

Community Based Analysis of the U.S. Legal System's  
Interventions in Domestic Abuse Cases  
Involving Indigenous Women

Final Report to the National Institute of Justice

Submitted by:

***Mending the Sacred Hoop***

***of***

***Minnesota Program Development, Inc.***

December 2002  
NIJ 1999-WT-VX-K006



*Community Based Analysis of the U.S. Legal System's  
Interventions in Domestic Abuse Cases  
Involving Indigenous Women*

Final Report to the National Institute of Justice

*by*  
***Mending the Sacred Hoop***  
*of*  
***Minnesota Program Development, Inc.***

*Thomas Peacock, Principal Investigator, Ed.D.  
University of Minnesota, Duluth  
Fond du Lac Band of Lake Superior Chippewa*

*Ellen Pence, Principal Investigator, Ph.D.  
Praxis International*

*Lila George, MSW  
University of Minnesota, Duluth  
Leech Lake Band of Ojibwe, Minnesota*

*and*

*Alex Wilson, Ed.M.  
Harvard University  
Opaskwayak Cree Nation*

*Amy Bergstrom, Ed.M.  
University of Minnesota, Duluth  
Red Lake Band of Chippewa, Minnesota*

***With Contributions from***  
***Jacque Agtuca, J.D., Eastern Cherokee Descent***  
***Jane Sadusky, National Training Project***

December 2002  
NIJ 1999-WT-VX-K006



*Elder Advisors*

Margaret Big George  
Dorothy Sam  
Margaret Porter

*Principal Investigator*

Thomas Peacock  
Ellen Pence

*Research Director*

Lila George

*Research Assistants*

Amy Bergstrom  
Alex Wilson

*Research Consultants*

Dorothy E. Smith

*Editors*

Alex Wilson  
Dorothy E. Smith  
Greg Nicholls  
Casey McGee  
Tineke Ritmeester

*Contributing Authors*

Jacque Agtuca  
Shamita Das Dasgupta  
Jane Sadusky

*Consultants on Violence Against Indigenous Women*

Roma Balzer, Arawa and Ngati Ranginui  
Valli Kalei Kanuha, Ph.D. Assistant Professor of Social Work, University of Hawaii

*Administrative Coordinators*

Jan Madosh Smart, Bad River Band of Lake Superior Tribe of Chippewa  
Maren A. Hansen

*Community Team Members*

Eileen Hudon, Terri Henry, Barry Skye, Babette Sandman, Tina Olson, Marilu Johnsen, Cheryl Boyd, Dawn Suttan, Sandy Slinker, Gerard Sordelet, Arlene White, Lynn Marie Uberecken, Graham Barnes, Cheryl Tcarzak

*Advisors*

Judge Mary Louise Klas (retired), Jacque Agtuca, Trish Erwin, Shamita Das Dasgupta



## ACKNOWLEDGEMENTS

We wish to thank the many people who assisted us in this project. Our first thanks go to Margaret Big George who attended almost every research meeting we held over a two-year period. As an Elder she continually helped us to understand many of our reactions to the processes we saw, documents we read, and the countless stories we heard from women who are abused by their partners and the professionals who are responsible for protecting them.

As principal investigator Tom Peacock allowed a grassroots community group to organize and find our way to a new understanding of the processes that impact our daily lives.

As the primary research consultant, Ellen Pence brought a wealth of knowledge of Institutional Ethnography, the U.S. legal system, and battering.

Dorothy Smith was a constant source of encouragement and guidance in using a sociological methodology that many find complicated and difficult but we found fully accessible and relevant to our investigation. We much appreciate the many hours she spent editing chapters that have three and four authors.

Shamita Das Dasgupta helped us frame a major section of our report and helped us organize our thoughts on the problematic features of the U.S. legal system.

*Thanks also go to:*

Dorothy Sam and Margaret Porter, two of our most respected elders, who helped us to start our project in a good way.

Jacque Agtuca, who spent hours with us in video conferences and then gave us permission to use her historical piece on the development of Federal laws governing Tribal legal systems.

Dawn Suttan and Babette Sandman, who organized focus groups of Indigenous women and legal practitioners.

Karen Artichoker who convinced Mending the Sacred Hoop to apply for the funding.

Mending the Sacred Hoop who, like Dr. Tom Peacock, trusted us to carry out this incredible endeavor.

Jane Sadusky who consulted with our team and wrote the analysis of pre-sentence investigations involving Indigenous men.

Valli Kalei Kanuha (Hawaii) and Roma Balzer (New Zealand) for spending a beautiful day with us talking about the meaning of Indigenous ways of knowing.

Jessica Myran and Alyssa Kramer who helped in the hundreds of hours of coding our data.

Sue Katt who spent countless hours typing in revisions, and more revisions.

Jan Madosh Smart who helped get us started and organized our community team.

All of the community team members who rode with police, observed court, read documents, participated in focus groups and helped us make sense of it all.

Casey McGee, Greg Nicholls, Hilary Johnston, and Tineke Ritmeester who stepped in the last months of the project to complete the final edit of the manuscript.

And finally to Maren Hansen, who we somehow tricked into joining us to organize our meetings, transcribe our tapes, and schedule our observations. Instead she became the glue that held us together for two years. We cannot adequately thank her.

To all of these people we owe a great debt.

We also want to acknowledge the law enforcement officers, prosecutors, probation officers, judges and advocates who allowed us such great access to their work and their thoughts about their work.

*Lila George, Alex Wilson, and Amy Bergstrom*

*12-31-02*



## CONTENTS

<b>ACKNOWLEDGEMENTS .....</b>	<b>7</b>
<b>CONTENTS.....</b>	<b>9</b>
<b>PREFACE.....</b>	<b>13</b>
<b>METHODOLOGY .....</b>	<b>19</b>
INTRODUCTION .....	19
INDIGENOUS SYSTEMS OF KNOWING .....	23
<i>Concepts Underpinning Indigenous Knowledge Systems and Methodologies .....</i>	<i>25</i>
INSTITUTIONAL ETHNOGRAPHY: THE RELATIONS THAT ORGANIZE AND RULE OUR EVERYDAY LIVES .....	28
<i>Objectives and Practices of Institutional Ethnography.....</i>	<i>31</i>
<i>Texts as an Institutional Form of Coordination .....</i>	<i>32</i>
THE RESEARCH .....	36
<i>Introduction.....</i>	<i>36</i>
<i>Defining Problematic Features.....</i>	<i>38</i>
<i>Exploring Institutional Processes: Data Collection .....</i>	<i>42</i>
<i>Investigating Sequences and Processing Interchanges .....</i>	<i>44</i>
<i>Exploring Institutional Processes: Analysis .....</i>	<i>53</i>
<i>Training the Research Team.....</i>	<i>56</i>
<i>Critical analysis from an Indigenous American Perspective .....</i>	<i>57</i>
<b>DATA ANALYSIS.....</b>	<b>61</b>
UNCOVERING PROBLEMATIC FEATURES OF THE U.S. LEGAL SYSTEM .....	61

<i>Introduction</i> .....	61
<i>Job Specialization</i> .....	67
<i>Institutional Use of Categories</i> .....	80
<i>Institutional Versus Lived Time</i> .....	91
<i>Texts in the U.S. Legal System</i> .....	108
<i>Women’s Stories</i> .....	127
<i>Sidetracking Violence</i> .....	172
PROMOTION AND PROTECTION OF THE INDIGENOUS MOTHER-CHILD RELATIONSHIP..	187
<i>Focus Groups with Indigenous Mothers</i> .....	188
<i>Police Reports</i> .....	189
<i>Arraignment</i> .....	195
<i>Pre-Sentence Investigation</i> .....	198
<i>Sentencing</i> .....	199
<i>Civil Protection Order Court</i> .....	202
THE DISPOSITION OF CASES: AN OPPORTUNITY FOR ACCOUNTABILITY AND SAFETY .	208
<i>Introduction</i> .....	208
<i>Pre-Sentence Investigation Analysis</i> .....	208
<i>Domestic Violence Case Outcomes in the U. S. Legal System</i> .....	228
<b>FINDINGS</b> .....	<b>247</b>
INTRODUCTION: INDIGENOUS VALUES AND THE LAW .....	247
HONORING RELATIONSHIPS .....	247
<i>Relationship, 911 and the Dispatch Process</i> .....	249
<i>Relationship in the Police Response</i> .....	254

<i>Relationship in Civil Court Processes .....</i>	263
<i>Domestic Abuse and Relationships in the Indigenous Community.....</i>	271
HOLISM.....	279
<i>Holism and the 911 Response .....</i>	281
<i>Holism and the Police Response.....</i>	284
<i>Holism and Court Procedures .....</i>	290
<i>Advocacy and the Opportunity for a Holistic Response .....</i>	295
RESPECT FOR WOMEN.....	298
<i>A Story.....</i>	300
<i>Respect and the 911 Response to Domestic Violence.....</i>	302
<i>Respect in Judicial Processes .....</i>	306
A VISION OF INTEGRITY .....	309
<i>Introduction.....</i>	309
<i>Towards an Indigenous Criminal and Civil System .....</i>	311
<b>HISTORICAL CONTEXT FOR THIS STUDY.....</b>	<b>317</b>
INDIAN TRIBES AND THE SAFETY OF NATIVE WOMEN .....	317
<i>I. The Development of Federal-Tribal Relations and the Erosion of the Status of Indian Women .....</i>	320
<i>II. Authority of Indian Tribes to Address the Safety of Women. ....</i>	327
<i>III. Responding to Violent Crimes Against Women: The Context. ....</i>	329
<i>IV. Contemporary Tribal Approaches to Enhance the Safety of Women .....</i>	332
<i>Conclusion: How Changing Woman Stays Young.....</i>	337
SOCIAL HARMONY, COLONIZATION, AND VIOLENCE AGAINST INDIGENOUS WOMEN .	340

<i>Indigenous Forms of Social Harmony: Relationship of Women and Children .....</i>	<i>340</i>
<i>Perspective on how Colonization Leads to Violence Against Indigenous Women .</i>	<i>345</i>
<i>Conclusion .....</i>	<i>362</i>
<b>REFERENCES.....</b>	<b>1</b>
<b>APPENDICES.....</b>	<b>1</b>

## PREFACE

This is a report about institutional processes within the U.S. legal system and their impact on the lives of Indigenous women who are battered. We wanted to know if the intervention processes put in place within the U.S. legal system offered Tribal governments a trail to follow in the struggle to end this devastating legacy of colonization. Our investigation does not start in the abstract terrain of professional discourse and literature reviews, but with the concrete lives of Indigenous women.

We ask the reader to take time to read specific descriptions of the violence that Indigenous women in two very sparsely populated counties in the Midwest experienced at the hands of their partners. These descriptions are typically found tucked away in civil and criminal court files. Here in Appendix 1 direct quotes from police reports, protection order affidavits, and women's accounts in focus groups define this violence. Figure 1 shows a sampling of the descriptions. Figure 2 shows a sampling of the violence Indigenous women used against their partners. The contrast is stark. The level of disrespect, hostility, contempt, and abuse that confronts Indigenous women is alarming.

Indigenous women in the U.S. are the highest risk group to experience physical or sexual violence (USDOJ, 2000). When Indigenous<sup>1</sup> women turn to the U.S. legal system for protection, however, many find that it does not adequately protect their personal safety and other self-identified needs. When the legal system processes cases involving Indigenous victims of domestic violence, it fragments and de-contextualizes their experiences. More often than not, its

---

<sup>1</sup> We have chosen to use the term Indigenous rather than Native American or American Indian in order to emphasize the relationship of a problematic to the colonial experience of the people indigenous to what is now the United States.

bureaucracy operates without honoring women's roles as mothers, grandmothers and partners in families and communities.

In 2000 the National Institute of Justice funded Mending the Sacred Hoop<sup>2</sup> to conduct a study that would analyze how the U.S. legal system processes domestic assault and protection order cases in order to explore which of its aspects tribal Nations should use for the implementation of a response to Indigenous women who are abused by their partners.

---

<sup>2</sup> Mending the Sacred Hoop (MSH), comprised of the Indigenous staff at Minnesota Program Development, Inc. (MPDI) originally envisioned this project. MPDI, which operates a number of Indigenous and non-Indigenous programs designed to reduce violence against women, is committed to the concept of parallel development. Following this concept, Indigenous staff and board members design MPDI's programming for Indigenous women, and non-Indigenous staff and board members design programming for non-Indigenous women.

Figure 1





Figure 2



## METHODOLOGY

### Introduction

When members of Mending the Sacred Hoop (MSH) first conceived of this project, their goal was to investigate the experiences of Indigenous women who have been abused by their partners. They were particularly interested in legal processes relevant to tribal groups in the United States that currently are developing their own judicial systems and processes. As a significant number of tribal nations (referred to hereinafter as Nations) seek to establish law enforcement and court systems, and as other Nations re-think existing legal structures, the problem of responding to violence against Indigenous women is moving from a marginal issue to a central concern of Nations. The organizing work of women from dozens of Nations during the 1980s and 1990s has pushed tribal leaders to acknowledge that *sovereign women strengthen sovereign nations*. Toward this end, MSH had hoped to collaborate with Indigenous activists from the Zuni, Pine Ridge and Northern Cheyenne reservations on a project that would have involved extensive research into the experiences of Indigenous women who have been abused on these reservations and who have sought protection from local legal systems. This original research plan was not funded. However, the group did receive funding from the National Institute of Justice to investigate and assess the responses of city, county, state and federal legal systems to domestic violence involving Indigenous women in four jurisdictions (two cities and two counties) of a Public Law 280 state in the Midwest.

The jurisdictions of the study area are close to a large reservation, and each jurisdiction has a relatively large Indigenous population. The approaches taken by agencies that intervene in domestic assault cases in the study area are generally regarded as progressive, and their case management processes as good practice. The research group looked closely and carefully at these

institutional practices and processes and their impacts on the Indigenous women they serve. Recognizing that approaches that evolving Indigenous justice systems take to domestic abuse are likely to be influenced by those of the U.S. legal system, we knew that what we learned from our investigation could be of real value both to Indigenous women and to tribal leaders who are attempting to restructure their own legal and judicial systems.<sup>3</sup> Because our funding restricted us to an investigation of the U.S. legal system, we did not have to resolve the significant methodological problems we would have faced had we attempted to assess Indigenous justice systems by looking at only the few tribal courts in the study area. The practical uses of such an investigation would have been limited, in part because of the small sample size, but also because most tribal court systems are not funded sufficiently to fulfill the responsibilities with which they are charged. Additionally, since the U.S. federal government does not recognize the full sovereignty of Indigenous people, tribal courts do not have jurisdictional authority to intervene in serious assault cases, a condition which severely limits their response to domestic violence cases involving Indigenous women.

Having secured funding, MSH approached Professor Tom Peacock of the University of Minnesota Duluth to be the principal investigator for the revised project. With his help, MSH organized a team of local Indigenous and non-Indigenous scholars to manage the research project (designated as the core research group) and a second group of community members to help conduct the study. The core research group consisted of Dr. Peacock, Lila George, Alex Wilson, Amy Bergstrom, Maren Hansen and Dr. Ellen Pence. Tom Peacock, Lila George, Alex Wilson and Amy Bergstrom are members of the Indigenous community. Tom Peacock is a well-

---

<sup>3</sup> We also will make our findings available to those in the U.S. legal system who are currently engaged in an effort to reform what has historically proven to be an ineffective response to the needs of battered women.

respected scholar and experienced qualitative researcher. Lila George, an instructor in the Department of Social Work at the University of Minnesota Duluth, Alex Wilson, a doctoral candidate in Human Development and Psychology at Harvard University's Graduate School of Education and Amy Bergstrom, an instructor at the University of Minnesota Duluth, were the group's research coordinators. Ellen Pence, the director of Praxis International, provided oversight of the research. She has extensive experience in advocacy and has conducted research on the effects of legal processes on non-Indigenous women who have been abused. Maren Hansen, a staff member at Praxis International and Minnesota Program Development Inc., was the research administrative coordinator. Praxis is a non-profit research and training organization that collaborates with community groups who want to understand and change institutional practices that perpetuate the abuse of women. In addition to this core research team, a number of women from the Pine Ridge Reservation were involved in early stages of the research. From their own personal experiences, the Indigenous women who joined the team brought invaluable insight into issues and problems for Indigenous women in the legal system.

The team members' diverse cultures and backgrounds produced a distinct methodology. Indigenous people who conduct research often rely on Western knowledge systems and research rather than on Indigenous knowledge systems, values, and beliefs. That researchers are Indigenous does not guarantee that their research comes from an Indigenous perspective or that their research practices and processes have emerged from Indigenous ways of knowing. The notion of research itself belongs in discourses that have arisen in political and cultural regimes that take for granted the historical subjugation of Indigenous peoples worldwide, and even the guidance of Indigenous ways of knowing does not guarantee that an alternative has successfully escaped these implicit commitments (Wilson, 2001). Indigenous research methodologies (that is, the ways in which our

knowledge and experience guide and inform research) must be consistent with the goals, objectives, audience, values, and beliefs of Indigenous knowledge systems. This research project attempts an innovative solution to this problem by (a) formulating an Indigenous methodology, (b) using that methodology to guide the project, and (c) combining it with institutional ethnography, a sociological methodology that coordinates with Indigenous methodology.

Following the theory and practices of the Canadian sociologist Dorothy E. Smith (1987, 1990a, 1990b, 1999), the core research group chose institutional ethnography as the primary investigative method. The group felt that this method would preserve the project's focus on the meaning and impact of the U.S. legal system's institutional practices on Indigenous women. The group wanted to ensure that the results of the investigation would be relevant to Indigenous activists who are working to reduce the high levels of violence against women in their communities and hoped to contribute to the development of judicial models that will better secure Indigenous women's safety from domestic abuse. Crucial concerns of the research project were stated plainly by Karen Artichoker, a member of the Indigenous community who acted as a consultant to the group during planning stages of the study:

We need to have research models that will help us figure out what to do next. We don't need anybody to tell us that Native women are getting beaten and raped in disproportionate numbers; we know that. We know that Native women don't get treated the same as white women in the legal system. What we need to know is what works and what doesn't work to protect us (Personal communication, 2000).

While we drew heavily from Smith's work and consulted on a number of occasions with her, our methodology was distinctively Indigenous. The research was organized in a non-hierarchical way. The team arrived at decisions, established the topics and focuses of the research, and worked out analytic concepts, categories, and codes during group meetings. The team strove for consensus and built discussions, debriefings, weekly meetings, email and phone conversations into the group process, determined to give each team member equal say. We

consulted several Elders, from both the Indigenous community and the research community. In keeping with our commitment to be accountable to the Indigenous community, the core research team developed and maintained its connections to Indigenous women who have been abused and to other members of the local Indigenous community. Some women from the community played a part in the research process, particularly in the early part of the study. Our close work with Indigenous Elders and community members was particularly important when the group sought to uncover ideological practices operating in the U.S. civil and criminal court processes. The Elders and community members did not necessarily share the assumptions of those who routinely work with these institutional processes and their responses to practitioners' "normal" and "good" professional procedures revealed ideological aspects that otherwise may not have been evident.

Our investigation and analysis have sought to enhance the safety and integrity of Indigenous women. Based on Indigenous ways of knowing, we have critically analyzed the ability of the U.S. legal system to help confront violence against Indigenous women. Our research approach has both expressed and ensured our commitments (a) to root our analysis in Indigenous people's experience of the system (rather than the system's experience of Indigenous people), (b) to generate knowledge that is useful to Indigenous women who have been battered, (c) to guide community members and Nations who are looking for ways to assist these women, and (d) to achieve our goals in a way that respects women and honors our relationships.

### Indigenous Systems of Knowing

Societies, including those of Indigenous American people, are ordered around systems of knowing that reflect the values and principles of their world-views (Montour-Angus, 1995; Meyer, 1998; Thin Elk, personal communication, January 2001). The order of Indigenous American societies complements systems of knowing that have both internal logic and external

validity, properties that have been affirmed by people's experience of the world (Battiste & Henderson, 2000; Ladson-Billings, 2001; Montour, 1995). For example, Cree and Ojibwe people have sustained themselves by trapping and hunting for centuries, and daily cultural practices in their communities have emerged from this way of life. Knowing how to find and mark a certain trail and knowing which trail to take are vital sets of skills and knowledge. In the same way that trails in the woods are marked so they can be found and followed by others, traditional teachings in Cree and Ojibwe cultures guide people through life. In Cree and Ojibwe cultures, the trails that lead people through the woods and through life exist before either journey begins, having been prepared by those who went before (Weber-Pillwax, 1998; Wood, 2001). Knowing how to find, follow and mark a path through life engages a system of knowing that connects our everyday behavior with spirituality and community.

**The value of our relationships** – that is, our interpersonal and intrapersonal connections to place, community, family, spirituality and ideas – is a central principle of Indigenous systems of knowing (Wilson, 2001). The success of our research depended in large part on our ability to identify, understand, and honor the relationships we were engaging in throughout the research process. In particular, we needed to understand our relationship to the Indigenous communities that were the subject of our research. As Indigenous scholars working in the field of domestic violence have cautioned, it is important to “do research that does not just focus on the method and the process, but rather [focuses on] the very real problem of violence against Native women” (Montour-Angus, 1995). Understanding that the knowledge generated from our research *had* to be useful to the Indigenous women and community members who were assisting us, the team was committed to conduct research in a way that showed respect to women and honored relationships. We faced a challenge already familiar to the Indigenous researchers on the team; that is, we needed



to assume control over the interpretation of our struggles and to begin to theorize our own experiences in ways that make sense for us (Mikaere, 1995). To meet this challenge and keep the commitments we have made to the communities of which we are a part, our interpretation of our results validates, honors, and draws upon Indigenous systems of knowing.

### *Concepts Underpinning Indigenous Knowledge Systems and Methodologies*

The research methods and practices used in this project incorporate five basic principles that underlie Indigenous systems of knowing. These interconnected and overlapping concepts were identified in discussions between Indigenous members of the research team, and in conversations between these team members and other members of their Indigenous communities. These principles are not presented here as standards or rules; rather, they are understandings that have guided our research and interpretation. The principles are:

1. The communality of knowledge
2. The value of recognizing and honoring spiritual connections
3. Relational accountability
4. Reciprocity
5. Holism

#### The Communality of Knowledge.

As researchers, we are the interpreters—not the originators or owners—of knowledge (Wilson, 2001). Most Indigenous American epistemologies understand that Knowledge belongs to the universe of which we are a part and accept that, as humans, we cannot know everything. In our research process, we sought to honor and accept these understandings. For example, either individually or as part of a group, research team members smudged and prayed to thank *The*

*Great Mystery* before each meeting. We also chose to present some of our findings as stories, a form used in many Indigenous American societies to share knowledge.

#### The Value of Recognizing and Honoring Spiritual Connections.

To be consistent with most Indigenous ways of knowing, research must proceed in a way that honors relationships and spiritual connections (Hanohano, 2001; Meyer, 1998; Wilson & Wilson, 1998). To honor the relationships and spiritual links between and within the team members, research subjects, community members and the cosmos, we incorporated many traditional Indigenous practices, including practices that have been used earlier by Indigenous researchers (Wilson, 1997; Wilson & Wilson, 2000; Graveline, 1998). We offered tobacco in thanks for the assistance of others, valued dreams as a source of knowledge and used a “talking circle” as a format for the focus groups.

#### Relational Accountability.

Lakota people use the prayer *mitakuye osin*, which has been translated as, “There is a degree to which everything is related.” A prayer in the Cree language uses the phrase *mena ka ki haw ni wah koo makaganak*, which means “and also to all to whom I am related.” These phrases allude to a basic philosophy of Cree and Lakota life: We are accountable for everything that we do. An understanding of relational accountability should guide our procedure in everyday matters, including how we do research (Wilson & Wilson, 1998). Relational accountability reminds us that every researcher has roles and obligations that she should fulfill in her research relationships. The researcher is a part of her research and inseparable from the subject of that research, and in her interpretation of knowledge she must be respectful and supportive of the relationships that have been established through the research process (Wilson, 2000; Meyer, 1998). Researchers must develop a “vested interest in the integrity of the methodology and the

reliability of the results if their research results are to be of any use to Indigenous communities” (Wilson, 1996). Relational accountability suggests that, if the research conducted here is to increase the safety of Indigenous women who have been battered, then as a team we must ensure that our methodology and interpretation support and reflect the experiences and understandings of these women.

#### Reciprocity.

Reciprocity in the research relationship suggests that the communities and people who are the research “subjects” should be primary beneficiaries of the research (Steinhauer, 1999; Phillips, 2001; Meyer, 1998; Hermes, 2000; Weber-Pillwax, 1998). This assumption differs strikingly from research practices that place researchers as the primary beneficiaries of research, frequently through the career advantages of research publication. Honoring reciprocity, the central goal of our research team has been to conduct research that will improve the lives of Indigenous women who have been battered and the lives of women in Indigenous communities in general. We understand that the research we have conducted may not be directly beneficial to the Indigenous women who have worked with us in interviews and focus groups. However, we share with them the goal of creating greater protection against violence for Indigenous women.

#### Holism.

Holism recognizes that a person and social processes are more than the sum of their many parts. Holism reminds us that, in the research process, the spiritual, physical, cognitive, and emotional aspects of all the people participating in the research (including the researchers) must be considered. This understanding shaped the beginning question of our research process: *How does the current justice system attend to the spiritual, physical, cognitive, and emotional needs of Indigenous women who have been battered?* This question was the starting point from which we

developed the guiding questions used in interviews and focus groups. An Elder was normally present at weekly team meetings. The Elders attended to many spiritual needs of the participants and offered considerable guidance to the group's thinking. Additionally, to provide for the emotional needs of the participants, our meetings included time and space for debriefing, a process that took the form of arguing, crying, laughing or silence.

Indigenous systems of knowing are communal. Western institutions, by contrast, are characterized by a specialized division of labor. These institutions impose an order that is hierarchical and that consists of different professional jurisdictions, each of which monopolizes specialized knowledge and skills. Institutions have an impersonal and instrumental orientation that precludes attention to or expression of spiritual connectedness. They are objectified forms of power, defined externally and abstractly, which operate through systems of categories that divide and exclude. These forms of power are the antithesis of reciprocity and holism.

A methodology based on principles drawn from Indigenous systems of knowledge is complemented by institutional ethnography as a method of inquiry (Smith, 1987; Smith, in press; Campbell & Manicom, 1995; Campbell 1998; Currie & Wickramasinghe 1998; Grahame, 1998; Devault & McCoy, 2001). While the Indigenous methodology described above provided a basis for the critical analysis of institutional processes observed by the team, the research also needed to produce descriptions and analyses of the institutional processes. By using institutional ethnography to understand the organization of institutional practices that produce the experiences identified in our analysis, problems located in non-Indigenous legal processes can be avoided or changed.

#### Institutional Ethnography: the Relations that Organize and Rule Our Everyday Lives

Institutional ethnography began with a recognition that people's everyday lives and the social organization they bring into being are not self-contained but are hooked up to, shaped, and

regulated by forms of organization and relations that are neither immediately observable nor experienceable by those involved (Smith, 1987). It was originally designed as a way to do sociological research and write sociology that would enable women to be more than the mere objects of research (Smith, 1987, 1999). Institutional ethnography provides an alternative to social scientific strategies of inquiry that begin their explanations of society and people's behavior in sociological theory and concepts. It replaces these approaches with an inquiry that begins in people's experiences of, and in, their everyday worlds. Institutional ethnography does not propose to represent a social world as if the observer could stand outside it. In that sense, it does not objectify and, instead, consciously takes up a position defined by experiences that are problematic for people. The object of an institutional ethnography is not people or their lives. Rather, the research object is the institutional processes themselves in which they participate (in whatever way, and whether willingly or unwillingly). This research structure enables institutional ethnography to be used here as complement to the Indigenous method.

The principles of institutional ethnography can be summarized as follows:

1. People are experts about their own lives. We all have inside knowledge of our everyday lives (how we live, get by, make sense of things, get things done).
2. The world beyond our everyday life enters into our lives and shapes them. We take much of it for granted and may not be able to describe it accurately, let alone see how its workings have consequences for us.
3. If we want to understand how everyday life is organized, research must reach beyond it to explore the social and economic relations that shape what happens, for good or bad. Institutional ethnography's focus is on the activities and practices that are coordinated in the relations that organize or rule people's everyday lives. In other words, how does all this work?

4. Institutional ethnographers stand with the people whose everyday experiences are the starting points of their research. The researchers learn from their experience and their expert knowledge of their everyday worlds.

5. The ethnographers' business is to explore, explicate and explain the ruling relations that organize the everyday but are not wholly within or wholly visible within it.

In the context of this research, institutions are viewed as specialized organizations of people's activities that rely on formalized discourses (law, medicine, and so on) and are generalized and standardized across society. Institutional ethnographic research focuses on the distinctive ways in which people's activities are coordinated in the institutional process. Institutional ethnography does not attempt to describe the individuals themselves, or their everyday worlds.

Institutional ethnography differs fundamentally from other sociological ethnographies in several ways. Ethnographers typically aim to produce objectified descriptions, i.e. descriptions that are not written from any particular perspective. By contrast, institutional ethnography's standpoint problematizes certain aspects of institutional functioning, thereby giving definite direction to the ethnographic gaze. In this project, the research has taken the standpoint of Indigenous women, particularly women who have been abused.

Institutional ethnography has a clearly specified focus in the collection of ethnographic data. Analysis is, in a sense, built into the data collection procedures. The problematic is oriented by the standpoint of those whose experience is the starting point (in this project, the standpoint of Indigenous women). This standpoint organizes the field research by providing ways to decide what aspects of an institutional complex are relevant and how the complex is to be interrogated with respect to the issues it raises for Indigenous women. Rather than addressing the legal,

bureaucratic, and professional structures of the organization as a whole, this research identifies specific processes relevant to the problems experienced and traces their organization *as a sequence of institutional activity in which people participate at various levels and in various capacities*. These processes or sequences are also embedded in relations that extend beyond them, which the ethnography connects with as appropriate and relevant. Thus the key question in this investigation is “how do the involved people put together these institutional processes that produce these problematic outcomes for Indigenous women and the Indigenous community?” The focus, however, is not on the individuals, but *on the institutional forms of coordination that assemble their work to produce outcomes that no one intends*.

Finally, institutional ethnography focuses on how people’s doings are coordinated and with how things are actually put together. This focus produces a strictly empirical investigation of people’s doings or “work,”<sup>4</sup> of how work in different sites is coordinated, and of the characteristically institutional forms of coordination in which texts and documents play a central role (Smith, 1995).

### *Objectives and Practices of Institutional Ethnography*

In sum, following its adopted standpoint, institutional ethnography describes processes by tracing the work activities of those involved, how they are coordinated and how institutional texts function as coordinating devices. The methods of investigation are straightforward (though

---

<sup>4</sup> In this respect, it has something in common with “activity theory” originating in the psychological theory of Vygotskii, but developed by some as the study of organizational work processes (e.g. Engstrom 1990, 1999). It differs from activity theory in not basing its field orientation on the activity of individuals, but on activities or work as it is coordinated with that of others and particularly with coordination “at a distance” (Latour, 1988) in which texts perform the dual functioning of coordinating work in multiple local sites and at different times and of standardizing representations, regulations and the like. Its aims are more strictly ethnographic and it is not interested in the kinds of model buildings characteristic of Engstrom’s work.

often laborious) and include: interviews with institutional participants about their work (including textual work); observation of work processes, such as those of dispatchers in a 911 office or police on patrol; and analyses of texts in terms of how they are produced and processed to coordinate those institutional sequences on which the research is focused.

Since the research does not focus on individuals or on variables identified through individuals, interviewing and observation follow the classic field procedures of sociological ethnography (see, for example, Spradley 1979; Schwartzman 1993; Emerson, Fretz, et al. 1995; Holstein & Gubrium 1998). In addition, researchers analyze the ways in which texts are situated in and coordinate participants' work in different local settings (Smith 1990b; Pence, 1996; Smith, in press). Since the object of the investigation is not to characterize individuals but an institutional process, there are no systematic sampling procedures. Instead, the process to be traced is identified as the sequence of positions and work and the interchanges among them that produce the outcomes in which the investigation is interested. Interviews and observations sample the work process at different points, ensuring a sufficient range of participants' experience to give reasonable confidence that the ethnography locates the normal institutional functioning and normal range of situations that are processed. Individuals in a given position are also knowledgeable about how things are done routinely and the interviews can tap into their competence.

### *Texts as an Institutional Form of Coordination*

To some extent, institutional regimes are coordinated by their texts and documents. The writing and circulation of texts produces a shared reality, constructed according to institutional rules, for participants in an institutional course of action. Once produced, a text circulates among diverse work settings, standardizing the 'reality' to which they orient. For example, a case of domestic abuse enters the institutional course of action that may lead to the arrest, arraignment, and



eventual sentencing of an abuser as a police incident report. In this document, the officer translates a real world event in people's lives into the categories and topics relevant to institutional processing. The police report is regulated by legal texts and by a district's established conventions, but it relies on how the police understand the incident and consequently may be subject to forms of racism and sexism that prevail in the given region. The police report becomes the founding reality of the event that coordinates the subsequent work of attorneys, supervisors, social service agencies concerned with child protection, probation officers, and other involved practitioners (Pence, in press). Tracing links in the chain of work-text-work exposes the ways in which outcomes are produced and in which people positioned differently play their parts.

Exploring the legal sequences of action in cases of domestic abuse involving Indigenous women brings to light how they are excluded and how their concerns are left unheard. A focus exclusively on individuals and legal sequences of action would violate values of connectedness and reciprocity that are central to Indigenous communities. The exploration of these sequences may also expose organizational gaps and disjunctures, such as the absence of the victim's voice in the sentencing process or communication gaps between the district attorney's office and the police when developing the protocol for writing reports.

A focus on institutionalized forms of coordination, particularly on the role of texts, has this major merit: because the research focuses on work practices and very specific interchanges between work sites, problems and issues can be located where and how they occur, and specific practices (and how they are coordinated) can be identified as sources of problems. This makes it possible to specify where change is needed and, perhaps, to make specific recommendations. Nations that are in the process of designing their legal proceedings will be particularly interested

in the problems identified in this research that result from the institutional coordination of different parts of an overall legal process.

In their interviews and observations, institutional ethnographers emphasize *how* things are done, rather than focus on the individual at work, though s/he will be a primary source of information. This method of inquiry assumes that people know what they are doing, regardless of whether they are considered experts when judged in relation to some objective criterion. The assumption is simply that people know how they go about getting their work done, in the same ordinary way in which people know, for example, how to catch the right bus to get to their place of employment on time, or which freeway exit to take if they are heading to the mall to do some shopping. For example, people who do not think in terms of maps can nevertheless give directions on how to get “from here to there.” Similarly, police on night shift are able to talk about how they get through their night’s work, what is involved in writing a report, how they get information from parties at the scene of a domestic abuse call, and so on. In effect, when interviewing experts such as these, the interviewer is being taught by the interviewee. It is like those very ordinary situations in which someone demonstrates and describes how he makes a particularly tricky cake or how she would prune a pear tree that is showing signs of blight.

In beginning with the everyday experience of Indigenous women who have been abused, we begin with stories that have not yet been captured by the institutional categories or the ways of talking and writing that, since Foucault, have been called ‘discourse.’ The concept of discourse has been defined and used in a number of ways, but in the context of this research, we are referring to a formalized language that has been developed systematically and as part of an institutional regime. Discourses provide the terms in which people who are operating in an institutional context can speak to one another as professionals. Lawyers use a different language

from probation officers; police from social workers, and so on. These different languages intersect in the institutional language of the judiciary, which sets up objects, events and actions that the different professional and occupational discourses share. In this context, the concept of discourse is useful because it directs our attention to forms of language that, in getting things said, also exclude. Institutional discourses establish systems of categories for naming, representing and, above all, making actionable the realities for which the institution is responsible. They are not devised to provide a description of what happened, or to permit those caught up in institutional processes to express their views and feelings. Notably the institutional language and discourse of the judiciary exclude almost all the dimensions presented above as characteristic of Indigenous systems of knowledge. By listening to the stories told by women who have been abused, we learn, from their viewpoint, about experiences that are embedded in real life situations and relationships and that include both the women's experiences of abuse itself and the women's experiences with legal institutions processing their abuse. The latter is notably missing from institutional discourses.

There is an ordinary tendency for the respondent to idealize practices reported in this way. In part, this can be avoided by interviews that move the respondent from generally describing a practice to giving multiple examples. It can be avoided even more effectively if interviews are coupled with observations. In this research, interviewing has been coupled with observations wherever possible (for example, of the dispatch process and of police patrols). However, the descriptive objective is not to produce a synthetic account of practices by melding different versions, but to allow the representation of variations. This is because uniformity is not expected; the standardization of sequences of action does not rely on uniformity of practices but on the textual mediation of different stages of the sequence. For example, what police do when

on the scene of a domestic abuse incident may vary considerably, but they must produce certain minimum numbers of items of information to establish “probable cause” as defined by state law. This information must be produced under conditions that will stand up in court, that is, they must follow proper procedures in the collection of information. Gerald de Montigny (1995) has given an excellent description of analogous procedures used by a social worker when entering a home where child abuse is suspected. He describes how the social worker, who has in mind the report that he is required to make to court, attends selectively to what he sees in the home. He checks the cupboards for food, checks infants for signs of frequent diaper changes and so forth. Such reports come to stand in for the reality of the event in the institutional process. The work of others who have responsibilities in the process are in this way oriented to the same “case” or “incident,” because their work picks up from the text of the report rather than from the original events. In general, institutional coordination occurs through standardized texts or standardized protocols for producing texts.

## The Research

### *Introduction*

The Indigenous methodology is primary. It establishes the problematic and the standpoint that direct the institutional ethnographic aspect of the research. A dialogue between the two has been created. In meetings between the Indigenous women researchers and other Indigenous women from the community, the women explored the issues of domestic abuse in the Indigenous community and the experience of women with non-Indigenous policing and judicial processing. Members of the research team collected the field data that have enabled description of the institutional sequences in which the experiences of abused women with the legal process are embedded. The institutional sequence starts with the police investigation and moves through

charge, arraignment, trial, pre-sentencing and sentencing. In this dialogue between the experiences of Indigenous women and institutional ethnographers, the issues that were raised at meetings and in interviews are located in, and specified in relation to, the institutional process. Providing substantive descriptions of the policing and judicial processes, field observations and interviews complement scrutiny of problems identified by Indigenous women's standpoint. These descriptions are essential if the ethnography is to be more than a critical reflection. If the practical and policy objectives of the research are to be achieved, it must connect with the actual workings of the institution.

At the beginning of the study, the core research team met with Dorothy Smith in a weekend workshop. On the first day, the scope of the research project was worked through; on the second, institutional ethnography was introduced as a method of inquiry. It was introduced both theoretically and using exercises to demonstrate how it worked in practice. The exercises demonstrated the importance in institutional processes (a) of the discourse or ideology in the organization of institutional processes, and (b) of the role of texts and documents. The research planning proceeded in this way, linking an Indigenous methodology with institutional ethnography. Five research tasks emerged:

1. Define the problematic we were analyzing.
2. Map out steps of the criminal and civil processing of a domestic abuse related case.
3. Collect data through interviews, observations, the use of focus groups, review of texts, preparation of site descriptions, conducting debriefings of observations and interviews, documenting ongoing research meetings and finally by recording the personal experiences of community members and researchers while conducting this study.

4. Analyze all of those data discovering how the sum total of the processes and practices do or do not take up the safety needs of Indigenous women.
5. Produce a set of findings that will benefit tribal Nations responding to domestic abuse.

### *Defining Problematic Features*

The term “problematic” refers here to the concerns and conflicts that emerge from the experiences of individuals who stand in a specific relationship to a bureaucratic process. The problematic locates an area out of which questions and issues arise (Smith, 1987). To identify the problematic in an institutional ethnography, a researcher must learn from those whose standpoint provides the starting-place for the research. In some cases, research may start with preliminary fieldwork (interviews, focus groups or observations) to get “the story” from those who are living it. In this case, the research agenda was developed in part through the participation of Indigenous women as researchers, through consultation with Indigenous women who have experienced domestic abuse, and through meetings with other women and men from the local Indigenous community.

The problematic is generally located at the disjuncture between everyday life and the institutional order, between the stories people tell from their point of view and the formalized institutional renderings of those stories. Using the notion of relational accountability we tried to understand the experiences of Indigenous women with police intervention, the judicial process as well as the response of their respective community. The goal of our investigation was to gain an understanding of how bureaucratic processes re-shape lived experiences. That is why the determination of the problematic provides the direction of the research. It begins with the stories Indigenous women tell. They describe a piece of the puzzle that we attempt to solve.

We identified and defined research problems in two steps:

1. We began by arranging to meet with Indigenous women who had indicated an interest in working on the project. We held two long sessions in which we provided information and training on the institutional ethnography method. Thirteen women from the community attended the sessions. They were women who had been abused and had experience with the legal process: community Elders women associated with local organizations that had helped with the project's original proposal. In these initial sessions, we set the tone of our investigation and defined what would happen in the research process. In the first session, those who had had experiences with the judicial processing of domestic abuse described their experiences. Others contributed stories of the impact abuse has on women's lives and the lives of those close to abused women, including their abusers, and described how abuse and the legal processes that manage abuse had been regarded in the Indigenous community. In the second session, we mapped the institutional terrain to be examined and developed a preliminary understanding of how Indigenous women experienced each of these institutional steps. The meetings were taped and team members made notes from the meetings.

2. In our second step, a community team was developed to participate in the research. Staff from MSH and MPDI had already made commitments to participate in the research. The research team also identified strong players in local organizations that serve Indigenous women in general and that specifically serve Indigenous women who have been abused. We approached front-workers at agencies such as a resource center for Indigenous people, a shelter for women and their children, a shelter for people who are homeless, a transitional housing program for women, a halfway house for Indigenous women in recovery from alcohol abuse, and detoxification centers. The research team targeted front-line workers as

research participants rather than the administrative staff of these agencies so that we would be able to learn from their extensive personal experience of what happens to Indigenous women in U.S. legal processes. We had originally envisaged that community members would participate throughout the research project, helping both to determine the problematic and to gather and interpret data. However, the involvement of community members diminished over the course of the project and we now recognize that a full time person assigned to work with this group may have been able to help sustain their involvement. The early involvement of community members, however, was enthusiastic. All the community members participated in meetings to identify problems encountered by Indigenous women using the criminal and civil system and half of the group went on observations or attended focus groups. At the beginning of the focus group meetings, each participant read and signed a letter of consent, which provided an overview of the research and detailed the participation expected from focus group members (Appendix 2). The participants were asked to honor the privacy and confidentiality of other group members. The focus group meetings were taped, and the tapes were then transcribed with all identifying information removed.

The research and community teams had received training on how to conduct focus groups (see above), during which a lengthy list of questions was generated. From this list, four main questions were developed. Focus group members were first asked to describe generally their personal experiences either as an Indigenous woman who has been abused or as a person who works with Indigenous women who have been abused. This question included an inquiry about whether children had been involved and what their experience was like. The second question asked specifically about the women's experience of the criminal or civil justice system in relationship to the incident of abuse. The women were then asked what aspects of the current



system they would want to change. In the final question, the women were asked if they wanted to add anything to their earlier responses. After the first focus group had been held and the research team reviewed transcripts of the meeting, the team felt that they needed to ask about some other things. Additional questions were added about the use of weapons or sexual violence in association with the abuse, and whether these factors influenced the legal system's treatment of an incident of domestic abuse.

The Indigenous principle of relational accountability guided our research relationships. The core research group organized a feast for their first meeting with members of the community team and the three Elders that the core research team had asked to assist and guide them. The Elders were approached initially by offering them tobacco and inviting them to the feast. Those who attended the feast provided names of other people who might be willing to attend the second community meeting. Both the feast and the second meeting began with a tobacco offering to the people with whom the team was working. These exchanges conveyed our commitment to the research and to the people with whom the team met. Tobacco was also offered to the heads of local agencies that signed Memoranda of Understanding with the research team. The memoranda were agreements between the research team and the agencies, in which the agencies granted the research team permission to interview and observe (including activities such as ride-alongs with police officers and sit-alongs with 911 dispatchers) employees of the agencies. The principle of relational accountability also guided practical aspects of the research team's focus group conduct. For example, the team provided transportation to some community members who participated in the focus groups, and offered food and childcare during the focus group meetings. The research team members understood that they were accountable for the ways in which they

conducted themselves in the community. If community members perceived the research process as disrespectful in any way, the study could be jeopardized.

Through these connections with the Indigenous community, we have been able to connect with Indigenous women who have experienced domestic abuse and particularly those who have had experience of the U.S. criminal and civil processes. We were able to establish the problematic of the research because our conversations and consultations with this group of women enabled the core research team to locate the disjuncture between the everyday lives and experience of women who are abused and institutional ways of relating to those women. The women located trails through the institutional processes that the research team followed in our investigation. The aim of our research was to locate Indigenous women's (including members of the research team) experiences of disjuncture in the institutional processes. This disjuncture is brought into being in the coordinated practices of those who work in the institutional processes and those whose everyday work practices produce the processes.

### *Exploring Institutional Processes: Data Collection*

In investigating institutional processes, we relied on both observation and interviewing. We were interested in the work that people do to produce what actually happens institutionally. We talked to people about their work and, when possible and appropriate, we made observations. We were not, however, interested in how well professionals do their work or in looking at individual biases or attitudes, although, in this research, we did encounter them. The focus of this investigation was the coordinated sequences of work that make up a given legal process. Each work site in a given sequence was conceptualized as a processing interchange, dependent upon and receiving what has been produced by the work of those earlier in the sequence and passing on to the next stage what is produced at that site. We were interested in how coordination between and

across these interchanges was achieved. This coordination includes the discursive or conceptual practices that are characteristic of the institution, that is, the language of the institution that aligns people's work at different levels and different stages of the process, as opposed to the vernacular language. For example, when police officers walk into a woman's home after she has called in to the dispatch center, an institutional discourse is activated; what the dispatchers recognize and record is conceptualized in terms established by the institutional discourse, rather than how the woman or her partner are experiencing it. They are terms that inform the police officers' report. His wording is intelligible within the law and helps it to determine whether there is "probable cause" on which an abuser can be arraigned. They are also the terms under which the situation of domestic abuse becomes actionable within the legal system.

Early in our research, we discovered that many of the problems we had uncovered in communities where most of the police, judges and social workers were non-Indigenous were also present in communities where most of these practitioners were Indigenous. Clearly, the kinds of problems we were uncovering in the institutional sequence of interchanges could not be resolved simply by replacing non-Indigenous with Indigenous practitioners. The specific problem in these interchanges was not racial bias on the part of non-Indigenous practitioners towards Indigenous people. Incorporating the institutional presuppositions and organizations of non-Indigenous judicial systems into Indigenous communities produced the same kinds of problematic experiences for women. Our goal, therefore, was to propose alterations in these structures as Indigenous Nations take up the task of either reforming or building legal systems that address the issue of violence towards Indigenous women.

*Investigating Sequences and Processing Interchanges*

Our plan was to investigate the steps and processing interchanges of the sequences to explain the outcomes of institutional action. We were not looking for how people constructed any kind of meaning from what they observed, wrote, or read. Instead, we were interested in understanding how cases were put together. We focused on the activity of practitioners, what people actually produced at each interchange in the process, and how they used what others had produced at earlier points of intervention. Institutional sequences are not the actions of any one individual but are produced in the coordination of the work of several individual practitioners. Investigation of these sequences moves the focus of our attention away from the individual to how a case is put together through the activities of people in the local court system.

Institutional processes typically are brought into being by institutional practitioners who are members of different professional occupations. Hence, their activities and the coordination of their activities are regulated and ordered not only by the overarching criminal and civil law of federal and state government, but also by professional discourses created extra-locally. This involves external rules or instructions such as the criminal code, state sentencing guidelines and rules of the court. There are also discourses that provide the objects, goals, and terminologies of different institutional practitioners, such as the legal and psychological discourse on family violence, the feminist discourse on violence against women and the professional theories of social workers. The production and reading of textual (documentary) materials play a key coordinating role for these various orientations. Reports (such as the original police report of domestic abuse that is supposedly available to all those involved in a case, or the pre-sentencing investigation report that is read by judges, prosecutors and defense attorneys and is also available to probation officers) create a shared textual reality. The criminal code and relevant civil law

provide the overarching concepts and categories for all involved since, apart from other issues, these laws establish the essential conditions of institutional action. The authority of these laws is such that local practices and forms of coordination are regulated by widely generalized institutional complexes of law; technical and professional discourses; as well as the jargon of particular social movements.

Following the principles of institutional ethnography, we focused our data collection on institutional activities that we found to be key determining factors in how and why individual practitioners act on domestic abuse cases. We narrowed the scope of our investigation of these processes by asking only six questions of each process we examined (Pence, 1996).

1. How do **rules, regulations, laws, ordinances** and **policies** become operational in each bureaucratic interchange?
2. How do **administrative processes** (the routing of information, the use certain kinds of forms, documentation and communication practices) influence the practitioner to act (or not) on a case at a given point? In other words: What are the documentary routines that organize institutional practices? What texts are used for routing information at each institutional interchange? What forms do practitioners produce and use? How do documents link practitioners to each other? How do texts act in the administration of a case? Do they screen, categorize, prioritize? Do they derive from a theory or concept to be applied to the case?
3. How do the **trainings** and **skills** of practitioners; theories, concepts and categories they learned to apply, influence how they act on a case and coordinate with others?
4. How do practitioners view their particular **decision-making power** that allows them to determine their course of action? What are the limitations? What do practitioners regard

as their specific task in case processing? To what extent do practitioners take action outside of those defined specific tasks?

5. How do **resources**, technology and work conditions affect decisions about, and eventually the outcome of, a case? “Resources” could include a women’s shelter, detox center or mental health facility. Resources also could include the time a practitioner has available to work on a case. Technology includes telephone, computer, a/v systems as well as other office equipment. Technology, for example, also includes the ability to write by hand, to dictate or put a report on a computer system.
6. What role, if any, does the **social position** of the victim or offender play in the way in which he or she is processed as a party in the case? Does it matter whether someone is Indigenous or non-Indigenous, poor or wealthy, homeless or housed, a mother, a grandmother, a tribal member, English speaking or not?

Methods of data collection were designed to capture the different levels of organization implicated in processes under investigation. They consisted of:

1. **Site description:** A general description of the site was prepared by the administrative coordinator of the project, who, in part, drew on previous research data archived with Praxis International (Pence & Lizdas, 2001). The coordinator prepared booklets to orient the core group and community team to each step of case processing. For example, the 911 booklet contains information such as: Terms used by dispatchers and operators with which observers should be familiar; state laws that affect the 911 dispatch center; best practices for dispatchers and operators; examples of forms that dispatchers and operators may use; and codes and abbreviations that dispatchers use in their communications with police officers. The booklet also summarizes background material for the dispatch centers, such as: Where does 911 fit into

the overall system? Do dispatchers and operators use terms and language with which observers should be familiar? What State laws affect the 911-dispatch center? What are the best practices for dispatchers and operators? What texts and forms are used? What codes and abbreviations are used when communicating with police? For each site, such a small handbook described what occurs at this site and the relationships of that step in the process to the overall handling of a domestic violence case.

2. **Observations:** Our second data source was observations of each institutional interchange in the process. Members of the core research team and some of the community members who had taken part in the earlier training sessions on institutional ethnography conducted these observations. Immediately following an observation, an observer was asked to record on tape all her thoughts, insights and observations, in order to capture her immediate responses to what she had observed. These recordings were then transcribed and provided to the research group. The research team also debriefed the community members.

The administrating coordinator of the project, along with staff at Praxis International, negotiated observations at interchanges not ordinarily accessible to the public. These observations included “sit-alongs” with 911 dispatchers and “ride-alongs” with police officers. The 911-dispatch site is the institutional interchange between a person who calls for help and the police response that is mobilized to assist them. Most criminal cases involving domestic abuse initiate at this interchange. On our ride-alongs with police officers, we were able to observe the everyday (or every night) work of the police at the interchange between community and judicial processes, and the interchange between police and jailer, when a person is arrested and his or her career in the U.S. legal system is launched. Observations were also made in more public settings, such as courtrooms. In total, core research team members and community members conducted 6

ride-alongs, in which they accompanied police officers and sheriff's deputies on patrol; 7 sit-alongs, in which they observed the 911 call and dispatch center; 137 observations of Criminal Court hearings, including arraignment, pre-trial and sentencing; 28 observations of Civil Court hearings related to protection orders; and 3 observations of Probation Officers' work.

3. **Debriefings:** After each taped observation was collected, the administrative coordinator scheduled an interview of the observer by a member of the research team. These meetings were seen as an opportunity for the observer to debrief and for the research team member to clarify details and dig more deeply into the observer's responses. These debriefings also gave the observer an opportunity to bounce ideas off another person, process some of the difficulties they may have experienced or felt during the observation, and talk about things they may have remembered that they did not initially record. This brief interview was also tape-recorded, then collected and transcribed by the administrative coordinator.

4. **Meetings:** While in the beginning the agenda of our meetings consisted of general administration and allocation of tasks, once team members began their field observations, the meetings quickly became an important opportunity for the team to discuss as a group our observations, reactions, thoughts, feelings, ideas, and dreams about our research processes. Toward the middle of the project, we also realized that it was beneficial to allow the audit and research teams time to debrief with each other about their field observations. Because some of the richest discussions of our research and responses to our observations emerged in these meetings, we recorded and transcribed the meetings and distributed transcripts of 38 meetings to the group.

5. **Interviews:** Observations were complemented by interviews with practitioners whose work we observed. Observers typically were able at some point to ask the practitioners



questions between cases. These questions gave the practitioners an opportunity to expand the observer's understanding of what was being done at their particular interchange. The questions were asked using a dialogic interview style and notes from the interviews, too, were later tape-recorded and transcribed. Team members also conducted a group interview with police officers. Practitioners who had not been observed were interviewed as well. For example, on separate occasions, three different team members interviewed a single district attorney. These interviews were also recorded and transcribed.

6. **Texts:** At each interchange site, we collected all the texts that we saw practitioners use, including laws, regulations, policies, forms, evaluations, assessments, accounts, and reports. We also gathered documents that were produced by the practitioners at the site, such as police reports, 911 documentation, pre-sentence investigation reports, and Orders for Protection. In addition to these collected texts, we had access to transcripts of sentencing hearings. Texts related to the cases observed were collected as follows:

- a. Police reports: 81 police reports from three different communities were assembled. They were electronically scanned, and names and identifying information (addresses, phone numbers, drivers' licenses, etc.) were changed. They were then organized as a database under the following general headings:
  - Gender of Victim/Suspect (always clearly recorded in the police report)
  - Race of Victim/Suspect (not always clearly recorded in the report)
  - Whether the Victim lived on the reservation
  - Weapon Involvement
  - Whether the suspect was gone on arrival
  - Women's use of violence

- Relationship between parties involved in incident (this includes relationships between witnesses and victim/suspect)<sup>5</sup>

The database made it possible to assemble instances when suspect and victim stood in specific relationship to one another, as when both were Indigenous. Cases of this kind could then be connected further, for example, to what the woman was reported as wanting to happen (if that was included in the report).

- b. Order for protection files (OFP): 46 affidavits written by women who requested orders for protection were transcribed into the computer (all identifying information was changed). We tracked and compared the following requested relief (forms of protection) to those that were ultimately granted:

- Cause no physical harm or fear of immediate physical harm to petitioner or the minor children she listed
- Requests for no contact, whether in person, with or through other persons, by telephone, letter or in any way of the respondent with the petitioner or the minor children she listed
- Exclusion of respondent from shared home, her home and/or her place of work
- Exclusion of respondent from a reasonable area surrounding her residence
- Order respondent to attend domestic abuse program, alcohol/chemical dependency evaluation and treatment or anything else she requests
- Specific police assistance
- Financial assistance for petitioner and her (their) children

---

<sup>5</sup> see Appendix 3.

- Assurance that insurance will continue from respondent (if he is the holder)
- Award petitioner temporary use and possession of personal property and order respondent to not dispose of or destroy property.
- Any restitution for expenses caused by abuse
- Time petitioner would like OFP to be in place

In addition, information about children was collected and tracked:

- Children—gender and age
- Parentage—who is the legal parent(s): mother, father or joint custody
- Living Status—with whom the children are living
- Custody/Visitation—who has custody, if it is being contested, if there already exist specific visitation requirements, etc.
- Arrangement Requested—any intervention regarding her children

Finally, the electronic record reflected the outcome of the petition and important contextual features of the cases:

- Granted Ex Parte—were the arrangements requested granted in the ex parte?
- Granted OFP—were the arrangements requested granted in the OFP?
- Case Outcome—was the OFP granted or dismissed? If it was dismissed, was it because: (i) the woman didn't show up for the hearing, (ii) she requested that the OFP be dismissed (either at the hearing or later, through formal processes), or (iii) the court denied it?
- Did attorneys represent either party?
- Was an advocate present to support the woman?

- c. Transcripts of formal proceedings such as sentencing and arraignment hearings

d. Pre-sentence investigation reports

7. **Personal experiences:** We also asked all observers and interviewers, those from the community team and those from the core research team, to discuss their personal experiences and reactions during observations or interviews. We took notes and recorded those discussions. An example of one observer's responses to a call that came in from an Indigenous woman when she was riding with police on patrol will indicate the kind of insights this yielded:

I can't get this image out of my mind how we responded to a call on the reserve. It was so different here, because you have the city lights, and you have people and the hustle and bustle. Out there it was so penetrating. I felt so violating going out to this land that was supposed to be so sacred and so full of history. It is their community. This siren that is so penetrating and all you see is the lights going, and it is pitch black and we are just flying out to this woman who was calling for help. Everything about it looked wrong to me. I was sickened just sitting in that car going to her residence knowing that this [police] man was going to a residence that he doesn't understand the dynamic of family, and values, and culture that he doesn't have any ownership in our culture. It felt really violating. Maybe that is wrong to say he doesn't have any ownership, but my perception is that he didn't just based on conversations. He took me all over on the reserve and talked about the Indians this and the Indians that. (Reported in a core group meeting, December 2000)

8. **Focus Groups:** Transcripts of focus groups held during the course of the study were also a source of data. The focus groups differed from our other meetings with community and research team members in that the focus groups were arranged more formally. Because one of the principal investigators in the project is employed at a university, the research had to be conducted in a way that met criteria set by that institution's ethical review board, which required that we not contact potential participants in the focus groups directly. To recruit participants for the focus groups, we asked a number of people who work with battered women in the Indigenous community to distribute or post a letter looking for women interested in being part of the focus group. The letter asked interested women to leave a message on our phone detailing how and when we could contact them.

We conducted six focus groups with Indigenous women who had been abused and one mixed focus group, with Indigenous women who had been abused, Elders, human service

providers, and court practitioners. The women were from a number of reservations and tribes, but all were living in the area at the time the groups were conducted. We also conducted a small focus group at a National Nations Conference on Domestic Violence, with participants who were all Indigenous women who had been abused and were now practitioners. The questions used in the focus groups are presented earlier in this document. Participants in the focus groups signed letters of consent, and confidentiality was discussed at the beginning of each group. All the focus group meetings were audio-recorded and transcribed, with identifying features removed in the transcripts.

### *Exploring Institutional Processes: Analysis*

Investigative data was gathered from a variety of sources and in a number of forms. It was also organized and analyzed in several different ways. Data gathered in field observations, debriefings, meetings, interviews and focus groups were tape-recorded and transcribed, as detailed above. The transcripts were analyzed with a qualitative analysis software program, Hyperresearch. The group developed a list of features of interest in the transcripts by reading through a number of them and identifying common themes related to problematic features of the legal system's response to domestic abuse. Thirty-six themes were identified and established as codes in Hyperresearch. The software program was used to flag and extract all instances of each theme, with sources identified. These reports were then distributed to the research team for further analysis.

While initially the codes seemed distinct from one another, further analysis and discussion revealed that a number of them overlapped—or, at least, the lines that separated them became less clear. Ultimately, a thorough analysis necessitated narrowing our focus to the predominant themes and, as a result, we ended up omitting a number of codes from the final analysis. We did so not because these categories are unimportant, nor because they do not have a

significant impact on criminal case processing, but because the scope of our research required us to prioritize which codes we would fully develop. The codes we did not analyze further, along with their definitions and explanations, are found in Appendix 3. While most of the omitted codes are covered to some extent in broader subjects, some simply were not supported by enough data, and could not stand alone in this report and in our findings. These categories may be worthy of further investigation in future research.

Our data included a number of different texts that are produced at each site, and we analyzed each kind of text in a specific way. We scanned 81 police reports and removed all identifying information (such as addresses, phone numbers, driver's licenses, states and cities) from the scanned documents. Simple factual details in the documents were then recorded in a database. These details included the gender and race of the victim and suspect; the relationships between and living arrangements of the involved parties; whether or not the victim lived on a reservation; whether a weapon was involved; whether the suspect was present when the police arrived; whether the victim had used violence; any recorded arrests; and who was interviewed by or gave a formal statement to the police.

The narrative sections of the police reports were analyzed differently. Members of the research team read several of these narratives from three different communities and wrote down everything that caught their attention and that they felt should be tracked. From these concerns, specific themes or codes were identified for aspects of the police report narratives. These aspects included advice or instructions given to the victim; whether alcohol was involved in the incident; any background or explanation provided in the narrative; the nature of any violence or sexual violence in the incident; evidence collected and any problematic features associated with it; the involved parties' accounts of events; outcomes for the involved parties; references to sex;

officers' actions and observations; interpretations of women's statements, including indications that the woman was unreliable or hostile; officers' interview questions; subjective remarks; references to race; references to children; indicated risk factors, including mental illness; and what the women involved in the incidents wanted.

Both sections of the police reports that record facts and the narrative sections were coded using Hyperresearch. As a result, we could use the program to generate comparisons between coded features or aspects of either report section. This provided us with a powerful tool for analysis. For example, we could create queries in the database that would report the violence in any recorded instance in which the victim was an Indigenous woman, along with, where available, the woman's description of what she wanted to happen, perhaps for herself, her partner and her children, and compare these to the actual outcome in each incident.

The research team also analyzed the affidavits written by women who had filed for an Order for Protection (OFP). These documents are particularly interesting because they are initiated by women who have been abused, presumably to achieve an outcome that is desirable to them. We transcribed 46 of these affidavits, changed all identifying information in the transcribed documents. For each transcribed affidavit, we then recorded any requests from the petitioner for relief and protection and features of the court's decision to grant any ex-parte or final OFP, including any specific conditions stated in the OFPs, or, if an OFP was dismissed, the presented reasons for dismissal. We also recorded any references to children in the petitions and court decisions and registered factual details about the involved parties, such as their age and race, relationship status, and whether attorneys represented them. With the data organized in this way, we were able to compare the outcome that women had asked for when they filed the OFPs

(presumably, what the women had wanted) to the outcome delivered by the court (what the women had received).

### *Training the Research Team*

At the beginning of this project, the research team was trained on institutional ethnography by Dorothy Smith. In the first training day, we discussed the scope of the research project we would conduct. In the second day, we learned about institutional ethnography as a methodology of research and conducted two exercises that helped us to see the methodology in action. These exercises revealed how dominant ideologies are connected to ruling relations of institutions, how these features are connected to the system's practitioners and how, through this map, they then affect Indigenous women who are abused. The exercises also showed how institutions are operated by and reliant upon texts. This training session strengthened our conviction that we should look for the ways in which institutions support or dictate the practices of individual practitioners.

Once the research team had been trained, we were ready to invite identified community members to meet with us for a feast. At the feast, the research team and community members prayed, ate and introduced ourselves to each other. The team gave the community members an overview of the project and presented our expectations of any community members who chose to participate in the research as a member of the community audit team.

Soon after the initial feast, the core community audit team had assembled, and we invited them to join the research team for training on the legal purposes of each step in case processing, along with a fast course in legal jargon. As a research team, we understood that it was important that this attempt to demystify the system not program our observers to look at the system with narrow vision. To avoid this, we decided to divide some of the research tasks. We split the



research and community audit team into two groups. One group would focus on case processing in the civil system and the other would focus on the criminal system. In the first half of the training, each group met separately to the processing steps in their assigned branch of the justice system. For example, one of our audit team members taught the civil system group how an Order for Protection form becomes an emergency ex-parte order and then finally a long-term Order for Protection. Another team member taught the criminal system group about the sequence of events that initiates with a woman's call to 911 and ends with the sentencing of an offender. The group also interviewed two experienced police officers to give the future observers a chance to rehearse questions they might ask practitioners about the work they do. The officers were encouraged to say how they felt, rather than what they thought people wanted to hear. Team members asked the officers the following questions:

1. In a situation where an OFP forces another agency to become involved in a couple's relationship, would you ever be able just to help the offender remove his stuff from the home without arresting him?
2. In most cases, the victim does not want an arrest or conviction. How does this affect the officers, who want a conviction?
3. Is it more difficult to respond to a domestic abuse call when drinking is involved?
4. How do officers view domestic violence in the Indigenous community?

#### *Critical analysis from an Indigenous American Perspective*

We could not be involved in this research in a way that wholly detached us from the processes we were investigating. Throughout the research process, we reflected on our observations, our own responses to what we were learning and our evolving understanding of the legal processes and of Indigenous women's experiences of these processes. The telling and

discussion of dreams and their meanings played a part in these reflections. Recognizing that dreams may assemble experiences in new ways from which we can learn has long been important in Indigenous culture and we drew on this tradition in our work. After attending court hearings, spending an evening in a squad car, and reading a number of police reports, sentencing transcripts, or protection order affidavits, the research members frequently had dreams that became an important aspect for us to discuss and think about in relationship to our investigation.

Over the course of our own six-month involvement in research, of discussion and reflection, we began to identify recurrent themes. In listening to people's observations, reading these texts, observing practitioners processing cases, and watching women enter courtrooms, file for protection orders and interact with police after being assaulted, and in processing our own experiences and dreams associated with this work, these themes became increasingly well defined.

Here is an example of how we arrived at the first of these themes: When we were preparing to do our first ride-alongs, we looked at 15 police reports of incidents of domestic abuse involving Indigenous women. Each member of the research group had read the reports when we held the preparatory meeting. Someone asked the question, "Well, what are people's reactions to the reports?" The first reply was, "They're a bit sparse." We were struggling to understand how such horrific events in the lives of women could be reduced to one or two paragraphs that leave the reader with more questions than answers. We started by asking what was recorded in the reports. What seemed to be relevant to the officers writing the reports? From there, we went looking for the social organization that produced the disjuncture between the lived experiences of the women in these reports and the institutional rendering of their situations in the reports. We called this theme "Sidetracking Violence."

We read all our observational, interview, and focus group data, identifying recurrent themes. Those transcribing the interviews (staff members at Praxis International) suggested other themes. We worked from these themes to a set of codes used to systematize the data analysis. All the data collected were coded. We also went through all the documents and used a cut-and-paste program to collect all instances of a given code. Some of the documentary material was analyzed in detail. In this process, further themes emerged. Taken together, themes were refined to produce a list of problematic features in the institutional processes that we had observed. We organized some data to help us make some comparisons.

During the period we were working on this aspect of data analysis, we met for two days to coordinate our work and discuss our findings. Finally, in March 2001 we organized a two-day meeting with the core research team to discuss how to coordinate our data into a research report. We had each completed a general review of the data prior to the meeting. Our task was to map out how we were going to analyze the data. In this session, we searched for some themes in our work. However, rather than finding themes in the information and the data we were gathering, we found themes in the members' reactions to their observations. The themes that emerged from our exposition of our reactions to the data were, in fact, recurrent throughout the data. They are presented briefly here, and are developed more fully in our findings section of this report.

1. In almost all Indigenous communities, there is a strong emphasis on honoring the physical, spiritual, emotional, and cognitive relationships between people, other living creatures, and the communities and environments that surround them. With this in mind, we considered whether such relationships are honored within the legal system and in the ways it processes cases involving Indigenous women who have been abused.

2. The principle of holism has been described earlier as integral to Indigenous ways of knowing. Holistic living means that how we do things/how we are in the world cannot or should not be compartmentalized and fragmented. Hence, in our examination of the U.S. legal system in the context of domestic abuse, we asked, “How is it that this U.S. legal system does or doesn’t allow for holistic thinking and living and does or does not enable holistic ways of dealing with the troublesome level of violence against women in Indigenous communities today?”

3. The third foundational piece that we deliberated and kept referring to as we watched these processes and talked with people was the notion of respect for women. We asked, “How are women respected in this system? How does each step lead to a requirement of respect for women by the violent men with whom it is dealing? Can we find an approach that is respectful to women within the boundaries of this kind of a legal system?”

4. Finally, we concluded that tribal Nations must emphasize the need for a justice system with integrity. For Indigenous people, our values of honoring all our relationships, holism, and respect for women must be integral to such a system.

## DATA ANALYSIS

### Uncovering Problematic Features of the U.S. Legal System

#### *Introduction*

Throughout our 18 months of observing, interviewing, reading case files, making sense of bureaucratic case management procedures and forms, analyzing directives and laws, and talking with groups of Indigenous women and professionals in the U.S. legal system, we constantly found ourselves talking about a “they” who always eluded us in the local setting of our study. For example, we would say, “they designed this process to...” or, “they don’t allow women to....” We had expected to find “them,” the ones who hold the power, at the top. Perhaps we expected them to be the judges or the state supreme court or the state legislature. However, in the end, we found the power we sought was not located in a position that one or more people held but in the processes and structures of the legal system.

We had expected we might uncover individual bias and cultural insensitivity, women-blaming, or lack of cultural competency that lead to poor protection of Indigenous women and their children in the U.S. legal system. Instead, we found an all-pervasive way of knowing and thinking about and acting on cases involving violence against Indigenous women produces a false account of Indigenous women’s experiences and promotes a course of state intervention in women’s lives that not only often fails to protect women under the stated goal of the U.S. system to ensure public safety, but actually draws Indigenous women into state forms of social regulation that further endanger them.

We recognize that the Indigenous community’s objections to what is “going on” in the U.S. legal system reflect more than a difference in theory or language or concepts or priorities. It is rooted in a fundamental difference in how we see social reality in comparison to how

professionals in the U.S. criminal and legal system are organized to see that reality. We want to emphasize that the differences between those of us on the outside watching the process and those on the inside carrying it out is not so much the difference of personal background or loyalties or political philosophies or cultural experiences, but a difference in where we are located.

Professionals working in the U.S. legal system are located inside a complex apparatus of social management in which, as professionals, they are coordinated to think and act within the relevancies and frameworks of that apparatus. As a group, we feel inadequate to the task of naming and fully explicating the workings of all of the ideological practices we were uncovering, but we could see what did not fit for us. We could see how the legal system was imbued with the way of pulling experience apart from the case to be managed. We could actually pinpoint where and how actual experiences were replaced with institutional renderings of those experiences in ways that subverted legitimate attempts to protect women. We could find occurring in dozens of institutional interchanges the loss of women's real experience, and the replacement of it with a fabricated experience.

We continuously had to remind ourselves to avoid discussions about the individual behaviors of practitioners or of their attitudes or comments, and ask ourselves what institutional processes or ways of doing things informed the worker to act on cases in particular ways. Eventually, certain features of the system, rather than of the players in the system, became visible to us. Instead, we focused on how the institution itself carries with it an ideological practice that dictates a way of thinking about and handling of these cases: a way of thinking and acting that precludes interventions from attending to the most cherished values of Indigenous people—a connection to our relatives; a sacredness of women and the bond between women and children; the notion of holism, and the interconnectedness of all of our experiences; and the need

for honesty and integrity in all of our dealings. In this report, we have attempted to explicate a number of concrete ways we saw the U.S. legal system produce a false representation of the problem of violence that Indigenous women experience and embark on an equally unrelated and unreliable solution to that violence. In the end, the power or powerful people we sought were found in the processes that pervade the system. We found that when practitioners acted on “cases,” they did so with techniques, mechanisms, and procedures that allowed the control of knowledge about women’s lives to rest with the professional ways of thinking about Indigenous women and families and violence against women. The knowledge came from the fields of psychology, social work, and criminology. We were unfamiliar with much of the discourse in these fields prior to embarking on this journey. In this section, we have listed what we saw happening in the U.S. legal system’s case management procedures. It is followed by nine separate sections that show how all of these practices came about.

We found that the processes and practices of the U.S. legal system ignore the familial and social cohesion that is a vital part of Indigenous cultures. For Indigenous people, women, children and men are not subjects separate from their relatives, clan and tribe. They cannot be plucked out of their relations and treated as separate entities. We are tied to our ancestors, our future generations and our clans, in ways that are ignored in every aspect of the U.S. legal system.

The U.S. legal system privileges professional knowledge over the knowledge of lay people, thus making women powerless through certain mechanisms of assuming power in these cases. The U.S. legal system produces a work force that is unaware of processing procedures beyond their relatively limited role in the case, which frequently leads them to be unconcerned about the outcome of a case. Unconcerned seems to be a harsh word, because many of the people we interviewed did realize the ineffectiveness of their interventions and did actually care about

the people with whom they worked. Nevertheless, once the case passed through their hands they most frequently did not know or seek to find out the outcome of these cases.

The system creates a myriad of mechanisms by which institutions elicit conformity from its work force. These mechanisms include the use of forms, institutional categories, matrices, guidelines, specifically crafted definitions, risk assessments, scoring devices and so forth. But, at the same time the mechanisms are not designed to account for the severe social disruption brought about by the colonization of the Indigenous people. Homelessness, alcoholism, despair are seen as personal dysfunctions rather than normal consequences of the experience of colonization and all of its imprints marking the present day lives of Indigenous people.

The U.S. legal system produces a series of processes that range from answering a call for help to conducting a trial by jury, which makes any identity, other than victims and offenders, impossible for Indigenous women and men. It is inevitable that when context is stripped from an experience the resulting account cannot be an accurate reflection of what actually happened. The system is designed to understand what generally “goes on” in these “cases” as opposed to what is actually going on in “this case.” We noticed that the institutional standards remove the motivational context from people’s narratives; their actions are not readily understandable.

There is no requirement that any one practitioner comprehensively understands what is going on in a “case” from beginning to end. In fact, workers are discouraged from being caught up in the stories, pain and fears of battered women. They are institutionally and professionally directed to focus only on the efficiency of their particular act of intervention. It is a workforce that thinks one-dimensionally about the violence in the lives of Indigenous women, and about domestic violence generally. Institutional procedures produce a perspective that locks practitioners responding to Indigenous women into culturally universalizing mechanisms,



regardless of the individual worker's personal beliefs about Indigenous people. This results in a continuing process of cultural imposition.

We found ample evidence that the system replicates many of the characteristics of a battered woman's relationship with her abuser: a) it threatens her with harm if she doesn't cooperate, b) it threatens her with the removal of her children if she doesn't do something, c) it tells her when and how she can speak, d) it labels her as sick or uncooperative.

The system detaches lived experiences (i.e., getting hit, being followed and harassed, hitting someone) from their context and recaptures them in terms of concepts (i.e., crime, assault, offender, etc.). Eventually we could see how this distorted the lived experience of women with each step of the legal way. For example, when a woman who is abused for many years, often in brutal ways, kicks her abuser after an attack, and is charged with a crime of domestic assault, she becomes the same as the abuser in the eyes of this legal system. Women who are the targets of men's threats to kill or maim them are expected to be witnesses. In this way, the system requires women who are beaten by their male partners to participate actively in a hostile action against him, despite the increased risk this will mean for her but with little acknowledgement of that danger. The court system tends to treat cases with the same set of options—regardless of whether the woman is attempting to remain in an intimate relationship with her abuser, or to remain in some kind of balanced relationship so they can parent their children together, or whether she has completely terminated that relationship.

The system organizes workers to prioritize actions that maintain the function of the institution over those effective in preventing crime and providing public safety. Many of the system's interventions are entrenched in values, customs, beliefs and philosophical premises that are antithetical to Indigenous values and beliefs.

In the following pages we discuss the power the system wields over people's lives – the power to define, to select, to categorize, to enunciate – that is used with limited consideration of those whose welfare it claims to support. We begin by looking at the how the U.S. legal system isolates an incident from people's lives, defines it, and divides its response to that incident into a series of precise and distinct steps; each of which has its own specialists, and none of whom has an overview of the whole case.

To the extent that they became visible to us, the problematic features of the U.S. legal structure can be found in other institutions that manage social relationships as well, such as the welfare and education systems. Here certain conceptual and administrative practices continuously lead to a disjuncture between the lived experiences of women and the institutional handling of those experiences. We decided to focus our analysis on six of the most prominent problematic features.<sup>6</sup> We also decided to analyze all of our data with an eye toward understanding how the system accounts for the mother-child relationship. Finally we analyzed cases from the perspective of case outcomes. The problematic features we analyzed are:

1. Specialization of the Workforce
2. Institutional Use of Categories
3. Institutional versus Lived Time
4. The role of Texts in Coordinating Case Management
5. The Institutional Inability to Take Up Women's Stories
6. The Continual Practice of Sidetracking Violence
7. Institutional Inability to Protect Indigenous Mother-Child Relationships

---

<sup>6</sup> The mother report shows the many ways that these features occurred in all phases of case processing.

## 8. Pre-sentence Investigation Analysis

## 9. Domestic Violence Case Outcomes in the U.S. Legal System

*Job Specialization*

## Introduction

When a woman who has been beaten by her intimate partner dials 911 for help, she activates the State's legal apparatus. This legal apparatus is linked, in turn, to other institutional complexes, particularly those of mental health and social service. The combined work of these agencies is coordinated and controlled through a complex system of administrative processes that manage people's experiences as cases for institutional resolution. We were interested in uncovering these processes in our observations, interviews, and text analyses.

At one point in our discussions, we taped a number of pictures representing certain job functions onto a wall and asked two questions: (1) How is this practitioner being directed to act on a case? and (2) How is her or his work on the case coordinated with that of another? We placed our own rather crude visual representations (clip art) of the coordinating directives on the wall (for example: department policies, state laws, federal laws, inter-agency protocols, job descriptions) and started to connect visually workers and processes, and workers to one another, with pieces of yarn. We also invited participants to add more coordinating directives. They added directives such as dominant culture, dominant ideology, religion, education, textbooks, and media. At the completion of the exercise, we clearly saw hundreds of influences on the workday of a practitioner in the U.S. legal system—all of which have a significant impact on how the practitioner responds to, interacts with, and helps Indigenous women who have been abused.

Seen in its entirety and held together by our colorful bits of string, this apparatus emerges as a dynamic web of influence—all on one person. If someone put this web into a computer

program (minus the string) it could appear to be organized, logical, and cohesive. Nonetheless, a disjuncture exists: not internally, but between the apparatus and the everyday world of women who get caught up in its procedures and processes as a case of domestic abuse, of child protection, or of a family dispute. We will explore the relationship of the organization of the jobs of institutional practitioners to the safety and well-being of Indigenous women and their children.

A woman experiences domestic abuse as inseparable from her everyday life; she carries it with her as she does her housework, goes out to paid employment, takes care of her children, talks to family and neighbors, goes shopping, makes meals, decides that she cannot go on living like this, and so on. Both she and her children are likely to be experiencing emotional and spiritual suffering. Perhaps her partner is refusing to let her leave him. She may be economically dependent on him. She may be dependent on alcohol, which makes it harder for her to act in the interest of her own safety or the safety of her children. As she engages with the institution of the state, her experience is translated into institutionally manageable pieces. Different specialists intervene in a fragmented way to her simultaneous, interrelated needs. She may need medical attention. Perhaps she needs to live separately from her partner, raising the issue of how they provide for their children's parenting. She may need to secure protection from him for herself and her children.

Institutional specializations divide the broad reality of her everyday life into distinct, institutionally defined problems. Different agencies and administrative processes are in place to intervene in aspects of her situation as if they were unrelated to each other. To the "system," she is a medical case, a police case, a divorce case, a civil protection order case, perhaps a child protection case, a chemical dependency case, a welfare case, a mental health case. She might be simultaneously drawn into a number of agencies subjecting her to different case management

procedures. A case is processed through a sequence of interchanges, or organizational actions, in which one practitioner receives from another a document pertaining to the case (e.g.: a 911 report, a booking file, a warrant request), and then makes some interpretation of the document, does something to the case, and forwards it on to the next organization for action. Each processing step, or interchange, may be performed by practitioners who are specialized occupationally. This method of intervention in the private lives of community members is so integral to the social landscape in modern western states that it is rarely the focus of critique, but rather accepted as an inevitable feature of human social interaction.

In order to limit our investigation to a manageable scope, we decided to focus only on the steps of case processing that are directly related to Protection Order petitions or criminal assault cases. Appendix 4 illustrates the steps in the criminal legal system and Appendix 5 depicts the steps in the civil justice system.

Each practitioner operates from a work setting that is designed to assist him/her to carry out his/her specific function in this series of case processing interchanges. Each practitioner's work setting is vastly different from the next (the available tools, the setting, and the "uniforms" worn). The 911 operator works from a console that permits some actions, but prohibits others. The 911 operator will talk to, but will never see, the woman whose situation she is processing. She comes to work in jeans and a sweater. The police officer operates from a squad car and is the only person in the entire response system who actually works in the space where the violence occurs. He wears a military-style uniform and carries a weapon. The arraignment court judge operates from a courtroom in the county court house. She wears a black robe bearing some European symbolism whose specific meaning is lost on observers, but is nonetheless daunting.

When a woman who is abused by her partner enters the legal process, her situation may be taken up in a half dozen or more “cases.” The management of each “case” occurs under separate guidelines, rules and purposes. One case created by the legal system may even be at odds with other cases that have arisen from her same situation. For example, her situation may be processed as a divorce case, where the abuser is granted joint legal custody of their children and visitation every other weekend. He is told by the court to work out the details with her about picking up the children. At the same time, in protection order court, he is ordered to have no contact with her or the children. In his court ordered alcohol treatment program, she is asked to come in for family therapy. Domestic violence advocates offer her groups separate from her abuser and do not provide for counseling that she could attend with him.

We found a number of recurrent problems in the course of our investigation. Most of these are problems are barriers to communication and to the transmission of information. Most stem from an institution’s dependence on specialization. For example, practitioners in one institutional jurisdiction may not be aware of what is being done in others, or those working at one processing interchange do not have access to information acquired by previous interveners because the textual forms, as well as the institutional categories, restrict the information transmitted earlier in the sequence. At each step of the process, case file documentation clearly reflects—and is framed by—what each institution determines to be relevant. Further, case file documentation is intended for a narrowly defined reading audience: dispatcher’s reports are designed for responding officers; the latter write investigative or arrest reports for prosecutors; jailers’ reports and probation reports are for judges; judges write for the court record; rehabilitation counselors write for probation officers, and so forth. Each practitioner documents cases in a way that makes visible and accountable the course of action taken on a case. Finally,

everyone's documentation is written with legal liabilities in mind. Each practitioner's written case file centralizes what is important to complete his or her aspect of case processing and move the case on to the next institutional interchange.

Each practitioner's role in case processing is defined. How the task is defined in practice can become a barrier to dealing with the needs of Indigenous women who are battered. We observed cases where a woman was afraid of a family member and called the police, but the problem was not criminal in nature and so the police could not physically protect her by removing the person but could only refer her to "social services." The police officer did not contact social services and ask them to come out to the home and provide help because that is not the police's role.

We attended one police call in which the woman was very afraid of her grandson. He had not assaulted her, so the police had to leave him there, even though she was still very afraid. They told her to contact social services. If she did contact social services and they assigned a worker to take up her case as a "vulnerable adult," the social worker might eventually request that an officer come out and remove the grandson. Meantime, the assault she feared could have already taken place.

We also saw this task specialization to be problematic on a more micro level, as different practitioners processing the same criminal or civil case had very specific duties that precluded them from acting in commonsense ways. For example, we observed deputies serving protection orders on offenders who became visibly shaken by the experience. One man started to ask questions and became quite belligerent. The deputy backed off, putting both hands up in the air, and said, "I'm just the mailman here, but take my advice and stay away from your house until the court date." It was not his job to calm the man down and give him a chance to talk, nor was he

required to contact the woman to tell her that the papers were served and that the man was extremely agitated. Finding unusual opportunities to increase a woman's safety is simply not figured into a deputy's job description. Deputies usually serve protection orders alone. They are informing a violent man that he may be losing everything that is important to him, and quite naturally do their work in a way that promotes the calmest reaction to their work. Victims are not alone in being afraid of an abuser's reactions.

Social service child protection records are confidential and we were not able to obtain access to any social service information based on police reports or OFPs for Indigenous women. We did, however, have access to some child protection files for non-Indigenous women. In one of the child protection cases we reviewed, a woman had been required by social services to bring her five children to weekly counseling sessions. However, her car regularly broke down. The worker made this notation in the file: "Darcy asked me to help her bring the children to counseling...I told her it would be inappropriate." In this case, there may be nothing more appropriate than to help her achieve the goals of her service plan, yet the worker does not have the resources or time to provide such services to her clients. Interestingly, we found that when women tried to wiggle some assistance out of the system that a worker was not authorized to provide, the women were often perceived as inappropriate or manipulative, but the system was not perceived as poorly designed. To an outside observer, practitioners may seem to be inattentive to women's needs. However, as frontline workers, they have no way to redesign—even if it occurred to them—a system that encourages its workers to accept its design as appropriate.

Each worker operates from a workspace that allows him or her to perform certain tasks on a case. None of the practitioners we observed worked only on domestic abuse related cases. Often they were limited in what they could do because of the resources, information, or



technology available. For example, dispatchers did not have access to past police reports written on cases. They could let responding officers know how many previous calls there had been to a particular address and the nature and disposition of the call, but no other details. Police officers are operating on a schedule that pushes them to “clear” as quickly as possible in order to be available for the next call. Officers drive around in squad cars and respond to the next 911 call as soon as they have completed their response to the previous one. They are not able to take two or three hours on a case and to follow up on witness interviews. That task rests with the detective bureau, which only handles felony cases. However, over two-thirds of domestic abuse cases in the communities under study are misdemeanors. The initial thirty-minute intervention by the officer is the only investigation that is conducted on misdemeanors. Judges setting bail conditions have available to them a court file with the police report for that arrest, and have the suspect’s arrest and conviction summary, but it is up-to-date and complete for crimes and convictions in the local county only—not for crimes committed in other areas.

The specialization of job functions contributed significantly to what we saw as victim-blaming attitudes by practitioners in the system. Women’s experiences were taken up in a way that meant the workers saw her situation as a task. She became helpful, problematic, or irrelevant in completing that task. When her interests and the institutional task did not coincide, the woman did not “cooperate” with the system. Her lack of “cooperation” might make perfect sense if one were to view her entire situation, but her entire situation is neither relevant nor known to the practitioner. Disjunctures of this kind are interpreted by practitioners in the system as a victim problem rather than as a problem stemming from the way cases are processed. In contrast, battered women who attended our talking circles, as well as some advocate participants, tended

to locate the problem in the attitudes, biases, and lack of training, or in the personalities of the practitioners, rather than the way cases are processed in the U.S. legal system.

In case after case, we saw how workforce specialization led to women seeming like data points to practitioners. Following are three examples.

#### Case A: Police Report Taped Statement.

201: You said earlier when you were at, the, you were, you were yelling and, and screaming at a person's yard that he, he tried to, tried to make you be quiet, er -

JL Yeah

201 How'd he do that?

JL He, I, he put me on the ground and he had his mouth, his hand over my mouth trying to keep me to shut up.

201 Okay

JL And then the light came on and he ripped me up and he said shut up and we're getting in the truck, we're going, we're leaving...

201 Mmm.

JL Shut up, um, get in the truck.

201 Okay, so then this goes on until how late, mm, what time did this all start? You got, what time, what -

JL Roughly about 1:30.

201 Is that what time it happened, it started -

...

201 Is there any alternative address that we may be able to locate PHILIP?

JL I don't -

201 We've got his address in CITY here, you say this is, uh, former girlfriend, this other one -

JL Yeah

201 STREET -

JL Yeah, and I'm sure he went back to her last night.

201 Otherwise, his parents live on Drive in -

JL Yeah, his mom's leaving, in like I believe a month, she sold their house, so she won't be there for very long.

201 Okay, is it just his mother that lives there?

JL And her boyfriend.

201 Okay, is there any other place that, that, does he have a cell phone, er telephone -

JL Yes, he has a cell phone.

201 What's, what's that number?

JL I believe it's 123-4567. (Community J, Police report 3)

#### Case B: Sentencing Transcript.

This woman's plea to the court occurs after a plea agreement has been made. She was asked to speak up for the microphone and the court record but there was no interaction with her or her experience as the sentencing process proceeded almost as if she wasn't there.

THE COURT: All right. Now, understand that what you're saying is being taken down by the court reporter, and also these microphones are hooked up to a recording system so we're sure we have a good record. So speak loud enough, if you can, so that we can hear you clearly, and go ahead and say what you have to say.

MS. CORNICK: Okay. I'm real nervous.

THE COURT: That's all right.

MS. CORNICK: I'd like to start saying that I love this man, and he took that love and twisted it to hurt me. And I am so sorry for all the things that happened. I still have nightmares every night of him saying things to me, calling me names, stabbing himself in front of me, smacking me across the face. And these are things that I have to carry with me because I opened my heart to somebody who does not have the capacity to love anyone, including themselves, himself, which makes me very sad.

My hope for you, PAUL, is that some day you find it in yourself to open yourself to the powers that be and heal. And I don't know what that is going to take, whether it's going to take prison time or, you know, actually honestly staying sober or whatever, I don't know; God, if you ever believe in something like that, I really hope you do. You know, it hurts me to -- it has hurt me to have to come to the realization that the love I had for you did nothing but destroy me from the inside out. And, you know, there's just so much that's gone on, it's just so wrong in so many ways.

I don't think that the things in domestic assault, all the words, all the manipulation, should be given such a light sentence because it's something that changes a person and gives you a different view of the world, gives me a different view of the world.

I don't think it's safe for you to be anywhere out, PAUL.

...

It's not safe for you to be out anywhere. I would never wish you upon another woman in my wildest dreams, PAUL. Never. I wouldn't. And I wouldn't wish you upon your wildest -- you know, I don't really have any much more to say except that I really hope that the Court takes this as a very serious matter and doesn't let this man con the courts, the doctors, and everyone else the way he conned me. That's all I have to say.

THE COURT: Thank you, Ms. CORNICK. Are there any other victim impact statements, Mr. SMITH?

MR. SMITH: I don't believe so, Your Honor.

THE COURT: All right. Thank you. And you may address the recommendations and your position on behalf of the State. (Community H, Sentencing hearing G2)

#### Case C: 911 Transcript.

911: 911

FC: I need someone to come to 555 Hill Drive

911: What's the problem Ma'am?

FC: It's my husband

911: OK. What's going on?

FC: I need someone to come, OK

911: (Interruption by 911) Ma'am tell me what's going on, OK?

FC: I called the police on him before because he was hitting me. And he put me and my son, he drug me out by my hair and threw me out.

911: OK is he there now?

FC: Yah, he's still here.

911: OK, where are you? Are you at a neighbors?

FC: (talking but 911 is talking over her. inaudible)

911: Ma'am, Ma'am calm down for me OK? Calm down for me, I have to get this information. OK? You are at the neighbors and your husband is still at the house?

FC: Yes, my two kids are still in there with him.

911: Does he have any kind of weapon or anything?

FC: He has a gun, but he didn't pull it on me or nothing like that.

911: Is he drinking?

FC: No he's not, I don't think...

911: You all were just basically fighting then?

FC: I wasn't even there. I tried to come home.

911: OK. If I send a deputy to see you at the neighbors house you can take him to the correct address then?

FC: I'm only one trailer away.

911: What is your name?

FC: Wanda

911: Wanda?

FC: Anderson. Tell him to hurry before he...

911: (interruption by 911) What is his name ma'am?

FC: His name is Billy Anderson.

911: OK. Do you think he might take your children if he leaves?

FC: Yes, that's what I'm afraid of

911: OK, what does he drive?

FC: A Buick Century, a 95.

911: What color?

FC: Burgundy

911: OK we're going to get somebody there in the North Shore trailer park. Just stay right there by the neighbor, OK? Just kind of watch and if he does leave just call us back and let us know that way the deputy can look for him on the road OK?

FC: OK

911: Thank you and goodbye. (Community A, 911 Transcript)

The U.S. legal system, like other institutions, has a specialized work force and a case processing design that break a single intervention into a series of tasks performed by dozens of

workers who are specialized in their training and their roles. Specialization creates a differentiation of knowledge and power. Practitioners working in one processing interchange will not have access to the information handled in others. Specialization, we found, gets in the way of the safety and protection needs of Indigenous women. For example:

- Dispatchers did not know the basics about the rules of evidence to understand how transcripts or the actual tapes of their calls are admitted in a trial or how prosecutors use them as evidence. A number of dispatchers are therefore not cognizant of how to solicit the information in a way that could be pertinent in the trial process.
- Law enforcement officers did not always know the content of the court orders that women were requesting to be enforced.
- Law enforcement officers did not know if suspects with whom they were dealing were on probation nor about their history with violence, be it related to one or more women. Instead, officers were provided with institutionalized forms of database knowledge that provides computerized listings of any current warrants out for the person or past convictions and arrests. This rather sketchy view of the suspect is focused on the relationship between the state and the offender rather than on the victim (whose protection should be the intention behind the intervention).
- Practitioners tended to work within the boundaries of their task, often oblivious to how their limited action has an impact on the ability of others to act on the case.
- Law enforcement officers were inattentive to the significant difference between the proof needed to make an arrest based on probable cause and the proof needed to get a conviction based on the beyond a reasonable doubt standard of proof. Officers tended to

investigate only to the point of obtaining probable cause, which is what they needed to take action.

- Victim or family members of the victim were often at court hearings, but frequently the court personnel did not know about or acknowledge their presence.
- Jailers were expected to make reasonable efforts to contact victims before releasing a suspect but they had only 20-30 minutes between being notification of release of a suspect and the actual release time. Judges were unaware that victims were rarely being contacted because of this time crunch.
- Even though the probation contract says that the offender must obey all court orders, probation officers cannot monitor compliance of their clients with, for example, protection orders, child support orders and such, because they rarely know when they have been issued. Even when they do, few probation officers know the scope of relief ordered by the court, even when orders were issued in a courtroom just a few hundred feet from the probation office.
- Agreements were made in some cases involving the placement of children without the court being clear on which family the victims or the offenders had agreed to take the children.
- In one arraignment case we observed, the abused woman did not appear. The court was going to release the defendant on his own recognizance until a person not connected to the legal system stood up and informed the court that the woman was in the hospital unconscious from the assault. The police report only indicated they had transported her to the hospital.

- The transfer of information from one practitioner to the next is often stripped of detail and therefore does not convey what kind of urgency is called for in the response.

The kind of work that can be done at each processing interchange is significantly shaped by the resources available to the practitioner and the way his or her work setting is designed. Specialization discourages practitioners from acting on cases outside of a narrow institutional definition of what makes the situation actionable for the practitioner. So a deputy serving a protection order may hear threats or sense danger but in the end he acts as “a mailman” and takes no follow-up action once he’s delivered his papers. Specialization thus creates all kinds of roadblocks for even a common sense approach, let alone a holistic approach. Even though at each processing interchange, practitioners were able to use their discretion to prioritize a case if it was extremely dangerous; in general, the information transmitted between each processing interchange was restricted to the formalized and standardized forms of the bureaucratic texts and forms. Information emerging at one site would not be passed on to others unless it was specifically required by the categories and relevancies of legal procedure. Many very dangerous situations were processed as simply routine because the practitioner operated on such a myopic picture of what was actually going on.

### *Institutional Use of Categories*

#### Introduction

The work of institutional practitioners is regulated through devices such as rules, regulations, guidelines, officially authorized definitions, matrices, forms, protocols, and directives that are standardized across particular jurisdictions and work settings. These devices ensure that workers operating in different locations, agencies and time frames are coordinated in their actions. All institutions use such devices to organize how their practitioners perceive,



discuss, and handle institutional business. The intake forms and processes for an emergency room, a welfare department, a detoxification center, a civil protection order center, are similar in some very general ways, yet differentiated by the functions and tasks of each of these institutions. Institutions pull highly individualized situations or events into manageable categories. The categories operate in a highly selective fashion on what is actually happening or has actually happened. At the intersection of an institution and people's everyday lives, the information selected is what can be categorized as instances or expressions of a given rule or procedure. Hence, the institutional order puts together realities in a very different fashion from the way in which they are lived. No one calls 911 to report, "I'm the victim of a misdemeanor violation of a protection order." Neither category nor the action that follows may make sense in terms of how people are living. Practitioners working at the front-line have to figure out how to make a fit between institutional categories and actualities.

In our investigation, we identified a number of ways in which institutional formulations and categories were either unsuccessful in achieving the protection of women who were abused or resulted in situations in which it was the abused rather than the abuser who was punished. We decided to explore these institutional formulations and their effects more closely. During our study, we noted that at each point of intervention (i.e. police investigation, prosecution, and sentencing), although practitioners may proceed entirely properly within institutional rules or guidelines, the categories used to define the relevance to the institutional mandate may obstruct rather than promote the protection of victims of ongoing abuse.

Is it an Emergency?

The guidelines used for training 911 operators in Communication Center C are one example. It is the operator's responsibility to assign a priority code—influencing how and when

officers respond to the scene—to each incoming call. The guidelines, reproduced below, provide exemplary descriptions of domestic assault situations and assign a code to each. The operator's job is to fit what is reported by a caller to the models provided, and to assign a priority code accordingly. Calls are recorded and can be reviewed. Here are the guidelines:

Determine Nature and Priority Level of Response - the dispatcher will first determine the type (police, fire, ambulance) and level of response needed, by getting a brief description of the emergency and injuries. The dispatcher will assign priorities to domestic calls as follows:

- CODE 3 - Assault in progress - individual is in imminent danger. Suspect has made threats to harm, there is an escalating verbal argument, serious injury has occurred, or the suspect is still in the immediate area.
- CODE 2 - Moderate emergency - individual has received non-life threatening injury or non-injurious physical assault in recent past and suspect is still in immediate area.
- CODE 1 - Non-Emergency - imminent danger to caller is either in past or distant future. The non-life threatening injury or non-injurious assault occurred more than 2 hours prior to call, suspect is not in immediate area, or threats made were of future violence. Officer needed to make a report. (Communications Center C, Dispatch Procedures)

This method of defining and assigning priority codes does not necessarily allow dispatchers or officers to assess the danger of a domestic abuse situation. This example of a 911 call illustrates this problem:

911: 911.

Caller (female): Yes Ma'am, I need a police sent out to my house.

911: What's your problem?

Caller: I have a restraining order on someone and they have passed the house twice and they followed me last night and I just want to make a report.

911: And you are at 1705 Girard?

Caller: Yes, Ma'am.

911: That's off of Lyndon road?

Caller: Yes Ma'am.

911: What kind of vehicle are they in?

Caller: He's got a red Ford truck.

911: What's his name?

Caller: Richard Stanko.

911: And you have a restraining order on him?

Caller: Yes Ma'am.

911: When is the last time he passed by the house?

Caller: Just about 3 minutes ago.

911: OK. What is your name?

Caller: Linda Paulson. Well it's Stanko now, I'm married.

911: Spell it, please.

Caller: S-T-A-N-K-O.

911: What's your phone number?

Caller: 781-XXXX.

911: All right, I'll have a deputy come over there.

Caller: Thank you.

911: All righty.

CAD REPORT: Off Lyndon road, Red Ford PU Richard Stanko, Comp. has restraining order on him; he keeps passing in front of house. SIGNAL: 17 [this indicates a domestic] DISPOSITION: REPORT (Communications Center C, Transcript 13)

The caller has a restraining order, so there is at least a history of harassment, if not of violence; her husband is driving up and down past her house. This situation could be one of "imminent danger." The dispatcher does not follow up the caller's "I just wanted to make a report," by checking on the current whereabouts of the suspect or on the caller's experience of violence from him. The situation does not fit the models of Code 3 or even Code 2 situations provided by the guidelines. The priority rating transmitted to the responding officers is a Code 1. In addition, the dispatcher does not tell the responding officers that the suspect, within the last

three minutes, has violated a restraining order. Without this information, the officer does not have a clear picture of the potential danger of the situation.

Who is the Victim?

Within institutional jurisdictions, reactions to events in the everyday world are determined by reference to standardized institutional categories. Practitioners, such as responding officers, act as agents of the institutional order. Therefore, the definitions the responding officers give to the situations they encounter, and their subsequent responses to these situations, are circumscribed by the predetermined categories available to the responding officers.

The state criminal code defines a criminal assault as “The intentional infliction of or attempt to inflict bodily harm upon another” (State Statute 609.02, subd. 10). Police officers are trained to instantly identify the suspect and victim in a case. In some cases, it seemed almost a matter of chance whether it was the abuser or the abused who was charged with an offense. We found in several instances that women with a long history of being abused were arrested and charged with criminal assault because the police arrived at a scene where they had used violence in reaction to the abuse. Reactive violence of this kind is not domestic abuse but a response to it. Here is an account that exemplifies this point:

I got married when I was 19. We got in a fight. He beat me up, bloodied my lip and ripped my shirt, you know, fucked me up and all this. To protect myself, I bit him. And then I called the cops and he turned around and called the cops on me. When the cops got there, I told them, ‘Hey, I’m the one all beat up here and bloody and all this, fat lip.’ He said, ‘Well she bit me, she bit me.’ I said, ‘Well, how else was I supposed to do that, he’s holding my head back?’ (Focus Group 1, October 2000)

When we read an account such as this, told from the standpoint of a woman’s experience, we see her biting, her violent act, in the context of ongoing physical abuse. She is resisting the abuse and resisting the form of domination that physical abuse imposes. Institutional categories, however, strip away the context to which the act belongs. In criminal law, a definite and

identifiable act has to be isolated from the complexity of people's interactions. Locating and defining that act identifies the suspect and directs the course of action to be taken. Other institutional categories such as a plea of self-defense may capture some aspects of the context, but they also select out and isolate specific aspects of what was happening and rearrange them to fit the institutional order.

The case of Flora James is one of those that exemplified this problem for us. Flora James is a thirty-four year-old Indigenous woman. She was booked on charges of First-Degree Assault and Domestic Assault against her partner for stabbing him four times in the chest. When the responding officers arrived at the scene, they met Flora at a neighbor's house.

She had blood all over the front and back of her shirt. FLORA also had splashes of blood on her shoes and legs, as she had shorts on. FLORA had a bruise approximately 4 to 5 inches long and 2 to 3 inches wide on her thigh area. FLORA also had a mark on her face, near her eye, and appeared to have redness on her throat area. FLORA appeared to be very upset and was crying slightly. (Community E, Police report 59)

John was inside sitting on the stairs breathing with difficulty. He was taken by ambulance to the hospital. The responding officers anticipated the possibility that the case might become a homicide if John should die. They therefore took particular care with the investigation (the incident is unusually extensively documented). Flora was taken to police headquarters. While Officer A was waiting for the arrival of the detectives to interview her, Flora talked, "though I did not prompt her or ask her any questions" (Ibid.)

FLORA was talking about how she was at home with her husband, JOHN JAMES. FLORA said they were at her house and she wanted to go to bed. FLORA said JOHN was bothering her and would not leave her alone. FLORA said JOHN verbally abuses her and that he was calling her a 'slut' and a 'whore' and telling her she was 'worthless.' FLORA kept telling me he always does that to her. She said she is 'sick and tired' of it and she can't take it anymore. FLORA said JOHN has been abusive to her in the past. FLORA said earlier this evening, JOHN was bothering her and would not leave her alone. FLORA said JOHN grabbed a knife and started to threaten her with it, saying he was going to kill her. FLORA said she told JOHN, 'No,' and that he wasn't going to do that to her and pleaded with him, saying, 'Please, no.' FLORA said JOHN put the knife down. FLORA said before JOHN put the knife down, he said it was going to be either him or her. FLORA informed me she grabbed the knife off of the counter and JOHN

grabbed her and started choking her. FLORA said she then stabbed JOHN three to four times and JOHN fell to the floor. FLORA said she stabbed JOHN again after he fell to the floor. FLORA said she couldn't take this anymore and wished JOHN would just leave and get out of her life. FLORA said after JOHN fell to the floor, she dropped the knife and ran, as she didn't know what to do. FLORA kept telling me she was so mad and repeatedly said to herself, 'I was so mad, I was so mad.' (Ibid.)

Later the detectives who questioned her at police headquarters got a more detailed account of events. She had been visiting her daughter and on her way home picked up a bottle of beer from the liquor store:

She said once her husband, JOHN JAMES, came to the apartment, she and JAMES started arguing about his jealousy and that he took the 40-ounce bottle of beer away from her and drank it. She said he began verbally belittling her, which escalated into him pulling her hair. She said he called her a 'bitch,' a 'slut,' and a 'whore.' She said at this time, she went to the kitchen area, near the refrigerator, and a space by a closet and he followed her and began hitting her approximately 10 times in the head. I asked her permission to feel the lumps on her head that she said she had and I did feel two goose egg-type lumps on the right side of her head, above her ear and in the hairline. She also said she had been assaulted by JOHN in the face and a reddish, swollen area was observed on her right eyebrow area.

Further checking of FLORA JAMES' body showed red marks and bruising on her neck, specifically to the right side, and a large bruise on her right thigh. She attributed the bruises on her neck to JOHN JAMES' choking her and the bruise on her right thigh to JOHN JAMES kicking her. These injuries were eventually photographed by Police I.D. Officers O and Y. It was also noted there were blood smears on FLORA JAMES' green shirt, on her shoes, and on her shorts. She also had blood smears on parts of her body, which included her elbow, hands, and arms. (Ibid.)

JAMES continued, saying that she told JOHN JAMES to stop assaulting her, but he again grabbed her by the hair, this time pulling out a clump of hair. She said she hung on to the refrigerator in an attempt to avoid the assaults, and he then got a knife out of one of the kitchen drawers. She said the knife was a paring knife that had a brown wooden handle on it.

FLORA JAMES was asked if JOHN JAMES stabbed her with this knife and she said he did not. She said she took the knife away from him. Officers pointed out the fact that JAMES had no fresh cuts or wounds on her hands to indicate she had disarmed JOHN JAMES and she at first stuck to the story that she took the knife away from him. She then later said he had put the knife down on the kitchen cupboard and she had taken the knife off the cupboard when he was choking her and she stabbed him in an attempt to make him stop choking her. FLORA JAMES was asked how many times she stabbed JOHN JAMES and she said she believed it was three to four times. She said she then took the knife and walked outside of her apartment and dropped it over the staircase railing. She

said after she stabbed him, he let go of her and she stabbed him again and he went outside and fell down the steps. (Ibid.)

When asked why she stabbed him, she said she wanted JOHN JAMES to leave her alone.

Because Flora used a “lethal weapon,” and the investigation occurred before it was known that John’s injuries were not life-threatening, the orientation of the reports is framed by the category “potential homicide” or “attempted murder,” with Flora as the suspect of the investigation. Hence, officers orient their questions and written reports to the legal issues of self-defense, motive, evidence collection, and the suspect’s due process. This framework precludes an investigation of the events that identify John, who has been transported to hospital, as a suspect who could himself be charged with assault.

Flora uses what is institutionally defined as “deadly force” with a weapon. This is what is picked out as the institutionally relevant act from the story she told to the police. Her account also describes how John choked her, struck her repeatedly in the head, left bruising and bumps on her head, thigh and neck, and threatened to kill her saying, “[I]t’s going to be me or you” (Ibid.). In the law enforcement setting, these offenses would have been investigated as a potential felony assault had she not stabbed him. Instead, her account of these assaults becomes an explanation for her motive to use deadly force.

There are inconsistencies in Flora’s account. Flora first describes her seizing the knife from John when he was attacking her. The detectives point out that there are inconsistencies. If she took the knife from him, she would have cuts on her hands. She then changes her story, saying that he had put the knife down on the counter and she picked it up. Care was taken both to get a detailed story from her and to compare her story to the injuries she showed. There are also inconsistencies between John’s and Flora’s stories. She describes him as attacking her; according to his story, “[H]e walked up to his apartment and passed out on the couch. JAMES said the next

thing he realized was his wife FLORA was stabbing him in his chest” (Ibid.). This inconsistency does not appear to have been investigated; for example, we do not know if there was any blood on the couch. It is Flora who is the suspect; John has been assigned the role of victim. His story is not treated in the same way as hers. The detectives do not investigate Flora’s reference to a history of abuse by John.

#### Institutional Categories and Courses of Action.

When we, as Indigenous women, reviewed this and similar cases, we tried to understand the actions of practitioners: specifically, how does the institutional regime organize the way in which they proceed? In the institutional process, Flora’s experience was reduced to a criminal case. Yet, it was so much more. The case was rooted in both Flora and John’s poverty, their use of alcohol, in how their lives were marginalized within their own community and the larger society, in the experiences that brought John to the point of beating and hurting Flora over and over again—the experiences we were not hard pressed to imagine. We ask, as members of the Indigenous community: What about this woman? She was living a nightmare. Who was trying to help her? He almost died, but is now out of the hospital. Who is there to help him?

In criminal cases, the goal of successful prosecution shapes how law enforcement officers activate institutional categories. As we have seen, Flora James was the suspect, not the victim. Once the categories have been determined, the lines of investigation and the reports written by the police become the primary resource of information in later stages of the processing of the case. A framework in institutional terms is transmitted forward, controlling what happens next and how the case is pursued. The decision to focus on Flora’s rather than John’s use of force will no longer be visible to subsequent interveners in the case. The documentation is organized in the early stages by the possibility of a homicide, and then, when John is recovering, with the felony



assault charge that is brought. Other possibilities disappear from view. If Flora's husband had also been charged with assault, it would be easier for her to convince a jury that she acted in self-defense. There exists, however, an unwritten rule among officers and prosecutors that a minor case should be sacrificed to improve chances of obtaining a conviction in the more serious one. As a sergeant commented, when discussing a hypothetical case based on the Flora James case, "He can be charged later if they can't make a first degree felony assault case. You use common sense; you go for the big fish and toss the guppy" (Personal communication, April 2001). However, backtracking is not possible once the case has been structured around Flora's assault; the information needed to support a later prosecution of John for assaulting Flora is simply not there. The perceived need for economy in producing the documentation leads to an adversarial legal system with the goal of successful prosecution.

Compare the outcome for Flora with that of Greg Bragstrom who was prosecuted at about the same time and whose case we also read. Both entered guilty pleas with virtually the same plea agreements. But while Flora's husband had a long history of abusing her, Greg's wife, who had suffered permanent hearing and sight loss because of his abuse, had never acted violently towards him. That the two cases could appear so similar in their outcomes was a result of the obliteration of John's past record of abusive behavior by the operation of the categories in an institutional course of action oriented towards prosecution. Flora James and Greg Bragstrom were placed in the same category of offenders and received the same treatment.

#### Getting the Job Done.

As we have suggested, cases of domestic abuse may be ambiguous. In some, the responding officer may have options when it comes to the application of institutional categories to what he finds at the scene. During one of our observational ride-alongs, a police officer

responded to a call reported as a man's suicide attempt. The dispatcher reported that the caller said that her husband was very unstable and threatening suicide. She was very upset. When they arrived on the scene, she said, "I know it's only a matter of time that it is me, or the kids, or both, are gone. He needs help and he won't get help" (Reported in Research Team Meeting, December 2000). He had just pushed their son off the porch, but said, "I didn't know I pushed him that hard. I thought I tapped him" (Ibid.). His wife reported that he did push his son hard. She was pleading with the officer not to bring him back that night.

The responding officer had a number of options here. He could have focused on the problem of protecting the wife and children; he could have focused on the man's mental state. He chose, however, to focus exclusively on his suicide attempt. The observer commented:

The biggest deal is that the guy I was riding with didn't want to waste half the night bringing him to the hospital. 'Hell, if I want to go to City and sit at the hospital and have him admitted, that is half my damn night.' This was a Friday night and it was this big deal. (Ibid.)

They went to an emergency room where the doctor looked to the officer for guidance: "Is she going to be in harm or danger if I were to release him?" The police officer reassured him that the man would be fine. The doctor talked as one professional to another without accounting for the possibility that it might be in the officer's own interest, rather than the woman's, to reassure him. The observer continued:

We brought him back home and it was horrible to drop him off there with five kids. The woman was very afraid...She was begging him, 'Don't bring him back! He is going to hurt somebody and he needs help.' She was begging him to please get him help. She was almost...physically attached to that officer's leg and saying, 'Please don't...' (Ibid.)

The research group member commented:

She is the one that lives with him and knows him and knows when he is likely to go off. What she has to say is totally gone. They should have taken her to the hospital and had someone sit with her and ask her what was going on. (ibid).

A number of institutional categories were available to the officer in this case: domestic assault, child endangerment or abuse, suicide attempt. The category he selects guides him and the case in three very different directions. The officer chooses to treat the case as a suicide case, which potentially makes him face the time-consuming chore of taking the man to a hospital that would be able to admit him for psychiatric observation. Having selected the category “suicide,” his course of action, when written up in his report, would raise no questions with his supervisor about liability should the man later take his life. However, doing so means that the issue of the possible danger to which the women and children were exposed will not appear. He would not be accountable for aspects of the case that fell outside the chosen categorization. In the end, the lengthy hospitalization procedures are avoided when the doctor determines the man not to be an imminent suicide risk.

### *Institutional Versus Lived Time*

The dynamic of relationships between victim and batterer does not conform to the temporal order of the institutional process; it is in lived time. “Institutional time” is the time taken by institutional sequences of action such as the processing of a case. Institutions manage everyday-world occurrences in a time zone decidedly different from everyday lived time. As our research team observed the institutional responses to, and the processing of, domestic violence cases, we became aware of how “institutional time” is imposed on, and overlays, lived time.

A story.

Near midnight, Jan, her partner Chet, and their two children return from a weeklong trip to Chet’s reservation. Even though the trip went well, a lot of tension built up on the last day. Chet became angry at little things as they drove the two hundred miles home. The last forty-five minutes of the trip, neither one of them talked except when Jan tried to keep the kids quiet in the

back seat. When they got home, Chet dropped off Jan and the kids, emptied the contents of the car onto the driveway, and left with no explanation of where he was going. When he returned three hours later, and she asked him whom he had gone to see so late at night, he started yelling at her to leave him alone. Jan became afraid. She wanted to call the police, but what would she say? After he calmed down, she threw on some jeans and a sweatshirt, put on a pot of coffee, and lit a cigarette. “Is there someone else? I want to know.” It was barely out of her mouth when he grabbed her. He grabbed her around the neck and squeezed hard. She could neither get out any sound nor get the leverage she needed to hit him or push him away. She pulled his hair, but let go to try to pry his hands loose. She felt warm urine running down her legs. She could hear him yelling and saw his lips moving, but she could not understand the words. She thought about her two children—she did not want them to see her dead. Then he let go. She fell to the floor and heard herself sucking in air. On her hands and knees, Jan thought that she probably looked bizarre. She felt like she had somehow become an animal, maybe a dog. There was a knock at the door—it was the police. Her son had called when Chet had started yelling, only twelve minutes ago.

The case was now twelve minutes old, but her understanding that it would come to this had been days in the making. The police were there for twenty-five minutes. They arrested Chet, took Jan to the emergency room, and her sister came and got the kids. Jan was released from the hospital three hours later, Chet got out of jail three days later, child protection opened an investigation four days later, and an arraignment and a pre-trial occurred within the month. Seven months after he choked her, she was subpoenaed to testify at Chet’s trial and the prosecutor’s office called to see if they were still living together. The trial was set for September

12, exactly nine months and 3 days after the attack. The day of the trial Chet pled to a misdemeanor assault.

Jan's story is told from the viewpoint of her experience. Domestic violence erupts in the lived world of the everyday. It arises in relationships that are ongoing and part of a lived reality—Jan, Chet, and their children are driving home when Chet starts getting upset; when Chet gets home Jan gets up and makes coffee; Jan's sister takes care of her kids when Jan is in the hospital. Such are the everyday settings of violence. Jan's story does not tell us much about her life after the police have intervened and the institutional process has set in, but there were still her household and children to look after and Chet was still someone to fear.

The institutional process is not responsive to the lived realities of the everyday experience of fear and insecurity. We know that a domestic dispute can escalate into serious and life-threatening violence, as it did in Jan's experience, sometimes ending in death. Previous chapters have shown how the institutional categories and reporting practices that are integral to case-management lift situations out of an individual's everyday setting, and enter them into institutional processes temporally controlled, organized and coordinated by a variety of practitioners. The eruption of Chet's violence in lived time was fast; within twelve minutes of his yelling at her, the violence had escalated to the point where her life was in danger. Then institutional time kicks in: Chet is arrested; three days later he is out of jail; weeks later he is arraigned; seven months later Jan is subpoenaed; nine months later, the day his trial is to begin, he pleads guilty. Lived and institutional times intersect in some institutionally defined events; but once the institutional process takes over, institutional "efficiency" takes priority over victims' needs.

Our scrutiny of more than a hundred criminal cases led us to conclude that the only occasions on which institutional and lived time coincide is in the first hours following an assault.

In that time, dispatchers and, for the most part, the responding officers seem responsive to the lived time of the victims and offenders involved. However, after the initial 911 call and police response to the emergency the case proceeds through a maze of administrative steps, completely unresponsive to what might be happening in the victim's life. When practitioners talk about a case, it is almost exclusively about the administrative process; what is happening between actual people like Chet and Jan has no relevance outside that. In this discussion, we will trace the intersections of lived and institutional time as they bear on the effectiveness of institutional procedures to protect women from domestic abuse.

#### The Dispatch-Response Stage of the Process.

The institutional process starts with the 911-dispatch center and the response of the police to the "domestic" call. Institutional procedures and practicalities govern how the crisis of violence is responded to. If the dispatcher determines that only "verbal abuse" has occurred, the call is given a lower priority than a "physical domestic" or a "domestic with weapons." This prioritization of danger is based on the perceived threat of injury to the victim as estimated by the operator during the call, and dictates the responding officers' level of urgency. Dispatchers rely heavily on such simplifications as "verbal" and "physical," or "weapon present" and "no weapon present" to code what the caller is telling or trying to tell them. Inevitably, such codes leave out a lot. In particular, they attend to concrete features of the situation as the caller describes it, but not to the level of apprehension the caller communicates or tries to communicate. Fear is lived, arises in lived time, and is oriented to what is happening and is about to happen. Such procedures for coding what callers have to say into information for the police may thus omit information crucial to determining the rapidity of the police response. In lived time, domestic violence can escalate in dangerousness extremely quickly. A call coded as "verbal domestic," and consequently given low priority, may

quickly become more hazardous. One 911 dispatcher, from Communications Center B, described the prioritization as DV1, meaning no immediate danger. Domestic Violence 1 (DV1) is assigned to “just verbal abuse,” and DV2 is assigned to calls described as “physical” and “physical with weapons” (Personal communication, October 2000). A situation that is experienced by a caller as very dangerous may be ranked as low priority and deferred while police respond to others ranked with higher priorities.

In getting the work of the dispatch center done, practitioners implementing the often overworked and stretched-thin system used “time” to screen out cases. Presumably, they hope that, given time, tensions will diminish between the feuding parties and the situation will resolve itself. In some cases we observed, dispatchers or officers deliberately waited to see if a situation would “go away.” A member of our research team, after observing a 911-dispatch center, noted that dispatchers would hold back from notifying a patrol officer:

For example, if it wasn't something...that fell into one of their emergency categories, [the dispatcher] could hold it before sending it to an officer. One time in particular, a gentleman called and, about an hour later, he phoned back again and said, 'Oh, don't send the squads. We don't need them here.' Dispatcher 1 made a comment to Dispatcher 2, who was working radios. She said, 'Oh good, I held that long enough.'... If it's people who call more frequently, people that they are used to getting calls from. . .they were more apt to do that [hold the call] in that situation. 'Hold on, because they may be calling back to say they don't need a squad' or whatever the case may be. (Community J, Debriefing of sit-along, October 2000)

Such practices as these are informal allocations of the responding officers' time. The dispatcher is in a sense managing the time of officers on the street by determining which of the calls need immediate attention. They appear to take for granted that the violence women endure in their homes is a normal feature of married life and that, in some cases, if left to themselves, those involved will settle things between themselves without police intervention.

As one deputy said, 'You go out on these calls a lot. Sometimes when the call comes over the radio, it's like, "Well, here we go again."' Instead of pumping up and red-lighting it to the call, an opposite reaction happens. You just say, "Hell, they aren't going anywhere, so no big rush.' (Ride-along discussion with deputy, September 2000)

While on duty, the responding officers have to decide how to allocate their working hours to various tasks, including the 911 calls from the dispatch center. The priorities the dispatcher allocates to calls guide them in deciding in what order and which tasks will be done. One of the ride-along observers noted that a young woman who had just been assaulted and had called for help was kept waiting because the squad “stopped at the station on the way to the ‘rez’ to take care of some other business before we went out there” (Reported in community debriefing meeting, September 2000). However, calls that are not coded as high priority may quickly escalate to serious violence. The procedures do not enable the dispatchers to discriminate between those that may escalate to serious violence and those that, in any particular instance, do not. The routine practices of the caller-dispatcher-responding officer sequence are not responsive to the lived time of the escalation of a dispute to serious violence. This escalation can be seen very clearly in Jan’s story cited above. Chet is angry in the car on the way home; on the family’s arrival at home, he throws everything out of the car on to the driveway and leaves; he returns in three hours; Jan asks who he’s been with; he yells at her; she is afraid and wants to call the police but doesn’t know what to say—up until now it’s “just a verbal”; Chet calms down; she dresses, makes coffee and asks if there’s someone else; he throttles her. If Jan had called at an earlier point, the call priority would not be high on the list of tasks for the responding officers, and yet in just a matter of minutes, her life is in danger.

The tendency of responding officers to postpone responses to “domestics” seems to be rooted in the normalization of marital conflict and violence towards women. An observer on a ride-along recorded this comment from an officer:

He said that really no very...what did he call it...no dramatic domestic really happens in the City. That, mostly...he says both parties have been drinking usually and...he looks at me kind of conspiratorially, and he says, ‘You know what happens when people start drinking. You know, first thing to go is their judgment and, you know, I get calls like, ‘Well, the cat peed on the carpet and he said he was going to kick the cat.’ And he kind of



talked about it as being a useless pursuit. (Observation, Community E Ride-along, July 2000)

### The Police Phase of the Response: Resources are a Problem.

One obstacle inhibiting a timely response to an Indigenous woman's call for assistance is a lack of law enforcement resources. "Domestics" are considered potentially very dangerous situations for responding officers. When a squad car is dispatched to a "domestic" call, police officers typically have to wait for a backup car before they can respond. In most rural areas, deputies do have to respond to calls without backup. The county in which we conducted our research is a large one and, therefore, one in which it takes a significant amount of time for two squad cars to assemble. The state is a Public Law 280 state, meaning there is no tribal police force (see section "Historical Context for this Study" for discussion on Indian Tribes and the Safety of Native Women). County deputies are reluctant to go on a call without backup on the reservation for a number of complicated reasons.

### Legal Time Limits are a Problem.

In the state where the research was conducted, domestic violence is unique among misdemeanor crimes, in that the suspect may be arrested without a warrant if the arrest is made within twelve hours of the assault. This twelve-hour limit ostensibly prevents frivolous, or retributive, charges being brought against citizens, and presumes that after that period of time, the assault victim can file charges herself. However, not all domestic assaults carry the same level of ongoing danger. This time limit, as others we encountered, creates an artificial parameter within which a situation is considered enough of an emergency to warrant taking the suspect into custody. Defining "emergency" by an arbitrary amount of time that has elapsed since the assault is itself a dangerous practice. Although the law is designed to safeguard against the capricious

use of warrantless arrests in domestic abuse cases, its implementation, as in the case described below, may do nothing to diminish the risk to the victim.

Heather Scandin sustained visible injuries as a result of the suspect (Adam Smith) punching her in the face repeatedly. Responding officers asked Heather the Dangerous Suspect Assessment questions. The following is based on her recorded responses:

Smith owns a .12-gauge shotgun, which he keeps at his mother's house at 67 Prince St. Scandin believes Smith would use a weapon against her or someone else. Scandin said the violence between her and Smith is getting worse. Scandin said Smith has threatened to kill her. Scandin believes Smith could seriously injure her or kill her. Scandin said Smith is obsessed with her. Scandin said there are no children present in their residence. Scandin said she has not had an OFP (order for protection). (Community E, Police report 8)

The suspect was gone on arrival (GOA). Responding officers attempted to locate him at the time of the incident, but to no avail. The responding officer noted in his report:

On 09/16/99, at approximately 0900 hours [nearly twelve hours after the original incident of violence against Scandin], I received information that Smith was at 326 Greenbury Ave. 132 and I went to that location to look for Smith. I knocked on the front door and it was answered by a female. I asked if Smith was there and she said he was and she then let me into the apartment. I was able to identify a male verbally as Adam Smith. I asked Smith about what had happened between him and Scandin the previous day. Smith said Scandin had been smoking crack and was acting 'crazy.' Smith said Scandin began swinging her arms at him and chasing after him. Smith said he held his arm out to try to keep Scandin away from him and he is not sure if she ran into his hand or not. Smith said he does not know why Scandin had been bleeding. I then issued Smith a citation for Fifth-Degree Domestic Assault. (Ibid.)

Giving a man who is reportedly obsessed and threatening to kill his partner a ticket did nothing, of course, to protect her. That he could not, at this point, be taken into custody without a warrant meant that Heather was still exposed to the same danger or conceivably even more danger because he has just received a summons to appear in court to be arraigned on an assault charge. Here the officer is constrained in acting in the interest of the woman's safety by a law that specifies how long an officer has a right to arrest without a warrant on a domestic violence suspect. The time is set extra-locally by legislators hundreds of miles away in a law to be applied to all misdemeanor domestics regardless of the particulars of the case.

### The Adjudication of Cases.

As a case winds its way through the legal system, it becomes increasingly unresponsive to, and indeed ignorant of, the actual situation of victims. It is not uncommon for the risk to victims to increase with each intervention by the legal system in their lives. Case-processing schedules revolve around court calendars, attorney schedules, and the availability of judges rather than around questions of a victim's safety or needs. The legal system is committed, in principle, to a party's right to a fair and impartial hearing at all points of case deliberation, yet it is so overloaded, again a resource problem, that there exists a constant pressure to settle cases without such a hearing. In the state where the study was conducted, the average number of criminal cases filed each year per judge in the system is 7,854.<sup>7</sup> In such an overburdened system, practitioners and citizens alike are pressured to settle almost everything. The fewer trials, the fewer contested hearings, and the fewer lengthy arguments, the less the backlog of cases will be.

### Orders for Protection.

There is a pressure on parties to stipulate to a protection order: in effect, the parties say, "Ok, we agree not to have a hearing and allow the court to issue an order. However, the respondent is admitting no wrongdoing. He will only agree to certain relief, such as a stay-away order and a restraining order, but not to an order to receive counseling or to give her possession of the family car, etc." As a result, the woman surrenders some of the relief possible with a full hearing in order to guarantee the restraining order, gain temporary custody of the children, and avoid the stress of a hearing. The court absolves itself of the duty to issue orders that it deems are in the interest of safety, and the respondent leaves with the minimum intervention. We watched many women bargain away some of their initial requests to get the order, and to negotiate what

---

<sup>7</sup> Program Evaluation Report: District Courts from Office of the State Legislative Auditor (2001).

seemed to be needed help from the court so that the order could be quickly granted, thereby avoiding a long hearing to find wrongdoing (abusive behavior). One advocate noted that,

The women walk into the courtroom absolutely terrified. When the judge and his lawyer start saying to her, ‘Are you willing to stipulate to an order?’ she has no idea what that means. Her advocate can explain it but, in the end, the woman is given the message: ‘Just do it! Do it and we can all avoid a big old confrontation.’ And that’s what she wants at all costs. (Reported in a community team meeting, November 2000)

In our study of orders for protection that were granted for Indigenous women, nine of sixteen orders had a finding of abuse. In a review separate from this study, of sixty-one orders granted involving both Indigenous and non-Indigenous petitioners, only thirty-one had a finding of abuse. In just over forty percent of cases parties agreed to forgo their right to a full hearing. Like many bureaucracies, the U.S. legal system is a self-maintaining social system.

Delays in responding to petitions for Protection Orders, continuances, and long waits in hallways were routine experiences for victims. When a petitioner comes to the courthouse, she is asked to leave the petition with the clerk to be signed by a judge. Once the petition is signed, the clerk “gets back” to the woman and informs her of its status. This process is typically completed by the end of the day the petition was filed, but might take as many as two to three days.<sup>8</sup> The state law requires that judges give docket priority to Protection Order filings, meaning a judge cannot hear another case before reviewing the petition. When we looked at the forty-two protection order filings in our study, we found that *ex parte* orders were granted the same day as

---

<sup>8</sup> Four years ago, when a woman filed a petition, the clerk simply found a judge who was not in a hearing, asked him to review the petition—which takes just a few minutes—and sign it. Judges complained about this process, and changed it so that the judge who will be hearing cases the following week was the same one who signed the requests for an emergency order and a full hearing. All requests are now put on his or her desk and, at some time during the next two days, the order is reviewed and either signed or rejected. The result is that most women filing protection orders in this jurisdiction leave the courthouse without knowing the fate of their petitions.

they were filed in most cases but in six cases they were not signed until the following day and in two cases it took three days for a judge to sign the request for the emergency order.

There is typically a seven to fourteen day gap between the judge signing the emergency order and the hearing to determine if a long-term order will be issued and to hear both parties' accounts of the situation. The average length of time between the filing of the petition and the initial hearing was sixteen days, with ten out of forty-two cases taking over seventeen days. In these ten cases, two involved the granting of one-week continuances, either because the petitioner or the respondent did not appear, or the respondent had not been notified of the petition. We observed two consecutive Protection Order hearings in which

[The respondents'] attorneys failed to appear; the judge granted continuance in both. In the next hearing, the petitioner herself failed to appear and the judge dismissed the case because of her absence. Although the reported violence in this particular petition was extreme, none of the practitioners present in the courtroom inquired into the reasons behind her non-appearance. (Community H, Civil Court Observation, July 2000)

The court treats differently instances when the victim did not appear or the suspect did not appear. The respondent's rights are to be protected when civil actions are taken against him. The victim, however, is viewed as the initiator of actions in a protection order case, and consequently the State will not pursue her case independently. In fact, the U.S. civil legal system is structured so that in citizen-initiated court processes, even ones involving extreme danger to the petitioner, it is impossible for the system to act on a case if the citizen is unable to pursue a request for help. Many of the cases we observed simply faded away. A woman's safety and the welfare of the children living in these situations are critically compromised in this arrangement.

#### Processing Criminal Cases.

We found a number of disturbing trends when we started simply counting the days between institutional interchanges on the cases. In our review of eighteen criminal case files, we

found that the average length of time between the arrest and its disposition was ninety-five days, with twelve of eighteen cases exceeding thirty days for resolution. One prosecutor we spoke with described the kind of crowded court schedules that lead to stretching the institutional time of case processing:

It's a waiting game. I'm trying to avoid producing a victim because usually I don't have one. Sometimes if a case drags on a defendant will say, let's just plead and sometimes dragging it out is in his favor. If I have a good enough case to win at a trial I probably won't have to go to trial because nobody has the time to spend three days in a courtroom over a misdemeanor assault, not even the defendant. (Interagency Meeting with prosecutor, September 2000)

The impact of deferment that institutional time imposes on people is not lost on defense attorneys. One of the significant strategies defense attorneys use is to keep requesting continuances in court. A recognized feature of domestic violence cases is that they will “disappear” if one can draw them out. The tactic rests on the fragility of victims and their consequent reluctance to sustain a confrontation with the abuser over an extended period. Delaying institutional action on domestic assault cases does nothing for victim safety.

Obviously, if there was only one case to handle the whole process could occur in a three or four day period. However, the court system handles thousands of cases a year even in relatively small communities. The U.S. legal system is set up to “bunch” together different points of institutional actions. “Bunches” of cases involving one specific institutional response such as arraignments, bail hearings, pre-trials, etc. are heard on the same day. For example, in one courthouse we observed, arraignments are all scheduled each morning, pre-trials are on Tuesdays, protection order court is held on Thursdays, trials are scheduled for certain weeks of the month. Dozens of cases are “bunched” so that a large number of each are acted upon at the same time. It is an assembly line approach where all sense of holism is exchanged for expediency. In one morning, we observed one judge hear over one hundred pre-trial cases. Two-

thirds were resolved in dismissal or plea-bargaining to a lesser offense or lighter sentence for the offender. One-third of the cases were pushed forward and scheduled for a trial, but most of those were resolved by a dismissal or plea agreement the day of the scheduled trial. Practitioners become involved in processing a large number of single actions and lose all perspective on any case distinctiveness. The focus of the action is on quick efficiency and concerns such as victim safety must be adjusted to the process rather than vice versa. An individual practitioner would be hard-pressed to stop the process to seek out missing information or request additional work that would enhance victim safety. Often, defense attorneys met their clients for the first time only a few minutes before the arraignment hearing and some met them on the day of the pre-trial. Many attorneys were reading the police report on their feet and asking the clients only a few cursory questions, and a prosecutor reviews 50 to 100 cases two days before pre-trials. Obviously, such bunched execution of actions did not allow prosecutors to develop a holistic understanding of a situation and as a result, women's safety was routinely marginalized.

As we discovered, bunching cases to expedite them through the system does not come without consequences. Prolonged delays due to bunching in case processing methods are common to large and complicated institutions, with serious consequences for women who are victims of ongoing abuse. In our review of eighteen full case files from police intervention through disposition, we were alarmed to find out that ten were pleaded down to lesser charges. Seven of the ten were negotiated down to the charge of "disorderly conduct" [Community E, Case Follow-up (CF) 3, CF4, CF5, CF10, CF13, CF14, CF17]. Yet the violence in these cases was quite serious and the injuries sustained by the victims extensive. Bunching forced cases to be dealt with in the hallways and taken care of as quickly as possible makes for an efficient process for the institution, but a flawed outcome for the victims.

Bunching also means that cases are treated in rapid-fire fashion. In the pre-trial hearings that we observed, most cases were disposed of in a matter of three to five minutes. More hotly contested situations would take an extra ten minutes at the most. Generally, if a defense attorney wanted to challenge the prosecutor's claim of evidence against the suspect, a later date was set for a new probable cause hearing. The push was on moving cases along without holding up the flow of the assembly line. There was pressure on everyone not to crowd up an already overloaded court calendar. One observer talked about the pre-trial process:

There were over a hundred cases, a dozen defense attorneys and one prosecutor with a mound of case files. Four hours later, they had held a hearing on every case with no breaks. I think there were seven domestic cases in that pile. I don't know, I was taking notes but I couldn't exactly tell it all went so fast. There was no way that the defense attorneys or the prosecutor knew much about those cases. (Reported in a community team meeting, January 2001)

One prosecutor commented, "We call it cattle day. You just keep herding them into the courtroom all day long and at the end of the day, the blood is on the floor. You just hope most of it isn't yours" (Interagency Meeting, March 2001).

The process had a market-place feel to it. The treatment of cases was highly standardized, inevitably precluding sensitivity to the magnitude of danger to individual women. Domestic violence cases that involved serious threats to kill, ongoing intimidation and abuse, as well as brutal beatings were treated as part of the lot with few effective distinctions based on the gravity of the situation.

The pressure on the court calendar was reflected in the practice of plea-bargaining, which was so automatic that even strong cases with good evidence were routinely bargained down. The practice of plea negotiations works in a similar way to negotiating details of an Order for Protection, except women have no observable role in the negotiations. The premise behind plea negotiations is that prosecutors base their decisions regarding the charge and the offer to the



defense on the strength of the evidence before them. In other words, if they have a strong case, they offer very little in the plea negotiation bargaining because they feel confident that they can get a guilty verdict without the defendant pleading guilty. Prosecutors know that the defense attorney knows this as well and will likely recommend to their client that they plead guilty. On the other hand, if their evidence is weak, they will not want the case to go to trial when a guilty verdict is unlikely. Again, both lawyers are aware of this, and so the prosecutor will offer incentives for the defendant to plead guilty, including lowering the charge from assault to disorderly conduct, lowering the charge from a felony to a misdemeanor, making a recommendation of no executed jail time and, in some cases, even a recommendation of no rehabilitation.

As the process continues the case gets further and further away from the crises and pain and fear of the night the incident occurred. Since it is the incident that is being considered now and its meaning has faded, these resolutions seem sufficient for a punch, kick, or threat that happened months ago.

Everyone Agrees there is a Problem.

This examination of the disjunctures between institutional time and the lived time of a violent relationship has illuminated two major problems: One is the processing itself that even in civil cases is not responsive to the realities of the victim's situation and the kind of threat she confronts; this is compounded by the second problem, the overloading of the system. An excerpt of a transcript of an officer's interview with a Indigenous woman exemplifies how the two effects appear in the lived time of a battered woman. Rita Ramione had been beaten up rather severely by the same man who beat her up four months previously.

201: And KERRY gave you some statement forms to fill out this morning?

Rita: Yeah.

201: Okay.

Rita: I wasn't sure I wanted to press charges, being that the last charges haven't even gone through.

201: Mmm, hmm.

Rita: I'm sure the charges are gonna get dropped down to nothing anyway.

201: Okay, so you, you had an assault complaint that was filed about 4 months ago with LEO? And that's still pending?

Rita: It's up to the County Attorney?

201: Hasn't been to court?

Rita: No it hasn't, I talked to the County Attorney and he said there will be 5 charges - 2 felony charges -

201: Okay.

Rita: But it took so long cuz it was...

201: Sure, and, in that mean time have you seen LEO, er, have you been seeing him at all, er?

Rita: I saw him around, I, he...I mean I don't tell him about, what's, what's gonna happen, what he's gonna be charged with...

201: Mmm, hmm. So, as of now, what's your status with him?

Rita: Well I'm not talking to him at all.

201: Okay, now, before you leave here I'll give you a card with some information, uh, I guess I'd strongly encourage to get a Restraining Order -

Rita: I've tried that...

201: ...expired? Okay

Rita: I tried to call you guys and tell you where he lived. He wouldn't answer the door.

201: Okay, is there anything pertinent to this case, uh, that you'd like included?

Rita: Uh -

201: I'm assuming by, by coming in and making statements that you want the County Attorney to review it and, and proceed with any prosecution if they deem it appropriate?

Rita: Yup

201: Okay. And the time is 15:15. (Community J, Police report 8)

In the life of a woman experiencing abuse, four months is too long.

At least some practitioners share the view of the inadequacies of institutional timing. This prosecutor puts forward the advantages of the rapid processing of a case:

One advantage would be to get an early resolution of the case versus dragging out a few more months onto a trial calendar. Sometimes that may be advantageous to the victim involved. Sometimes the advantage to my side would be to get a conviction in place, even if it's a reduced one, so we can get a person on probation generally and get them into the men's violence program. (Interview prosecutor, November 2000)

This judge also stressed the importance of being able to move rapidly to conclude a case:

[We have to do] everything we can...to come up with a solution that works for them as quickly as we can. I think three or four months down the road...it just seems to be irrelevant at that point. The process just went to hell because it just doesn't meet their needs. (Reported by a Judge, Focus Group 5, February 2001)

Facilitators of men's groups have found that the extended time periods involved between the original intervention by the police and the sentencing that brings them to the group makes group work less effective.

Of course, it would be much better if we got the men soon after they assaulted their partners. A lot of these guys are months away from the incident when they get their court order to go to the group. If he's not still with the [same] partner, he just says, 'Oh well, that's over now.' (Men's group coordinator, Interview 2001)

A judge expressed his reservations about the effectiveness of a process that takes months to resolve a case;

No matter what we say or do, the orders don't really mean anything to them...And sometimes I think we have to accept that if the charges get dismissed, if the order is dropped, sometimes the process has served their needs. It's not that the system has done anything wrong, it's just that they don't have any use for the system at a certain point. I don't know that there is anything that the system can do. (Reported by a Judge, Focus Group 5, February 2001)

Practitioners consistently reported feeling that they have done everything they can to come up with an appropriate solution for each family with whom they are involved, but that they are not effective.

I sort of feel like outcomes are generally good, sort of in spite of me. In the sense where I have gotten a good outcome or what I believe is a good outcome, we have won the case

and then I will run into the client six months later to find out that...they have worked it out in a different way, in a way that works better. They are very thankful and maybe there is something that going through the process got them to a point where they could [work things out]. So it seemed as though with the passage of time it has become sort of pointless or irrelevant or they worked it out in a different way. (Reported by Attorney, Focus Group 5, February 2001)

Like the dispatcher who figures holding a call might have led to the parties just working it out, this prosecutor may have it right or of course maybe nothing got worked out at all and violence continues.

In criminal cases, there is a further and, in a sense, more fundamental disjuncture between institutional and lived time than is the case for Orders for Protection. The focus of the legal system is on only single incidents. It picks out a particular moment from the lived time of a violent relationship and makes that its focus. Battering, however, is a pattern of ongoing abuse and threats as opposed to a single incident of violence (Levinson, 1989; Pence & Paymar, 1993; Stark, 1996). Thus, an important feature in many of the cases that we examined was the accumulation of abusive events over a long period. The criminal case procedure selects a particular “incident” from the ongoing stream of lived time. This can be clearly seen as Rita tells her view of the process to the responding officer. She has an assault charge pending against an abuser from an incident four months earlier. That has done nothing to protect her; he has now assaulted her again. She has no guarantee that this will not happen again sometime.

### *Texts in the U.S. Legal System*

#### Introduction.

The U.S. legal system, like most institutions of social control, uses bureaucratic forms of management to accomplish its complex work. Texts (or documents) are foundational to bureaucracy (Weber, 1968). In all of our observations, interviews, and court-record reviews, we

sought to explicate the role that texts played in defining the ways that practitioners thought about and acted on cases. To better understand how the legal system intervenes in the lives of Indigenous women who are abused, we paid attention to how the case file, or documentary practice, organizes the relationship between the state (or its representative worker) and the woman. A case record or file is a key organizational element in taking action—it is the institution’s representation of the “incident” (here, the incident is an assault on a woman) that precipitated the opening of the case—so it necessarily reflects the concerns of the institution. Case files rarely contain verbatim transcripts of conversations. Instead, they contain documents that are organized to record what “of institutional significance” occurred at each stage of case processing.

Institutional practitioners are trained to read and write in institutionally recognizable ways. The reader is linked to the writer of a document—not only through the text, but also through the legal discourse that organizes their profession. All professionals are trained to translate what they see and hear from the everyday world into pre-arranged terms and concepts specific to their field. As practitioners document what they see and hear and observe in a case through administrative forms, computer screens, narrative reports and case notes, the reality of the woman who has been abused is transformed into an institutional representation of a domestic abuse case. Institutional texts act as filters; they select what is institutionally relevant and obscure what is not.

Texts organize the sequencing of practitioners’ work: For example, a computer screen prompts dispatchers to consider certain information when coding a call. The code they use informs officers how quickly they should respond. In addition, a report filed by an officer on the “arrest in custody” form is typed immediately by the police records bureau and routed to arraignment court the next working day. Texts create links between practitioners who work in

different agencies and perform different tasks. For example, police reports from domestic calls in which children are involved are automatically routed to the child protection agency. Texts filter cases, allowing practitioners to exclude those that don't fit. For example, petitions for protection orders are structured to allow the court clerk to determine if a case fits the criteria of a "domestic." If it doesn't it is not forwarded to the judge. Practitioners produce texts that document their compliance with state law, regulations, and policies, and address liability issues. For example, almost every arrest report we read contained the phrase, "I placed the suspect in handcuffs which were double gapped and locked," or, "I read him the Miranda warning."

Standardized texts define for practitioners which details are institutionally relevant and, therefore, those that will be gathered and recorded. Using forms like the parent/child interaction checklist (Appendix 6), or report-writing formats, like the one used by police when documenting domestic assault calls (Appendix 7), the institution instructs practitioners about what information is appropriately gathered, and in what order. Texts require that practitioners categorize a case in order to move it down a specific course of action. For example, misdemeanor- and felony-level cases call for different levels of investigation, use different amounts of the court's resources, and result in a different sequence of hearings before the court. Texts highlight what is important about a case by requiring certain pieces of information and omitting others (or relegating other types of information to an optional narrative section). For example, in the case of traffic accidents, police officers use a form with a check box to document visibility due to weather at the scene. They do not, however, require the documentation of an assault victim's visible injuries through a format such as a body chart.

We attempted to understand exactly what role texts play at each case-processing stage. It became clear that at each stage of intervention, the documentation reflects only what is

institutionally relevant. This has consequences for the goals of protecting and respecting women in our communities.

Case files are the institutional presence of abuser and victim. They are the textual reality that coordinates the work of the institutional practitioners involved in the processing of a case. Though they organize practitioners' involvement in very specific ways, the way in which data is gathered for those files is not examined nor considered to be problematic. People who observe and interpret the actions of the people involved—the man who beat his wife and the woman who was beaten—make entries in terms of the appropriate legal category in their institutional capacity. A police officer records information about the existence of the elements of a crime, the probation officer produces an account that relates to sentencing objectives, and the rehabilitation worker documents indicators of amenability to change. Administrative forms, established ways of seeing things, and policy-guided criteria defining what information is relevant, steer the recorders through literally dozens of choices.

The dispatch operator's response to a 911 call is the first in a series of prescribed actions that coordinate, guide, and instruct the practitioners who subsequently help to process a woman's experience of being beaten as a criminal assault case. The dispatcher who receives the call does not use her own discretion in this highly specialized system. Instead, she is guided by a series of computer screens that script, or mediate, the discussion: first, between the caller and the 911-intake worker, and then, between the dispatcher and the police officer that responds to the call (Smith & Whalen, 1994). These screens constitute the second text for the police and court system that will manage the domestic assault case. As D.E. Smith notes (1990b), they are not "without impetus or power."

The reality of what is happening to the woman who is being abused disappears in the processing of the case. Its focus is on the prosecution or possible prosecution of the suspect. No continuity of knowledge about the victim, her experience of violence, or what is happening in the relationship between abuser and victim during the course of the case's processing is provided in the system of texts. No one is assigned to work with the case from beginning to end. If information is not recorded at the first stage of intervention, there may be no point of entry for it at a later stage. Subsequent reports become narrowed in scope as intervention efforts further define and sort the case. If information does not fall into institutionally prescribed categories of documentation, it just does not appear in the file and does not get considered.

Three forms that we came across in our observations exemplify how the reliance on standardized and formalized texts prevents the state from fully understanding the situation of the woman being abused, often bringing about misguided legal interventions. Simply altering these forms will not completely solve the problems inherent to the process. Instead, as discussed later, a process that is attentive to women's needs must rely more on the actual narratives, stories, words, and accounts of the people involved.

"I want to withdraw my petition for protection..."

A civil petition for a protection order is considered to be a complaint made by one citizen against another, not a criminal case. A criminal case, in contrast, represents the *state's* complaint against the individual who committed the crime; the victim of the crime is essentially a witness to, rather than an active party in, the proceeding. This distinction affords a civil petitioner much more control over his/her case than a person involved in a criminal proceeding has. For example, the civil system allows a petitioner to request a dismissal of his/her case, even after the protection order has been granted. Our interviews with judges and prosecutors revealed some



disagreement about whether or not a judge can deny a petition to dismiss a case. Regardless of the judge's legal obligation to grant or not grant a dismissal, the process is extremely telling about the U.S. court system.

Twenty-two of the 42 Indigenous women, who petitioned the courts for a protection order during the 12-month period under review in Community H, either formally filed an affidavit to dismiss the case, or simply did not appear at the first hearing—an action that typically has a similar outcome. All but one of those cases were subsequently dismissed. As a matter of course, if a petitioner fills out an affidavit form (Appendix 8) requesting a dismissal (Appendix 9), the judge approves it and no more intervention occurs. However, the research team discovered several cases in which the level of violence described in the petition clearly called for some level of community intervention.

For example, Helen Jeffers stated in her affidavit to the court on November 8, 1999, that she was requesting a protection order because she was afraid of her boyfriend. Over the past year, she had experienced much physical abuse at his hands. In the most recent assault, he:

- “stomped on my head”
- “kicked me in the head”
- “dragged me by my hair from the dining room to the living room”
- “punched me quite a few times”
- “slammed my head into the floor and the walls”
- “said, ‘I’m gonna kill you, bitch,’ over and over”
- left “a cut lip, scratch marks on my face, bruises on my face, marks that look like blood blisters, bruises on my legs and arms, ...a shoe imprint on my arm, and red marks on my back” (Community H, Order for Protection 41).

Following a hearing in which the respondent admitted the domestic assault, the court granted a one-year order for protection, ordering the respondent to have no contact whatsoever with Helen, and to not go within two blocks of her home. The court did not award him visitation of their two-month-old son; temporary custody was awarded to the mother because paternity had not yet been adjudicated, but the court specified that the OFP could be amended if paternity were formally established. Seven weeks later, Helen filed an affidavit requesting an amendment to the order for protection—specifically, she wanted the respondent removed from one of her college classes, in which he had just enrolled. One week after filing a request for an amendment, she filed another affidavit, this one requesting a dismissal of the entire order for protection. Helen stated that, “the child has medical appointments coming up and problems and I would like the father to be with me” (Ibid.). Two days later, the judge signed an order to dismiss the case.

If a petitioner is granted an *ex parte* (temporary emergency) order and then decides she wants to have the case dismissed, she simply does not appear for the formal hearing. After a protection order petition has received a hearing and been granted by the court, as in Helen’s case, a petitioner must follow a formal affidavit process that nullifies the order and allows the respondent to return home or have ongoing contact with her. In either case, the affidavit requesting a dismissal reads as if the petitioner has independently decided that it is in her best interest to drop the order for protection. However, no system exists by which someone might privately sit down with the petitioner to discuss her interests and determine the conditions under which she is requesting the dismissal. It might well be that the petitioner has decided that she no longer wants to live apart from her partner. She might need him for economic reasons or for childcare. Her emotional attachment to him may be such that she wants to continue the intimate relationship. However, the system is not designed to help her figure out how to maintain the relationship while enhancing her

safety. The judge's decision to dismiss the order is based solely on the affidavit. The victim is not there, her family is not there, the people in the community who know what is happening are not there. The court's decision is not based on what is going on in the real world in which people live but what went on in the institutional world in which cases are processed.

One judge approved every affidavit we reviewed that requested a dismissal. The approved affidavit was then filed with the original protection order—saying, in so many words, that this action represents a free choice of the petitioner, and the court has no objections to the petitioner's request. Of course, citizens must have some kind of control over the legal processes that govern their lives once they make a plea for protection. However, a reader of files describing a level of violence such as that in Helen's affidavit would be convinced that the women and children are not safe. The formal paper filed by the state, implying some kind of a review, is an abdication of the state's responsibility to protect its citizens. The team reviewed a number of cases in which the level of violence described was similar to Helen's. The cases simply closed after the petitioners filed affidavits or verbally requested a dismissal at the initial hearing. The state (via the courts) paid no attention to the clues to the lived human story reduced to a few sentences on a form. The institutional requirements to dismiss the order have been met, and the case goes away, but neither the violence, nor the intimidation, nor the fear are likely to leave when the case is closed.

Are you a good parent?

Social service child protection records are confidential and we were not able to obtain access to any social service information based on police reports or OFPs for Indigenous women. We did, however, have access to four child protection files for non-Indigenous women. One case involved Angelina and Russ Herrig who were married in 1993. At the time, they cared for Russ'

two children from a previous relationship, and together bore their first child in early 1994. Russ began to abuse Angelina six months into the marriage. The couple's fourth and youngest child was six months old when the first police report was filed, in November 1995. Over the next five years, the police made eighteen calls to the home. The reports include Russ' physical violence, burning furniture on the lawn, making threats, ripping the phone out of the wall, and preventing Angelina from leaving the house.

On that first call to the police in 1995, Russ was arrested for domestic assault. He was not convicted. In 1998 he was arrested a second time for assaulting Angelina and, again, he was not convicted. In January of 2000 a third abuse-related "case" was opened by the state when a schoolteacher reported suspected child abuse of Tamara, Angelina and Russ' 6-year-old daughter. The teacher noticed a bump on the back of Tamara's head and, when asked about it, Tamara related that her father had hit her with the lid of a Tupperware container.

The county child protection division assigned a caseworker to the Herrig family. A non-criminal child protection investigation began, opening the third legal case in as many years. In Russ' first interview, he admitted to hitting Tamara. The caseworker began to work with both Russ and Angelina to reduce what she labeled, "high risk of abuse to the children." The Herrigs now have six children: Charlie (12 years), Barb (10), Tamara (6), Ben (5), James (4), and Caroline (18 months). The case remained open for a year and a half: from January 2000 to July 2001.

During that time, the Herrigs were offered a series of services, with the understanding that if they failed to utilize these services, social services could request that the court remove the children from the home. The caseworker ran a records check and discovered the two previous arrests of Russ. The child protection file, however, does not include any police reports or other details of these arrests or assaults. The file contains a notation of Charlie (12) having been

sexually abused “in the past,” but no other details, no mention of the date, or the perpetrator, or the circumstances of the abuse. Neither does the file contain mention of any abuse by Angelina towards Russ, which we assumed meant she did not use any violence toward him. The file gave no details of Russ’ abuse of Angelina.

One of the child protection worker’s responsibilities is to develop a safety plan and a corresponding service plan based on her observations, interviews and review of records. A major determinant of the service plan is the result of a parenting skills evaluation conducted by an independent agency. The leap from responding to the report that Russ has hit and injured his child to assessing the *couple’s* parenting skills is made through the use of administrative tools such as the service plan, the parenting skill assessment guide and similar institutional documents. The worker who is automatically organized to pursue a review of parenting skills does not consider the appropriateness of such assessments in light of the situation. We observed many steps in case processes similar to this in which the practitioner was organized to take certain actions on a case that seemed routine to him/her but in fact were quite problematic from the standpoint of the people involved.

The family service center that conducts the parenting evaluations uses the same form to conduct all parenting evaluations, regardless of the subjects’ cultural, economic, or geographic background, age, sexual preference, or social status. The same evaluation is conducted in families that do not have a history of violence, but that are being assessed for other reasons, including allegations of neglect or requests for parenting-related therapy. The counselors also use a parent-child interaction checklist to help in completing their evaluations. These two forms provide the framework for the report that describes Russ and Angelina’s competency as parents, and largely guide the child protection worker in developing her service plan.

These evaluative procedures and standardizing tools are the mechanism by which institutional ideologies are woven into the fabric of case management procedures. The concept of parenting skills and the descriptive categories used to define it are, among other problems, clearly culturally specific. They do not take into account cultural and sub-cultural differences in parenting beliefs and practices. Nor did the evaluation procedures make sense in the context of the family's history of violence and intimidation. They did not attend to the family's poverty, Russ' beliefs about controlling his family through violence, nor Angelina's economic dependence on Russ.

The form itemizes the elements of an idealized set of interactions between parents and children, and requires a representative of an institution of social management to evaluate a father or mother's competency only within this context. A parent-child interaction checklist (Appendix 6) directs the evaluator to observe, comment on, and rate (with a "yes" or "no") twenty-five aspects of a series of parent-child visits, starting with the greetings. The sessions at which observations are made are not exactly visits, although the form refers to them as such. They are more like performances, in that both Angelina and Russ are required to bring the children to the family service center and interact with them under observation.

As an example, one criterion (line 19) is: "Parent attends to child's toileting needs, e.g. changes diapers, takes child to bathroom." During Angelina's first visit, the evaluator notes that one child had to ask twice to go potty and another child asked once. Presumably, the second child asked her but she did not take him to the potty, because this criterion is marked as a "no." During the same visit, Angelina receives a "no" in the category "Parent provides for child's safety." The evaluator notes that "Ben was pushing Caroline in her stroller, giving her a push and letting her go. He did so 4-5 times before this worker intervened." As a result, Angelina was not

considered to have cared for the safety of her children during that visit. Similarly, Russ received a “no” in this category during his first visit. The evaluator noted that, “Safety was the most difficult issue of this visit. Caroline and James do not stay put and do not respond to voice commands. Dad could not keep up with both younger kids and did not try diversions to keep them near. Occasionally too lax in watching over kids.” Here is a father who is by no one’s account the primary caretaker of his children, interacting with five children that he rarely cares for alone. He is considered not to provide for their safety because he is unable, in this foreign environment, to keep his kids from running around in all directions.

These observations and pre-formulated categories for assessing Russ’ skills as a father, and Angelina’s skills as a mother, bypass the issue of how the children’s safety is compromised by Russ’s violence—either towards a child, or towards Angelina. However, this report informs a second parent skills evaluation (Appendix 10). This time, the parents are judged numerically according to a different set of attributes. The second report does not examine individual visits, but rates them (on a scale of 1 to 5) in the following general categories: Personal Growth, Family Management, Protection and Safety, Substance and Nurturing, Discipline, and Communication. Several subcategories are offered. For example, Family Management includes providing adequate and appropriate safe housing, sufficient food, appropriate clothes, and so forth.

Russ and Angelina do share a household and, logically, score equally in many categories. For example, they both received a 5 in the category *provides appropriate and safe housing*. Only when the interaction is individualized do the scores start to differentiate—but only very slightly. For example, a subcategory to Personal Growth is *shows willingness to change behaviors by accepting suggestions from the staff*. Angelina receives a 5; Russ, a 4. Of course, the numbers do not reflect the fact that Russ receives very few staff suggestions compared to Angelina. In fact,

two out of every three suggestions about securing the safety and well-being of the children were made to Angelina.

Russ scores higher than Angelina in some safety categories, such as *choosing appropriate care takers*. On only one occasion is he required to secure a caretaker, and he chooses the children's grandparents. However, Angelina is responsible for making caretaker arrangements quite frequently. On two occasions she selects a person that she does not know well, which concerns the evaluator, who rates her 3 in that category. She and Russ receive the same scores in *supervising children* and *child-proofing [the] home*, even though Angelina actually does most of that work.

Their final scores on the second report were relatively equal, despite the fact that there is no indication that Angelina has physically abused her children or her spouse in any way. This, after all, is what brought the case into the system in the first place. In addition, their parenting has taken place under drastically different conditions; the report does not account for the fact that Angelina has been the primary caretaker of five children while being abused by Russ, suffering significant injuries over the years. A great deal of documentation shows that Russ does not regularly care for the children, nor does he spend a great deal of time with them. Yet, they are rated as having equal parenting skills.

The routine use of these evaluative forms to assess parenting skills, in an artificial observation setting, prevents practitioners—in this case, the social worker—from acknowledging the shortcomings of the process. Namely, there was no suggestion in the file, from any source, that Angelina had been abusive or, indeed, neglectful of her children. Nor would an abusive parent be likely to strike a child while under observation. Instead, the reason for their case being



opened—Russ’ abuse of her and his hitting a child on the head—became immediately lost in the momentum of prescribed parenting skills evaluations and case planning.

Another serious problem woven throughout the framework of forms such as parenting assessment guides or pre-sentence investigation reports is their assumption of a universal notion of parenthood, or good citizenship, or even danger. But none of the forms we reviewed addresses differences based on social position or status. All of us who read about Angelina’s case found the parenting skills evaluation to be extremely euro-centric and based on middle-class resources and values.<sup>9</sup>

The two forms were used as the basis for a case plan and a safety plan (Appendices 11 and 12, respectively) for both Angelina and Russ. The plans ultimately gave Angelina far more responsibility for protecting the children—including that she literally protect the children from Russ when he was in a bad mood.<sup>10</sup> The plan did not arrange for the state to directly intervene, although it was in a much more powerful position than Angelina, but instead used Angelina’s attachment to the children to get her to try to control Russ’s behavior.

In the end, this form—like many other aspects of this textually driven system—assigns a numerical score that makes a batterer and his partner appear to be similarly capable of being good parents, and obviously would be problematic when a battered woman is trying to justify to the court that she should obtain custody of her children. Indeed, the outcome of this grading process was ultimately unhelpful and unfair to Angelina. In the petition to the court the worker used much of the information about the parenting skills of Angelina and Russ to justify removal of the children. We found the numerical rating system, the methods of observation, and the

---

<sup>9</sup> Both Angelina and Russell are white and of low income. We were unable to secure Native women’s files from social services for the purposes of this study, but instead used several child protection files from battered women who agreed to let us review their entire files.

<sup>10</sup> Safety Plan for the Children of Angelina Herrig.

conceptual underpinnings of the parenting skills evaluation form to be almost ludicrous: not only in their inability to capture the reality of a woman's raising five children while being abused, but also for failing to account for Russ' use of violence, which may have little to do with his or Angelina's parenting skills.

These assessment tools, coupled with a series of home visits in which the worker documented a series of events using a similar conceptual framework, provided most of the data in a petition to the court to remove the children from Angelina's care.

Below are excerpts from the social worker's petition to the court. All of these statements are presented to the court as "facts."

The following facts constitute grounds to believe the children are in need of protection or services:

Russ and Angelina Herrig were married in 1994 and have four children: Tamara, Ben, James and Caroline Herrig. Mr. Herrig also has two other children from a previous marriage: Charlie, age 12 and Barb, age 10. Prior to January 2001, Charlie was residing in the home of Angelina Herrig. He is now living in Madison, Wisconsin with his own mother. There has been a significant history of domestic violence in Russ and Angelina's relationship, dating back to at least 1995....

During the Child Protection social worker's involvement with this family, Russ and Angelina Herrig have exhibited a pattern of inadequate supervision of the children and exposure of the children to potentially injurious situations, as evidenced by the following:....

On March 2, 2000, Ms. Herrig put Ben on an earlier school bus than usual. The bus driver told Ms. Herrig that Ben would be at school over the lunch hour and that the child is not provided with a lunch at school. Ms. Herrig put the child on the bus anyway....

On March 29, 2000, the social worker made a visit to the home of Russ and Angelina Herrig. When she arrived, Ms. Herrig was sitting outside, watching Ben and Tamara ride their bikes. Ms. Herrig told the social worker that Russ Herrig was sleeping and that Caroline was inside, sitting in her high chair and eating. The social worker told Ms. Herrig that Caroline needed to be monitored and should not be left unsupervised in this manner. Angelina Herrig was apparently unaware that this was a problem....

On June 26, Russ Herrig became angry and was yelling. Angelina reportedly felt threatened, so she fled from the home, leaving all of the children in Mr. Herrig's care. Her actions were contrary to a Safety Plan, intended to protect the children from the risk of physical abuse, which she had developed with the Child Protection social worker.

Later that day, Mr. Herrig reportedly ripped the phone off the wall and threw it through a garage window when Ms. Herrig tried to call the police....

On September 18, 2000, the Child Protection social worker visited Angelina Herrig at her home. Ms. Herrig was caring for two other small children, in addition to two of her own children. The social worker had to intervene several times to prevent the children from hitting each other, falling off the bed and climbing a railing. Ms. Herrig was unable to control the children.

During a parenting assessment at the Family and Children's Mental Health Center on October 23, 2000, Angelina Herrig left the children without appropriate adult supervision for an extended period of time in a waiting room of the Health Services Building. She apparently went to another part of the building to complete paperwork. James and Caroline reportedly became concerned when they realized that they were in a new environment without their mother. A receptionist paged the Child Protection social worker, who came to the waiting room area, and saw that the receptionist was the only adult available to supervise the children. The receptionist stated that, before she left the floor she told her that she needed to watch the children. Russ Herrig was also in the building for a supervised visit. When Ms. Herrig returned, the social worker observed that Tamara was missing. Ms. Herrig asked the receptionist where Tamara had gone. Tamara was later found in the visitation room with Russ Herrig....

At a supervised visit on January 23, 2001, Russ Herrig set a hot cup of coffee on a table in front of Caroline, then walked away from the table. The social worker told Mr. Herrig that it was dangerous to leave hot coffee in front of a two-year-old. During the same visit, James asked the social worker for more cereal, after Mr. Herrig failed to respond to the child....

From September 20, to November 9, 2000, Russ Herrig participated on a Psychological and Parenting Assessment with Social Worker A, Licensed Psychologist with The County Family and Children's Mental Health Center....During the Parenting Assessment, Dr. Social Worker A observed that Mr. Herrig was able to deal with each of the children individually, but became overwhelmed, stressed and distracted when interacting with two or more of the children at the same time. He also struggled with setting and maintaining appropriate structure and boundaries, he was inconsistent in his expectations at times and he tended to abdicate his parental authority.

From August 14, to November 9, 2000, Angelina Herrig also participated in a Psychological and Parenting Assessment with Social Worker A, Licensed Psychologist. Dr. Social Worker A diagnosed Ms. Herrig with an Anxiety Disorder, Not Otherwise Specified (by history). According to Dr. Social A's assessment report, "While Ms. Herrig has numerous skills and a high level of involvement with and interest in her children, it appears that she becomes overwhelmed by multiple stressors and responsibilities thus can become prone to errors in judgment when prioritizing the children's needs.

As a result of the Psychological and Parenting Assessments completed by both Russ and Angelina Herrig, Dr. Social Worker A made the following recommendations: continued individual therapy, continued involvement with the Family Services Center Program and programming for victims of domestic violence for Angelina Herrig; consistent follow-up with medications and treating physician, domestic violence programming, and parenting

education with Family Services Center for Russ Herrig; and marital therapy for Mr. and Ms. Herrig....

The above named children are in need of protection or services, pursuant to the following subparagraphs of State Stat. 260C.007, Subd 4....

We could not think of a single woman we knew with Angelina's resources and under the circumstances of being abused that could have met the standards set by the intervening agency. But the final report to the court is produced in a way that Angelina is reinvented from being in our view a phenomenally strong woman and devoted mother to being a neglectful parent.

What I did on a domestic call, and why.

The initial investigation report written by the police officers who respond to a domestic assault related call follows a standard format. That format shapes what can be included in the report and hence what police will be accountable for. In this way, the standard format shapes what police do in response to a domestic abuse call. All of the police agencies in our review are aware, to a greater or lesser extent, of advocacy groups' efforts to change how law enforcement responds to domestic violence cases. Specifically, advocates have long sought recognition of domestic violence as a crime, and have pushed police to treat domestic violence cases as serious crime scenes rather than occasions to mediate, separate, and leave without taking protective measures for the victim.

This advocacy effort has led to a significant increase in the number of law enforcement agencies that require or strongly encourage officers to arrest on domestic calls involving an assault against an intimate partner. Increased arrests have led to pressure on prosecutors to obtain convictions in these cases, which requires police to write reports that fully document the incident. Because so many victims do not want to testify at a criminal trial months after an assault the police report becomes an important document for the prosecutor.

One of the law enforcement agencies in our review requires its officers to follow a report-writing format with thirteen categories (Appendix 7). The police report is divided into two sections. The top half is a series of checkboxes that ask for demographic data: prior records, names and addresses of witnesses, etc. The second half of the report is a narrative. This format has significantly changed the way that officers write domestic-assault reports because all thirteen items must appear in a full report before it gains supervisory approval. While we found many reports that fell short of that ideal, we also reviewed a large number of reports written prior to the implementation of this format, and found them extremely sparse. They had barely one-fifth of the information contained in the current reports. This new format has resulted in officers writing in-depth reports in misdemeanor and felony assault cases; prosecutors now have significant amounts of information to help them obtain a conviction or even decide to drop a case.

Despite the obvious improvements in this new format, we were nonetheless interested in examining what the form omitted about the experience of an Indigenous woman who has just been beaten. Most women who have been beaten want help because they are still in immediate danger, but do not necessarily want to invoke an extended criminal process that may or may not enhance their safety. However, most information requested on this card was intended to facilitate the prosecution of the case. Information about when the officers arrived on the scene establishes whether a prosecutor may introduce certain kinds of “utterances” (things said in the heat of the moment) without a victim’s testimony. 911/dispatch information substantiates the police officer’s decision to make an arrest without actually witnessing the crime. An officer must collect nine different pieces of information when interviewing a witness or involved party, each of which have been carefully chosen by prosecutors to help them determine whether or not to pursue a case, how aggressively to do so, and what charges to bring against the suspect. Even the

documentation of victim contact information supports the institutional purpose of locating a victim who might later provide testimony. While these informational categories seem effective in carrying out some of the reform efforts to criminalize domestic abuse, they are still limited in gathering a full understanding of what is happening to the woman and what needs she might have from the various agencies that have access to this report.

These elements do directly reflect the efforts of the community to take domestic violence “seriously,” and to pursue state intervention with full recognition that it is a crime. However, the research team did not find that the reports reflected a thoughtful process that outlined a list of things that a community should do in its first contact with a victim of domestic abuse. For example, nothing in the rather comprehensive format instructs the officer to be gentle with the victim or to spend time talking with the victim before investigating the crime scene, to determine who the victim might want with her at this painful time, to determine whether or not the victim wants an investigation of a crime scene to occur at all, to document how the victim contextualizes this act of violence, what kinds of problems led up to it, or what steps—besides prosecution—would reduce or eliminate the violence. Items that would render police accountable for responding to victims in ways such as these do not appear in a police report; they are irrelevant to the investigation of a crime.

When officers use the report-writing format, they produce more thorough and detailed reports. The format is becoming embedded in the institution’s case management routines, and will help reform advocates realize at least some of their goals. At the same time, the specific needs of Indigenous women are not taken into account. At one point in our work, we seriously considered re-writing the report-writing checklist to rectify this. We eventually decided that doing so

represented accepting this awkward-at-best, and chaotic-at-worst, division of labor within the U.S. legal system that is described in the previous section on Specialization of a Work Force.

It has been our goal to illustrate how texts shape case management in the U.S. legal system. While practitioners admittedly leave their own imprints on these cases—shaped by biases, personalities, and levels of knowledge about domestic violence—texts nonetheless provide an overarching method and structure by which these cases are managed. Regardless of the personal or private beliefs and work habits of individual practitioners in the system, a general outcome is achieved through the use of standardized forms and formats for documentation.

### *Women's Stories*

#### Introduction.

As Indigenous people, we are storytellers. When we tell stories, what kind of stories we tell on certain occasions, who tells stories, and how they are told are all part of our traditions and cultural ways of doing things. In this section, we examine the extent to which the institutional processing of domestic abuse cases under U.S. law is open to hearing women's stories. We started our inquiry on this topic by asking when and how a woman is allowed to talk to the people acting on her case. How is her knowledge of the situation incorporated into the state's determinations of public safety, truth, and justice (all stated goals of the U.S. legal system)? Soon after we formulated these questions, we quickly added a third: What restrains women from speaking in this process?

In the end, we found that virtually no part of the process allows a woman to tell her story as she has experienced it. Every interchange had its constraining features. The use of institutional language, relevancies, processes, and ideological frameworks was so all-encompassing that women's lived experiences were virtually written out of the final story that formed the basis of

the state's actions.<sup>11</sup> We watched and listened to what institutional practitioners were doing and saying with the intent of finding out how their documentary practices were coordinated. We wanted to see what kind of account of women's experience the legal process produced, and to see how a woman was drawn into the production of her account.

As we reviewed our conversations and interviews, three patterns shaping the talk between practitioner and battered Indigenous women came into focus. The first is a phenomenon we called communication without dialogue. Institutions provide formulaic procedures that operate in many settings to restrict how practitioners relate to those involved in their cases. We found only a very few instances in which a practitioner and an Indigenous woman engaged in a truly respectful, open, and free discussion about what was happening to her and what she needed to be safe. The second was the use of administrative forms and procedures that prevented the full account of women's experiences from coming forward. The third was the intimidation of women in court processes by the abuser or by intervening practitioners. These three are not a comprehensive account of how women's voices are constrained in these institutional processes, but they exemplify our observation that women's stories are written *out* of case files, not *into* them.

#### Communication without Dialogue.

In an earlier discussion, we concentrated on identifying the processes structured into case management practices that coordinated individual practitioners to document women's accounts of events and their expressed needs from the intervening system. We were also interested in how these documentary routines produced both intended and unintended case outcomes. We asked:

---

<sup>11</sup> Had we asked the same question of the men whose stories were processed differently we still would have found a significant disconnect between what most men would have to say about their daily experiences, their relationship with their partners, and their use of violence.



How did the institution tell practitioners what to and what not to document? In addition, how did these instructions shape case outcomes?

U.S. legal institutions process cases. Cases do not exist in the lived actuality of the night on which a man's fist smashes into a woman's face; cases exist in case files. Case files create a shared document based reality for many practitioners involved in resolving the case. Generally, institutional practitioners used case files as a resource without considering that the process used to document cases might be problematic. Entries into a single case file are made by dozens of individuals occupying specific institutional positions. When police, probation officers, or prosecutors incorporate their observations into official reports, they do so in terms of the legal process for which the report was designed. A police officer records evidence of a crime, the probation officer produces suggestions for sentencing, and the rehabilitation worker attempts to determine whether the offender is amenable to change. Administrative forms, ideological practices, and institutional policies defining relevant information, guide the report's author through literally dozens of choices. These guiding forces are invisible to the casual observer and make it appear as if practitioners are making individual choices based on the specifics of a case.

In our review of records, and in our interviews and observations, we started from the premise that legal practitioners do not independently decide what to look for, what to record, or even how to interpret what others have documented. Rather, they work within legal and administrative instructions on every aspect of case documentation. Explicit directions are provided through frameworks such as guidelines, laws, codes, policies, job functions, court calendar priorities, and legal levels of proof. Tacit conventions had been established through practitioners' experiences, by their learning the "routine" practices of their jobs, and through informal traditions passed on from other practitioners.

We were interested in how the accounts and experiences of women were expressed and documented. We found few official directions on how to document what women have to say about their experience, but tacit instructions buried in the intended use of the document. For example, directives to police officers about obtaining a woman's account of an assault were buried in instructions on how to document a self-defense claim or make a probable cause determination. In these institutional directives, victims of a crime are never treated as participants in decisions about how to intervene, except within rather narrow frames such as providing testimony or victim impact statements. Even in civil court, where the woman is an official party to the case, her story is shaped by legal rules on petitioning the court and what may be said in the courtroom.

There was no better place to observe the process of institutional culling of relevant information than at the dispatch center. Dispatchers are trained to elicit specific information, paring down a scattered and emotional conversation to two or three sentences and then communicating that to the next intervening agent. All of their conversations are captured on tape. By listening to tapes and reading transcripts, we could examine the first conversation that transpires between a woman calling for help and the community she reaches to for protection. We noticed how quickly the dispatcher takes control of a conversation with a woman and finds out what 911 has to offer that is institutionally relevant. For a woman being abused, her call to 911 is typically her first opportunity to articulate the help she needs. This, however, was also the point at which institutional procedures took over. The questions that the dispatcher asks are designed to fit what the caller has to say into institutional relevancies. The story the caller is trying to tell is muffled; aspects of key importance to the caller may be marginalized or even disappear.

In our initial meetings as a community team, we used the 911 transcript below to explore how to analyze these tapes:

Caller: my husband is Gene La Prairie. Can you get a squad out here to pick him up.

911: What has he done, Ma'am?

Caller: He's hitting and punching and just scaring everybody.

[The dispatcher gathered information on address, identification, his whereabouts.]

Caller: I think he's finally gone off his rocker. He's not even drunk and he's saying all sorts of wild things.

*911: Like, what is he saying?*

Caller: How he's going to hunt down my brother and my two uncles and how everybody that's ever helped me is going to wish they had just let me rot.

*911: Where are these people now?*

Caller: They're back in Bear Creek [150 miles from woman's location] but he can find them. He's nuts right now. (Community H, 911 Transcript)

The dispatcher does not record the information about the threats to her relatives or pass it on to the responding officers.

To the woman, the threat against her relatives is clearly serious: her husband is threatening to hunt down her brother and uncles. To the dispatcher, that information is not institutionally relevant; it introduces potential problems that are 150 miles away, outside the jurisdiction of the responding officers, and not immediate. The threat against her family members gets only a vague reference in the police report and is not taken up in any way the next morning when Gene is arraigned and released with no bail and ordered to have no contact with the victim (Community H, 911 Transcript).

Since the reference to the threat against her family members is noted in the police report, it could become relevant to the prosecutor at a later stage. Months later, if she should refuse to testify, the prosecutor could put her on the stand as a hostile witness and play the tape of her

telling the dispatcher about the threats to her family in order to establish her fear of giving testimony, or to explain why she might now be recanting her version of events that night. This use of the information is not, however, about protecting her family and friends. No practitioner makes an attempt to contact her brother and uncles to discuss their safety needs. His conditions of release do not include orders to have no contact with his wife's relatives. The threat that is central to her experience of the violence, and a significant form of coercion by her husband, is only peripherally important to the prosecution process. Dispatch reports from two separate centers reveal a number of similar examples, as shown below:

FC = female caller; DIS is operator from the dispatch center.

1        *DIS: 9-1-1.*  
2        *FC: I need the police here at my house.*  
3        *DIS: What's the ma...what's the problem?*  
4        *FC: 7238 Pelton Road.*  
5        *DIS: What's going on there?*  
6        *FC: My husband's trying to kill me.*  
7        *DIS: What is he doing now?*  
8        *FC: In Britt. He's throwing things out the door.*  
9        *DIS: Do you need an ambulance?*  
10       *FC: [inaudible]*  
11       *DIS: Do you need an ambulance?*  
12       *DIS: [The operator tells the dispatcher the caller has hung up]*  
13       *[Dispatcher operator dialing back – phone ringing]*  
14       *FC: Hello?*  
15       *DIS: Hi, is this MRS. NICHELMO?*  
16       *FC: Yes. But I don't want to talk to you. I just want the police to come.*  
17       *DIS: Well, I need...*  
18       *(Hang up)*  
19       *(Female called back five minutes later)*  
20       *DIS: 911.*  
21       *FC: Hi, this is MRS. NICHELMO calling.*  
22       *DIS: Yes.*  
23       *FC: I already called but he's gone and he won't be back.*  
24       *DIS: Where did he go?*  
25       *FC: I don't know. He got in his truck and left.*  
26       *DIS: What happened there?*  
27       *FC: Well, he just went crazy and started breaking, pulling all the doors off the walls*  
28       *and everything else.*  
29       *DIS: What kind of truck is he in? We've got several squads there. What kind of truck is*  
30       *he in?*  
31       *FC: He's in a um... '81 Ford.*

32 DIS: '81 Ford pickup? What color?  
 33 FC: Dark blue and it has a topper on it.  
 34 DIS: Dark blue  
 35 FC: Well, he's had a few drinks and stuff too.  
 36 DIS: You guys been drinking, both of you or...?  
 37 FC: No.  
 38 DIS: Just him?  
 39 FC: Yeah, he does.  
 40 DIS: Did he hit you?  
 41 FC: No, but he twisted my wrist. But I slapped his face too, so...  
 42 DIS: You slapped his face too?  
 43 FC: Uh..hum [yes]  
 44 DIS: Is that why you didn't want to talk to me, because he was there?  
 45 FC: No, uh..uh [no]. I just, I just, you know, I just...I don't care now cuz he's gone.  
 46 DIS: Do you know where he was going?  
 47 FC: No, I have no idea. There's no point in coming here cuz he won't come back  
 48 anyways.  
 49 DIS: Why won't he come back?  
 50 FC: Because this is the first time we've ever had a fight and I know he's not gonna  
 51 come back.  
 52 DIS: He won't come back tonight or he won't come back ever?  
 53 FC: He won't come back tonight cuz that's what he said. I mean, I know by what he  
 54 said...  
 55 DIS: Is this the first time you ever fought?  
 56 FC: Yup. But he's pretty goofy because I don't know, he has some kind of an anger  
 57 thing. I don't know what happened to him. I don't know what's happened to him. Not  
 58 very, not the usual thing.  
 59 DIS: What were you arguing about? Do you know?  
 60 FC: Pardon?  
 61 DIS: What were you arguing about?  
 62 FC: We weren't arguing.  
 63 DIS: Oh, he just...  
 64 FC: He just was driving the car and started screaming, slammed the brakes and  
 65 jumped out of the car in the middle of the highway. So I just came home and then pretty  
 66 soon he came home and...and soon as I asked what was wrong with him or whatever, he  
 67 stomps around and says nothing, there's the door, so he just doesn't want to be married,  
 68 so I know he's not gonna come back.  
 69 DIS: Oh, he doesn't want to be married?  
 70 FC: Yes.  
 71 DIS: Do you know which way he went?  
 72 FC: No, but I'm sure he'll go towards Town because there's nowhere to go towards  
 73 Other Town, you know.  
 74 DIS: You think he's gonna go towards town?  
 75 FC: Yeah  
 76 DIS: Okay.  
 77 FC: So he said, Oh, now you called the cops. Well, of course, I never had to call the  
 78 cops before so...but he's violent. He threw all the doors out the back door and he was  
 79 gonna throw them through the window and I don't want them...  
 80 DIS: Threw all the interior doors, he took them off the hinges?  
 81 FC: Yes, the real big ones. And threw them, ripped them off the hinges and threw  
 82 them out the door.

83 DIS: *What was his reason for that?*  
 84 FC: There is no reason.  
 85 DIS: *Okay.*  
 86 FC: There is no reason for that.  
 87 DIS: *So they're all outside?*  
 88 FC: Well, there's two closet doors outside.  
 89 DIS: *Okay, anything else did he do?*  
 90 FC: No, cuz I called you right away as soon as he started ripping the doors off.  
 91 DIS: *Okay. The only thing he did to you was twisted your arm?*  
 92 FC: Yeah, he twisted my wrist.  
 93 DIS: *Okay. Do you need an ambulance?*  
 94 FC: No, I don't. And they don't even need to come now, because he's already gone  
 95 so...  
 96 DIS: *They're going to come and talk to you, I'm sure if they want to talk to you , okay?*  
 97 *And what's your first name?*  
 98 FC: Alice  
 99 DIS: *Alice, okay.*  
 100 FC: Okay, well I'm gonna hang up then...comb my hair.  
 101 DIS: *Okay, you're going to stay there though, right?*  
 102 FC: Well yeah  
 103 DIS: *You don't know anywhere of where he would have went though?*  
 104 FC: No, I don't know.  
 105 DIS: *You just think towards Town maybe? Does he have any weapons in the car?*  
 106 FC: No, he's not a person with guns.  
 107 DIS: *He doesn't have guns?*  
 108 FC: No.  
 109 DIS: *Would he be violent towards officers?*  
 110 FC: No, he's pretty nice, actually. But I don't know, he's just kind of crazy when he  
 111 has any drinks.  
 112 DIS: *Okay. Do you know how many drinks he had?*  
 113 FC: He had about three or four Colorado Bulldogs which are all alcohol, then he had  
 114 another vodka with something, diet Coke or whatever.  
 115 DIS: *Okay, were you at a bar?*  
 116 FC: No, we stopped at the Hotel  
 117 DIS: *Oh, okay.*  
 118 FC: But then he doesn't want to leave. I don't know what's wrong with him. But  
 119 maybe he's cracked up, I don't know. Maybe it would help if somebody talked to him. So  
 120 if they stopped him...because... he won't listen to me. He won't talk to me.  
 121 DIS: *This is your first fight like this?*  
 122 FC: Yup.  
 123 DIS: *Um...okay.*  
 124 FC: It's not, it's not his usual behavior.  
 125 DIS: *Did he lose his job or something or?*  
 126 FC: No, no. There's nothing wrong with him. He has everything that...no reason for  
 127 him to do that.  
 128 DIS: *Okay.*  
 129 FC: So, I'll just wait til they come then. I gotta hang up now.  
 130 DIS: *Okay. You're gonna hang up?*  
 131 FC: Yeah. I've gotta hang up because I've got to go to the bathroom and comb my  
 132 hair and stuff so...

133        *DIS:*    *Well, okay. If you think of anything else that will help the officers, call me right*  
134        *back, okay?*  
135        *FC:*     Okay, bye.  
136        *DIS:*    *(inaudible)* (Community H, 911 Transcript)

In this transcript, we see two parallel conversations occurring. One conversation is directed by the dispatcher who is trying to obtain the information required by the police to adequately respond to this call: the caller's location, her partner's location, how urgent the need for a response is, what kind of violence has happened, whether or not there are guns involved, whether or not there is alcohol involved, and the nature of the dispute.

The woman's orientation changes rapidly in this case. At first she calls because her husband has just grabbed her and twisted her wrist, he is pulling doors off their hinges and throwing them either towards, or out the back door. She is, at that time, wanting the police to be out there immediately to protect her. She tells the dispatcher, "My husband is trying to kill me." The call is disconnected. Later when she calls back, her husband is gone and there is a much different conversation. At this point, she seems to be trying to figure out what has gone wrong. In this conversation, it almost appears as though she is trying to find someone to talk to and someone that will talk to him.

The dispatcher continues to frame the call around the needs of the institution to identify parties, identify locations, and so on. For example, in line 27, when the caller says, "Well, he just went crazy and started breaking, pulling all the doors off the walls and everything else," the dispatcher responds, "What kind of a truck is he in?" The caller describes the truck, and then returns to describing what is happening: "Well, he's had a few drinks and stuff, too." The dispatcher asks if she has been drinking, too. She says, "no," and starts to explain something. In line 39, she says, "Yeah, he does," but before she can comment on what that means to her, the operator asks, "Did he hit you?"

In three different places, Mrs. NICHELMO starts to explain something but the operator, who is trying to get specific information to the responding squads, cuts her off. In line 53, Mrs.



NICHELMO tries to explain how she knows he will not come back but is interrupted by the next question, “Is the first time you ever fought?” Again, the woman returns to her conversation in line 56:

Yup, but he’s pretty goofy because I don’t know, he’s had some kind of an anger thing. I don’t know what happened to him. I don’t know what’s happened to him. Not very, not the usual thing.

When the dispatcher asks what they were arguing about, she goes on to say (line 64):

FC: He was just driving the car and started screaming, slammed the brakes and jumped out of the car in the middle of the highway. So I just came home and then pretty soon he came home and...and soon as I asked what was wrong with him or whatever, he stomps around and says nothing...there’s the door, so...he just doesn’t want to be married, so I know he’s not gonna come back.

*DIS: Oh, he doesn’t want to be married?*

FC: Yes.

*DIS: Do you know which way he went?*

The dispatcher brings it back immediately to his location, and away from her discussion about what might be going on in their relationship and what is going on with him. Again, towards the end of the conversation, the woman tries to ask for some kind of help with him (line 117):

But then he doesn’t want to leave, I don’t know what’s wrong with him, but maybe he’s cracked up, I don’t know, maybe it would help if somebody talked to him. So if they stop him...because...he won’t listen to me.

The dispatcher asks a few questions but does not address the possibility of someone talking to him. She moves the conversation along by asking her to stay put until the police come, and does not return to a discussion with the caller about what might be happening.

To our group, this transcript was indicative of something that we saw happening in different ways in different cases. The woman might contact the system because of the immediate danger she is in, with a desire to have police protection, the protection of the state, the protection of outsiders, but as the immediacy of the danger dissipates, another goal for her quickly

activates. She wants help for him, help for the relationship, help for the family—some women simply want him to stay away from her. At all points of intervention, it seems impossible for women to shift from one need for intervention to another. In this case, she has activated a police response to what initially seemed to be a very dangerous situation. When the man leaves, she is quite confident that he is not coming back, and she senses the danger is gone, she still cannot shift the conversation to something else. The call remains a call for help on a domestic.

We are not suggesting that the police should not respond to this potentially serious domestic assault. However, this interchange—that only allows for a very narrow aspect of what women need to be taken up in this system—illustrates a pervasive dynamic that characterizes women’s experiences as legal cases. The ability for women to articulate their needs and have a dialogue with the legal system is continuously thwarted.

This 911 transcript will not become part of any court record or court file unless someone requests that it be transcribed. In this case, the 911 tape was transcribed because we noticed a dispatch record that showed a domestic call for which no police report was written. This case was coded in the file as: “Domestic disturbance; No physical contact” with a notation, “One party will stay elsewhere tonight. Cleared residence by squad number 123.” In the end, this entire case is documented with that one final notation to the file. Later if police, probation, or the prosecutor open another case involving Mr. NICHELMO, this transcript will not be institutionally available to them as future interveners. Only the notation in the file will remain as evidence of this call for help. The tape will be erased sixty days after the call unless it someone requests that it be copied or preserved. The case is filed under her name, not his. There is only a notation of a non-physical dispute settled by separation.

The context of women's experiences of violence, and women's experiences of fear, is lost in a system designed in this fashion. Here are two more examples:

DIS: Has he been drinking at all?

FC: No, he doesn't drink.

DIS: Okay. Okay. Did he have any weapons or anything with him?

FC: No.

DIS: Okay.

FC: Well, this started again as an argument and...and I know where it's gonna go when it gets that way, and I'm not gonna wait until it becomes physical.

DIS: Um..hm

FC: And he wouldn't leave. I asked him to please, to get out of here.

DIS: Okay. So it was a verbal argument until he gave you a push?

FC: Yes.

DIS: Okay.

FC: Well, more of a shoulder block, I guess, as he was walking by me.

DIS: Oh, okay...

FC: It's his way of saying that he didn't touch me.

DIS: Hum...is there anybody else in the house or?

FC: No, just the two of us.

DIS: Okay...

FC: He told me now he's never gonna forgive me for this.

DIS: Where is he now in the house? (Community H, 911 Transcript 3)

In this example, the extremely alarming statement, "My husband is throwing gas *[sic]* on my house" is followed up with routine questioning:

FC: Um...my husband is throwing gas my house and threatening to burn it down

DIS: *Your husband is throwing gas on the house?*

FC: Yes

*DIS: And what is your name?* (Community H, 911 Transcript 13)

[The conversation never returns to the original statement.]

In our observations of the dispatch center, and later the patrol response to calls, we uncovered our first evidence of a system that seems unable to engage in dialogue with those who seek its protection. These types of exchanges struck a fundamental chord of dissonance in us, yet they were routine in the handling of cases to the practitioners that we observed and interviewed.

As cases moved on in the system, communication between the woman and the representative of the “state”—the practitioner—became more and more structured by institutional tasks and procedures. Women appearing at arraignment court were asked, “Do you or do you not want a no-contact order in the months preceding the resolution of the case?” This question is the only one asked at this point. According to the chief prosecutor of Community E, only a small percentage of women are consulted before the prosecutor makes a plea agreement, even though that consultation is required by law (Interview Prosecutor, November 2000). In eighteen pre-sentence investigations examined, only two women responded to a form letter from probation inviting them to participate in a pre-sentence investigation process. The process had virtually no room for a full discussion of her needs. Women were given a menu of options (Appendix 13): Do you want a no contact order as part of his sentence? Do you want him to go to a community counseling program selected by the court as part of his sentence? Do you want him to be ordered to pay for damages that he caused? On those rare occasions when we observed (or read transcripts of) women speaking in court at a sentencing hearing, they had virtually no opportunity to speak. If they did speak, they appear to have been ignored.

## Forms versus Stories.

Procedures for gathering information in a form or formal report were integral to the institutional process, and organized sequences of institutional action such as the 911-dispatch computer screen, the police investigative or arrest report form, the police probable cause declaration submitted to the jailer, the booking form, the probation officer's pre-trial release interview form, the jail release of a violent suspect notification form. These forms provided the informational basis for the institutional process.

We analyzed three of these forms and their respective processes by which they are completed in order to understand how these institutional tools eventually produce an eventual account of the case:

1. Local police agencies prepare an **investigation report form** by which patrol officers write a report of their initial response to a criminal complaint.
2. State judicial bodies have created a form by which local court jurisdictions **process petitions for civil protection orders**.
3. County and state probation agencies have prepared a **protocol for probation officers** to use when preparing and presenting a pre-sentence investigation that advises the court on sentencing domestic abuse offenders.

In the previous section, we showed how conversations between practitioners and women whose cases they were processing occurred without dialog. Here we extend that notion, but focus on how the use of administrative forms and their accompanying processes for proper use constrains what can be said and recorded, and eventually, what can be taken up by the system.

*Police Report Formats: What do women have to say?*

The investigation report form differed among the four departments we studied. All four departments—E, H, I, and J—used the top fill-in-the-blank half of their forms for names, dates, times, location, charges, disposition code, and so forth. The bottom half, and any attached sheets, were designated for officers' narratives. While Community E's police report narratives were the most comprehensive of all the communities we observed, they rarely took written statements or obtained taped statements from victims. Department H occasionally took written statements; their policy left this to the discretion of the officer. Department I rarely took written statements from victims and their narratives were extremely sparse. Finally, Department J required officers to routinely obtain taped statements from victims in addition to summarizing a victim's account of events. These summaries were often quite detailed. In Department E, an extensive checklist required officers to record seventeen categories of information (Appendix 14). Officers addressed all of the categories in about half of the reports we examined. Even those reports that were not completely filled out contained more extensive information than almost all of the reports from the other agencies.

In the three other agencies, certain officers stood out in their report writing: one for his hostility toward women and men involved in these cases, and his racist references, and the others for their relatively extensive and thorough documentation of detail on their cases. Department H instituted a new report-writing format for domestic calls toward the end of our study. This new format was based on Department E's but included a number of improvements (Appendix 7).<sup>12</sup>

---

<sup>12</sup> We were able to observe training and monitoring of the new policy to see how a department shifts its documentation of certain kinds of cases. At the time of this writing, new reports from that department were far more detailed than those that we had gathered for our study.

We extracted any mention of what women wanted from all of the police reports. We found, surprisingly, that even though two departments had recently redesigned their formats with extensive input from victim advocacy groups, they still had not incorporated guidelines to ask women what they wanted to happen. One advocate we interviewed explained:

There are a few dilemmas here. If we tell police to ask women what they want they'll interpret that to mean; *does she want him arrested and does she want to have him prosecuted?* We'll be taking a step back to the days when police would come in and say do you want him arrested? Of course the women would most often say no and the police would advise and leave. So all the pro-arrest policies have been written to say 'it's the states decision, don't put the onus on her to arrest.

So now many more people are being arrested for domestic assault, but this idea of not putting the onus on her about the decision to arrest has changed to; *don't let her control the case in any way because he controls her and she doesn't know what is best for her.* It's always so black and white in this system. Before [referring to prior to a pro-arrest and prosecution policy] women could control the decision not to arrest and not to prosecute but, they couldn't make those same things happen. Now arrest and prosecution happen far more often but, women can't seem to make them not happen. And in the end, when police say, 'What do you want?' that is what they are asking. '...Do you want him prosecuted?' (Reported by Advocate, Community Team Meeting, February 2000).

Still, in 71% of reports we reviewed, officers built into their narrative some mention of the women articulating which course of action she wanted. Most frequently, women said: (a) they wanted to press charges; (b) they did not want to press charges; (c) they wanted him to leave the home; (d) they wanted an advocate; (e) they wanted to talk to him before he was transported to police headquarters. We saw no indication that her expressed desires were relevant to a criminal case, and only rarely did her desires appear to influence what actions the officer took.

We coded each report and identified anything that was said about items that struck us as interesting. For example, we pulled out any mention of alcohol; children; history of abuse or violence; tribal connection or affiliation; reason either party used violence; violence, threats, or acts of intimidation. The cumulative remarks around each of those topics informed our discussions about how the documentation of such information affects the case or the possibility of enhancing Indigenous women's safety. For our purposes here, we will focus our discussion on

everything that was said about the history of abuse or violence the victim had experienced or the suspect had used.

We found a significant difference in how the departments recorded this information. Not surprisingly, how the information is presented strongly influences what a reader is able to understand about the case. Below are typical case backgrounds from each of the departments:

*Department E* directs officers to conduct a Dangerous Suspect/Risk Assessment evaluation. This evaluation includes several questions for the victim about the extent and type of violence in the relationship. The officers are to record any information the victim offers about this series of risk factors:

1. The suspect owns or has access to guns.
2. The suspect is likely to use a weapon against a family member or others.
3. The violence is getting more severe or more frequent. How?
4. The suspect has threatened to commit suicide or to kill victim or others. Who?
5. The victim *believes* suspect may seriously injure her/him.
6. The suspect seems obsessed with or is stalking victim.
7. Children are in the home or involved.
8. There has been a recent separation, protection order issued or divorce (in past 6 months).
9. The suspect appears to be reacting to the OFP or divorce in a dangerous way.

Officers from Department E asked and recorded victims' responses to the above questions in only twelve of fifty-two cases, or 23% of the time. When these officers did use the Dangerous Suspect Assessment, the majority of them recorded a relatively detailed response



from the victim, while a few provided only minimal information. Typical examples of the responses are:

*Relatively Detailed Response:*

I asked MYHRE the questions on the Dangerous Suspect Assessment form. MYHRE provided the following responses:

1. NEER does not own or have any access to guns. NEER does have a lot of knives.
2. MYHRE believes NEER is likely to use a weapon against her, a family member, or others. MYHRE particularly thinks NEER would use a weapon against her. MYHRE said NEER is quite a 'puss' with others. MYHRE said she has never seen NEER get in a fight with anyone else except her.
3. MYHRE said the violence is getting more severe and more frequent with NEER. MYHRE said NEER beat her up twice within three weeks of being out of jail on May 16, 1999. Each time has been like tonight; NEER has hit MYHRE in the face and gotten upset any time MYHRE has mentioned the police.
4. MYHRE said NEER has threatened to commit suicide. MYHRE said NEER has threatened to kill her. MYHRE said NEER threatens to kill her almost every day.
5. MYHRE believes NEER could seriously injure or kill her.
6. MYHRE believes NEER is obsessed with her.
7. MYHRE has one son - CHAD MYHRE, DOB 10/04/88. MYHRE was staying with his father tonight and did not witness the violence. CHAD MYHRE has been in the apartment when NEER has argued with and threatened MYHRE.
8. There has not been any recent separation, OFP, or divorce in the past six months. (Community E, Police Report 5)

Even when officers did ask about the history of abuse, they adhered closely to the prescribed questions and rarely fleshed out the woman's story. When the above officer records that she believes he "could seriously injure or kill her," one might think that a few follow-up questions would be in order. However, fully understanding the victim's perspective about the degree of danger she faces is outside the task assigned to the officer, who is principally investigating this incident for possible prosecution. When she tells the officer that she believes

he is “obsessed with her,” we wanted to know what that meant to her, especially in relationship to her safety, but no such narrative is solicited, or at least recorded.

*Minimal response:*

SCHULZ does not own guns or has access to them. SCHULZ is likely to use a weapon against her. The violence is getting more severe. SCHULZ is not suicidal and has not threatened to kill HERMANS. HERMANS believes SCHULZ could seriously injure or kill her. SCHULZ is not obsessed with HERMANS and does not stalk her. There has not been a recent separation order or divorce. (Community E, Police Report 57)

Here, the woman indicates that she believes Schulz could kill her and is likely to use a weapon against her, but the officer does not elicit more information. This low level of inquiry about a victim’s perception of an offenders’ dangerousness is consistent across all of the reports we read. It was one of the most striking examples of how the task of processing a case becomes the primary goal of the system, rather than taking up the safety needs of a community member.

*Department H* does not prescribe questions for its officers, but some officers nonetheless elicited fairly detailed information:

I asked CHERYL what had happened and she said that her boyfriend and father of two children, who was identified as LARRY DANIEL CARLSON, DOB 09/18/75, had beat her up. In talking to CHERYL, she stated that this had happened before and that LARRY said it wouldn’t happen again. In the past, CHERYL did not want charges filed...Today she said she’d had enough and wanted him arrested...It should also be noted that CHERYL’s and LARRY’s two children were present when this occurred. At one point during the assault, one of the children said to their dad, ‘Don’t fight mommy, fight me,’ and then threw beer cans at him. (Community H, Police Report 11)

The officer framed the history of her abuse in the context of her likelihood to testify or cooperate with a prosecution, and within the context of the impact of the abuse on the child.

*Department H* recently adopted a new report-writing format that requires officers to ask victims risk questions. The new training manual says, “Now we are asking the victim for her/his opinion about the level of fear, level of risk, and pattern of abuse. We have settled on three questions to ask in the emotional moments following a specific incident that might help shed

light on a whole history of violence.”<sup>13</sup> The three open-ended questions, designed to assess the risk and danger experienced by the victim, are as follows:

1. Do you think s/he will seriously injure or kill you or your children? What makes you think so? What makes you think not?
2. How frequently and seriously does s/he intimidate, threaten, or assault you?
3. Describe the most frightening event, or the worst incident of violence involving him/her.

The excerpt from the report below shows how this type of questioning sheds light on the woman’s experience of violence. The victim in this case, Carol Karr, was attempting to move her belongings out of the residence she shared with David Hill, the suspect. As Karr was preparing to leave the residence, Hill pushed her into a doorway in the home, causing the door to break loose and injuring her back. Karr then ran to the neighbor’s to call the police. David Hill was gone when the police arrived. The responding officers assessed his dangerousness by integrating the questions above into their interview with the victim.

CAROL stated that they haven’t had many fights as of late, but she has had severe fights in the past. She stated that about a year ago she had a really bad one where police did not get involved; however, it was very physical. She stated that after that, she had black and blue marks and a very sore and swollen neck. CAROL stated that she was scared that that could happen again tonight. That’s why she ran out to the neighbor’s and called police. CAROL stated that she had considered earlier this afternoon calling WOMEN’S ADVOCACY PROGRAM, but didn’t. CAROL stated that she did fear for her safety and felt that DAVE was very capable of doing severe bodily harm to her and that was the primary reason for her leaving. She stated that unless DAVE was in police custody, she would continue being scared of him.

CAROL KARR stated that the kids have not been hurt on any of these fights. DAVE appears to be capable of becoming very physically violent with her. She stated that up until this heating incident (the heat had gone out), they had been getting along fairly well. Things seemed to be better after the terrible incident of one year prior. But things have been building up to this fight tonight. When CAROL was asked questions about past

---

<sup>13</sup> Department H. (2001). *Domestic Violence Handbook and Training Guide for Patrol Deputies*.

incidents, she always referred back to the incident of approximately one year ago. (Department H post-study police report #1)

In the second example from this jurisdiction, the responding officer uses a more direct line of questioning to assess the suspect's dangerousness:

I asked her the three risk questions. 1) Did she think AARON would seriously injure or kill her or her children. She said that she did not think so because he is only violent when he has been drinking. The second question I asked was how frequently and seriously does he intimidate, threaten or assault her. Her reply was only when he has been drinking alcohol. I next asked her to describe the most frightening event or worst incident of violence involving MR. COLE. Immediately after I asked this question, she appeared to break down crying. She began to shake. She wept for a few minutes and was then able to answer the question. She advised me that approximately five to ten years ago, she was assaulted by MR. COLE while at his house. The extent of this assault was that while there, he had aimed a rifle at her and fired it approximately twelve inches over her head. She also told me there was a hole in the wall in one of the bedrooms of his house from the bullet.

As I was leaving, I asked if there was anything else she wanted to add or if anything else had happened while the assault was occurring that she had not told me. She then told me that after he punched her, he said to her either, 'I'll kill you,' or 'I'm going to kill you,' which frightened her. (Department H post-study police report #2)

Our findings uncovered a disturbing trend in *Department I*. Responding officers recorded information about the potential dangerousness of the suspect in only six of the thirty-two cases we examined. At best, officers included only vague references to weapons or threats made by the suspect to kill the victim were included. Of the six cases that did include these references, *none* contained any follow-up questions to clarify the history of violence, or level of danger or risk experienced by the victim. In the examples below, the victim reports serious levels of violence and/or threats of violence. Nevertheless, responding officers neglected to follow up with questions that would shed light on the degree of danger or threat.

While she was there, PAULSON choked Comp. [complainant] and pushed her to the ground causing red marks on Comp's neck. Comp. feels that PAULSON is a very dangerous person and feels something must be done. (Community I, Police report 85)

Complainant informed officers that REPENSKY had returned home intoxicated and went into a rampage. During this rampage he threatened to kill her and if someone comes into the apartment he would stab them in the face. (Community I, Police report 88)

*Department J* collected risk or dangerousness information in ten of the twelve cases we reviewed, often via taped interviews with the victim. However, even within the context of these taped interviews, rarely did Department J's officers pursue lines of questioning that would further clarify or exemplify the level of danger or risk experienced by the victim. For example:

OFFICER: Are you afraid of him?

VICTIM: Yes.

OFFICER: Okay, have you had Orders for Protection against him?

VICTIM: Yes.

OFFICER: And those have expired?

VICTIM: Yes.

OFFICER: How many times has this happened before?

VICTIM: Eight, it's happened eight, just since I've been back with him, and this year.

OFFICER: Okay, how long have you been married?

VICTIM: Nineteen years.

OFFICER: Okay, and you've been separated for?

VICTIM: Almost a year.

OFFICER: You're in the process of divorce, or you --?

VICTIM: I'm going to, yes.

OFFICER: Okay, where does he live at? (Community J, Police report 184)

Certainly, the information provided by the above interview sheds some light on the potential risk factors in this case, although it only hints at the level of the victim's fear. As shown earlier, the officer's questions fail to establish how dangerous the suspect might be. In the legal system, placing a person in fear of imminent harm, or creating a pattern of threats to make a person think they are likely to be seriously injured, constitutes a crime—such as assault, harassment, or terroristic threats. Yet, we found no cases in which an officer documented any of

these potential charges by pursuing in detail the pattern of abuse over an extended period. No matter how a woman answered the risk questions, the officers never seem deterred from limiting their investigation to the single event before them.

All of these rather hastily gathered and scantily documented accounts of danger seem to be sufficient information for the legal system's intervention in these cases. Documentation of these risk factors occurs now thanks to advocates' efforts to include the history of domestic violence in all police reports. Practitioners we interviewed gave no indication that these accounts were insufficient for the purposes of setting bail or conditions of release, determining plea agreements, determining a sentence and probation conditions, or assessing the need for incarceration. To us, this stood out as peculiar in an institution that was purportedly designed to ensure public safety.

In the overall processing of criminal and civil domestic assault related cases, the police's initial investigation report is considered to carry the most valid information to practitioners who subsequently act on a case. This report controls the information that gets disseminated within the system. However, police reports document real-life occurrences very selectively, constructing an institutional reality that frames the work of other institutional practitioners. The police reports in all four departments shared several features. First, the fill-in-the-blank section of the reports covered all the data needed for administrative purposes, including all the information needed to complete the *uniform crime report* used statewide and nationally to collect crime statistics. Second, the narratives documented the officers' actions and the basis for those actions—usually by means of a short description of the situation; parties present; whether there was a claim of an offense; occasional summaries of everyone's statements; a conclusion about whether there was probable cause to arrest; and a description of the officers' actions that included arresting, cuffing,

mirandizing, mediating, warning, and transporting. Third, the reports usually briefly documented actions related to the victim such as, “I advised her to contact the battered women’s group to see about getting a protection order” or “I gave her the victim information card.”

On numerous occasions in both criminal and civil court, we observed these police reports being introduced into a hearing or case deliberation as an objective, factual account of what was *going on*. Poorly written reports, or sparsely documented accounts of events, were not discussed at any hearing that we attended. Historically, attempts to enhance the police report’s usefulness in protecting women have been made by advocates and a handful of their allies in the court system. While some practitioners expressed discontentment with how these documents were prepared, we are not aware of any mechanism within the legal system to make improvements or to insist that they more fully document women’s experience.

This discussion has focused only on one part of the report: the documentation of the history of violence by the abuser. Our intent here is to illustrate how the form itself frames how information is solicited and what information is documented and, moreover, how the legal system’s dependence on texts to stand in for people’s lives creates a reality removed from the actual experiences of people in need of community or state protection.

### *Women’s Stories in Civil vs. Criminal Court*

The civil court forms for eliciting women’s account of events and their desires for state intervention are markedly different from those used in the criminal court process. In civil court, the woman initiates the action and, in her own words, tells the court why she needs protection. In the jurisdiction we studied, the process for petitioning the court for protection from an abuser varies slightly from courthouse to courthouse. However, we found that the state law and the forms created by a state Supreme Court appointed committee largely standardized the process.

The protection order form requires an affidavit (Appendix 8) that describes in detail the acts of domestic abuse committed by the respondent. Petitioners must answer specific questions for each act of domestic abuse that she includes in her affidavit: What happened? Who did what? When did it happen? and Where did it happen? The instructions for filling out the affidavit request that the petitioner: “Be very specific in giving details. The approximate dates when the incidents happened MUST be given. Describe the most recent acts of abuse first.”<sup>14</sup>

Our team prepared a summary (Appendix 1) that extracted descriptions of violence from affidavits, police reports, focus groups—from all of our data—to illustrate how much violence actually occurs in women’s lives. The left-hand column describes the violence, the middle column the context in which it occurred, and the right hand column any violence that women themselves used. After studying the chart, it became apparent to the team that women’s affidavits explaining why they needed protection from the court read very differently from police officer’s reports in which they summarize a victim’s account of events. Below are five excerpts from the chart that compare affidavits to police reports (not a case-by-case comparison; each documentation represents a different victim).

---

<sup>14</sup> Advocates help petitioners fill out forms. Advocates are not allowed to write out petitioner’s narratives. Several local attorneys have complained to the court that advocates go too far in helping victims with these orders and cross the legal line of practicing law without a license. Non-lawyers are not allowed to represent or advise people on legal matters. Advocacy groups must then organize their work with women around the concepts of education, support, and information-giving. Still, there is an enormous difference between a uniformed police officer’s taking an account of an assault, in the home of an Indigenous woman, in response to a recent assault (within minutes or hours) and an advocate meeting with a woman in a courthouse or an advocacy office days after the assault. Similarly, a probation officer who mails a woman a form and calls her months after an assault to complete a pre-sentence investigation report gets a very different kind of account than does an advocate working with a woman who wants to file for a protection order.



*Protection order accounts of violence:*

He started to come up the stairs yelling at me saying, 'You're a stupid bitch. You can't tell me what (IA) kids.' He was telling them 'Look what your mom is doing. She is trying to hurt us. She won't let me see you.' The kids were screaming and crying. The whole time he was saying things like—you can't stop me from seeing my kids so you better not try. Don't f--- with me. Sign the kids over to me. I'm going to get them anyway. I'll do what I want with my kids...he became very angry and told me if I didn't stop bringing the baby to my mom's There would be 'serious repercussion on your life' He has repeated this numerous times...he has told me to never let my guard down because once I did he would be waiting for me. I am very afraid of Resp. He has told me many times he'll kill me, he is known to carry a handgun. He has been arrested for possession of a handgun and a gun with an altered serial number. I believe he will do anything to see the kids...I am very afraid he will do something to me so he can get custody. He has pushed and shoved me many times. He gets in my face and screams at me. He has spit in my face 3 – 4 times. (Community H, Order for Protection 9)

Friday morning at about 4 AM he kicked down my door—he was very intoxicated so I got dressed and was going to go to the neighbor's house to call the cops. He said, go ahead, I'll let you get to the end of the driveway then I'll come and gut you like a deer then he showed me this army type knife he had in his sweater pocket already open (the blade). I had missed numerous days of work because of bruises and injuries inflicted by Resp. I was on medical leave twice from my work--once for knee surgery and once for when he busted a chair over my head. He is constantly threatening me and harassing me—I fear one day he may become so intoxicated he will follow through on one of his threats...I have sought medical help for a large cut on top of my head requiring 8 staples and 4 stitches...he has threatened to kill me, because he said he could plead temporary insanity and he could get away with it—he threw me down when I was trying to kick him and his psycho girlfriend out of my yard. (Community H, Order for Protection 10)

I was connected with 911 when Resp. ripped the cord out of the phone...he left saying he's going to kill my boyfriend (I don't have one). He's going to slash my tires. It's just going to get worse for me. On the freeway, he drove up real fast on my bumper, sped around me and then would slow way down again. Resp. has a long history of criminal behavior. In the past, he has assaulted me and made numerous verbal assaults & threats against me. I am terrified of this guy. He is extremely obsessive and does not know when to stop. He has a long history of committing acts of domestic violence. He is mentally unstable. I am afraid for me and my daughter. (Community H, Order for Protection 14)

Resp has been with me since 1995, living with me. He was arrested back in 1997 for 5th degree assault and was put in jail. He has a violent temper & could harm me that's why I get afraid of him when I find out he's out drinking. Everytime I get off work at the CASINO I worry about if he's gonna be at the apt. drunk...He was fired from his job because of drinking. He has hit & pull my hair out before...In the past he has given me blackened eyes, and bruises on my hands where I was blocking him from hitting me. I tried to make it to the phone & call for help and he pushed me on the bed. (Community H, Order for Protection 21)

He is getting out of prison and he will come looking for me he told me he would kill me and family. He has always been violent and I believe he will look for me. In the past he

has threatened my family...he charged me with a knife, threatened to kill me...He said he will hurt my family--father, sons, daughters, grandchildren. He bit me on the right side of my face before he went to jail. He chased me with a knife. (Community H, Order for Protection 5)

*Police Report accounts of violence:*

WARPULA started calling her names and came out in the hallway with a container of what she called 'fish water' and started dumping it over her. She stated he also dumped some cans of beer over her head while they were in the hallway in front of Apartment #B. She stated she struggled to get past him to get outside. WARPULA hit her on the foot with a board he had picked up from the hallway. She stated he immediately then struck her in the right hand with this board while she was bending down to pick up the radiator and then struck her in the back of the head with the board. She said WARPULA made some comment to her to the effect of, 'Fucking bitch, now you've done it.' SEMORE stated when she got to the bottom of the stairs, she heard WARPULA say something to the effect of, 'I hope you freeze, you fucking bitch.' (Community E, Police report 12)

After a short time of yelling and screaming, he started kicking the front door and ultimately gained access into the living room area of the house. She estimates that the violence in their relationship is getting more severe and HOLT has threatened to kill her on several occasions, including that night. He grabbed her by the hair and threw her to the floor and would not let her up. She said he began hitting her and kicking her several times in the head and shoulders area. (Community E, Police report 27)

According to BOBBINS, MCBRIDE then began hitting her on her legs while she was sitting on the bed. She said he hit her 6-8 times in her upper left thigh. According to BOBBINS, MCBRIDE said if she stood up, he would hit her. (Community E, Police report 39)

DUANE began to strike LLOYD HAMMOND. STACY said DUANE punched HAMMOND in the face and during this time, STACY was trapped by the table on her chair in the living room. She said she eventually got up and went into the living room area, at which time DUANE pushed her and knocked her to the floor. When STACY was asked to go over this again, the only part she changed was that DUANE actually pushed her to the ground before he began punching LLOYD and still during the time he was punching LLOYD, she was trapped by the table. JAMIE then said she went and dumped out the drink he had in the 7-Up bottle. DUANE came and grabbed the bottle back and threw the bottle at her, striking her on the left side of the head, near the eye. This officer could see some small swelling near and above the left eye (Community E, Police report 45).

MARY told me STEPHEN 'got up in her face' and pushed her. MARY JENSON told me that she then asked STEPHEN to leave because she 'wasn't going to take it anymore.' MARY said STEPHEN then grabbed MARY'S glasses, which were lying on the table and crushed them and threw them on the floor...MARY said STEPHEN grabbed her by the shoulders and pushed her up against the back of the couch...MARY said he still had her by the shoulders and would not let her go. MARY said he then threw her to the floor and got on top of her. MARY said STEPHEN then punched her on or about the head with a closed fist, about six or seven times. MARY said she then got free from STEPHEN by

pushing him off of her. MARY said when she did this, STEPHEN fell on the floor and he kicked her in the face, near her right cheek. MARY told me the right side of her cheek felt like it was swelling up. MARY then said STEPHEN left the apartment. MARY said shortly after STEPHEN left, he came back up the stairs and tried to get in the apartment with his key. MARY said she held the door locked while he was trying to get in and he left once he knew the police were coming. MARY said while STEPHEN was trying to get into the apartment, he told her, 'You fucking bitch, I'm going to kill you.' MARY said STEPHEN then left the apartment complex. (Community E, Police report 52).

State law does not require that a person be in fear of their abuser to obtain a protection order, it only requires that the person demonstrate that abuse has occurred. However, women often describe their level of fear in protection order affidavits. She, as the petitioner, tends to include examples of the abuse that placed her in fear, and uses these instances to articulate her reason for seeking protection from the state. By contrast, the focus of the police is on a specific event. They describe specific injuries, the number of blows—a description that is intended for the prosecutor when filing criminal charges. The petitioner often brings up the impact that the violence has on her children, or the way that the offender uses children to control her. Police reports, on the other hand, usually mention children if they were present and witnessed the events. Rarely do these reports describe the impact on the children, or their current welfare.

These two different descriptions of very similar behaviors are partly indicative of the purpose for which they are being prepared. The criminal police report is used in the criminal prosecution of a case, while the civil protection order is used to petition the court for protection from abuse. We noticed that the way in which protection order affidavits are written affords a reader with a better understanding of the interventions that might protect both women and children from future harm.

While police reports and women's affidavits describe similar events, they are written to different standards of proof. In both the civil and criminal process, the legal system must determine if abuse occurred. In the criminal process, however, the state must prove *beyond a*

*reasonable doubt* that the defendant committed a criminal act. Once that is proven, the judge can impose a punishment or, in lieu of incarceration, require that the defendant follow certain court orders. In a civil case, the judge must make a determination of responsibility based upon a *preponderance of the evidence*: determine that it is more likely than not that the respondent committed acts of domestic abuse. Once that is determined, he or she can issue orders that protect the victim from future harm but cannot punish the respondent.

In a criminal case, the victim is a *witness* to the act and can provide evidence to the court, but the state takes the action against the criminal. In the civil case, the victim *initiates and bears responsibility* for the action when she files a petition for protection from an abuser.

In both the civil and the criminal court, shortcuts avoid proceeding to full trial on these matters. In criminal court, prosecutors and defense attorneys reach plea agreements, thus eliminating the probability that the judge will be exposed to the details of the case and thus learn about the defendant s/he is about to sentence. In civil court, the petitioner is encouraged to negotiate a settlement with the respondent to avoid a lengthy hearing about the facts of the case. If the respondent agrees to a settlement, this typically protects him from admitting to the court that he committed abuse. However, he does submit to court orders that commonly include barring him from the petitioner's home, and limiting or eliminating any contact that he can have with the petitioner. At the same time, the court establishes criteria for visitation of children. If the respondent agrees to these conditions, it is usually with the understanding that the court will not order him to participate in a rehabilitation group, pay child support, participate in a parenting group, turn over certain property to her.

We went on to compare the sentencing proceedings of a criminal case to the issuing of civil protection order relief. Intervention in civil protection orders—if the case was fully heard

and the judge ruled on every request—responded to the needs of the victim around housing, economics, children, police protection, the use of cars and insurance policies, and so forth. The civil process—again, when the proceeding went through a hearing—allowed for a much lengthier and more direct discussion between a judge and a woman. However, sentencing in criminal cases focused primarily on punishment, rehabilitation, and no contact with victims, and allowed for strikingly little interaction between judges and victims. By the time a victim speaks in criminal court, the parties have already agreed on sentencing, and her statements in the hearing are almost an intrusion into the agreed-upon consequences to the offender.

Despite the room afforded to victim participation in protection order cases, victims bargained away most of what they had requested from the court—ultimately receiving only exclusion orders and custody of children—in over half of the cases filed in this county over a one-year period. In all of these cases, victims were left to pursue separate legal actions to establish other forms of relief such as visitation, child support payments, and the use of personal vehicles. In all of the criminal court proceedings that we observed, sentencing addressed chemical dependency treatment, batterer’s programs, and jail time. In civil protection order cases that included hearings, the following relief were discussed: a court order that the respondent commit no acts of physical abuse or harm to the petitioner or her children; no (or limited) contact with the petitioner and the children; exclusion from certain areas such as the victim’s home, place of work, or children’s school; participation in batterer’s education programs and parenting programs; alcohol and chemical dependency evaluation and outpatient treatment; financial assistance to the petitioner and her children; police enforcement and monitoring of the order; continued health insurance for the petitioner and children; payment for damages and expenses caused by the respondent’s abuse; physical custody of the children with the petitioner; a

visitation schedule and/or supervised visits; registering the order with local law enforcement agencies; and a confiscation of the respondent's weapons or firearms. This comprehensive menu of relief more completely addresses the issues that victims face when separating from an abuser.

Generally, the civil protection order process allowed for more voice—and more negotiation—by the victim. But again, in more than half of the cases, that same open nature was thwarted by pressure on victims to participate in proceedings that exclude full hearings. As a result, the petitioner bargained away many of her requested protections in order to avoid a confrontation in the courtroom.

Eighteen of 42 petitioners who were Indigenous women did not attend the first hearing and had the final order dismissed. The system has no structured way to contact the victim to determine why she did not attend the hearing. Petitioners' affidavits documented violence that ranged in severity from mild (pushing and shoving) to severe (strangulation, shooting weapons, threatening to kill, and threatening to maim). When petitioners did not appear at a court hearing, the petitions were dismissed regardless of the severity of the violence. The process reached its conclusion; the file was simply closed and the case dismissed with no further examination of the safety issues that exist for this woman. However, missing from the conclusion was a community's sane and thoughtful response to a person who states that she is experiencing severe violence. Again, legal processes subsumed a victim's personal situation, assuming it normal that a person who files a petition such as the one below would not appear for a hearing two weeks later.

On 5-9-99 police was called to my home because Respondent wouldn't leave my resident. Respondent backhand me in my mouth. The police came remove him but let him walk. Respondent hid between two cars until the police left. Respondent tried to break my door down. I ran out the front. Respondent came running at me with a knife saying he was going to kill me. Respondent was dragging me around by my hair trying to make me go in house. (Community H, Order for Protection 16)

*The Pre-Sentence Investigation Form*

In a later discussion, we will examine a number of pre-sentence investigations in detail. Here, we are interested in how the form itself was designed. In all three states from which we drew examples, the pre-sentence investigation form was very prescriptive about the information to be gathered and presented to the sentencing judge. None of the forms focused on or illuminated the nature of the violence, the victims' vulnerability to future abuse, issues with the couples' children, the relationship of offenders to tribes or tribal resources, or the history of the offenders as Indigenous men or women. Women were rarely involved in preparing the recommendations regarding punishment, rehabilitation, or their own safety. Practitioners we interviewed generally attributed this absence to the profile of domestic abuse victims—particularly Indigenous women—who do not want to cooperate with the state's intervention. Practitioners did not appear to consider Indigenous women's lack of involvement in sentencing to be related to an ineffective consultation process, the timeliness of the intervention, or how little victims benefit from court orders.

Intimidation.

Perhaps the most disturbing practices we observed and uncovered in our examination of women's ability to tell their stories was the use of intimidation by practitioners and, occasionally, by abusers. While we observed a number of overt and covert methods of intimidation, we also discovered a number of recent efforts to reduce the use of those methods. Women, advocates, and some practitioners use the term "re-victimization" of women to describe the practices discussed in this section.

Our discussion here focuses on five aspects of that process: (a) the threat of arrest or charges against women who refuse to cooperate with practitioners; (b) the threat of removal of

children; (c) the use of force or overt hostility by practitioners against a victim or her family members; (d) turning of a call for help into an unrelated enforcement opportunity for police; (e) the failure of practitioners to curb abusers' intimidation; and (f) the impact of the adversarial structure of the system on the ability of women to provide a full account.

### *Threat of Arrest or Charges*

Comments made by women in focus groups such as, "It did get to be where I didn't want to call the police anymore. Why should I, if I was going to end up in jail too and risk losing my kids?" (Focus Group 1, October 2000) inspired us to code our data to scrutinize how institutional interventions appear to intimidate the victim, offender, or even in a few instances, those of us conducting the study. We were interested in understanding how intimidation was purposefully used as an institutionally-acceptable tool to manage cases.

It was surprisingly easy for abusers to get victims arrested. In a detailed review of a limited number of cases involving the arrest of women, we discovered five categories: (1) women who were arrested for seemingly acting in self-defense (where arresting officers did poor self-defense investigations); (2) women who used force against a partner that was not legally self-defense, but appeared to be in defense of herself or her children, or in immediate retaliation for an act of abuse; (3) women who were dominant aggressors; (4) women who appeared to be engaged in mutual violence with their partners; (5) incidents that seemed to be a one-time act of violence, not part of an ongoing pattern of violence.

Most of the cases that were discussed in talking circles or read in reports seemed to be cases in which women were either immediately retaliating to force, or were using force as a way of standing up to ongoing abuse. Placing women who use force in the same category as batterers creates a mechanism by which batterers and institutional practitioners can intimidate women.



Abusers may accuse the victim of having used violence against them and subject them to charges, or police may use the threat of a charge to induce the victim to cooperate with them. On a police ride-along the observer noted,

The domestic involved a sister and a brother. She was pregnant, and he hit her in the face. She changed her story and said that it could have been anyone. The Sergeant was there. He looked at her and said, 'You're lying. You called 911 for a reason, what was it?' She just wanted her brother out of the house. The cop got right in the victim's face and told her she was lying. She did not want to give a statement. The Sergeant told her she was going to give a statement. She said that she did not want to go into the house. He said that you don't want to go into the house, because you are dealing drugs there. It was really intense. He made her get into the car and make a statement... The whole call probably lasted an hour. The cop does not know why people stay in these situations. The cops were mad at her. She kept changing her story. The victim was afraid, she was crying... They [responding officers] told the sister they were going to press charges against her for falsifying a police report. (Community I, Debriefing of ride-along 3, October 2000)

### *Threat to Remove Children*

Indigenous women were sometimes subdued into compliance with the threat of having their children removed. As one research team member stated, "Another clear theme I heard was that they [women] were arrested—or if they weren't arrested, they were threatened with arrest—and they were threatened with the loss of their children. And so there seems to be a lot of threats at that moment of crisis; it seems to be a common part of their story" (Community Team Meeting, October, 2000). Researchers further observed:

There is something about threatening about the kids, 'I will just call social services and let them get your kids.' It is a common thing that officers say to women. It is a constant threat of the system in various ways. It also seems to me that they [practitioners] abuse their knowledge. They know these women do not know what social services can and cannot do. They use it to scare them. (Research Team Meeting, December 2000)

This statement is further exemplified by one woman's account:

I got married when I was 19. We got in a fight. He beat me up, bloodied my lip and ripped my shirt, you know, fucked me up and all this. To protect myself, I bit him. And then I called the cops and he turned around and called the cops on me. When the cops got there, I told them, hey I'm the one all beat up here and bloody and all this, fat lip. He said, well she bit me, she bit me. I said, well how else was I supposed to do that, he's holding my head back? And my son was down the road at the babysitter. I said, I'm the one that called you. He said, sit down in the backseat of the car and we'll take your statement, we're not going to take you anywhere. I sat down in the back seat of the car.

He said why don't you put your legs in? I did, and I was half drunk and he slammed the door. He didn't bother filling out a police report or nothing. Then they brought us downtown. That's the only time I ever. They let me out four hours later, but he had stayed in there and got charged. What really pissed me off is when he tricked me and got my feet in the car, and slammed the door and wouldn't let me say any more. They said you can make one phone call to your son, the babysitter for my son, or we're gonna throw him in the crisis shelter. I'm glad it was only four hours, but...

RESEARCHER: You said you called your babysitter, did they offer that only after you said something about the child, or did they ask about the child?

No, no, they didn't. They didn't even know I had him until I said you've got to let me out of here, my baby is down the street. They said you can call, otherwise, we're taking him, he's going to a shelter too. (Focus Group 1, October 2000)

It was outside of the scope of this investigation to discuss how routinely these threats were made by officers, but women in focus groups seemed to think that it was a frequent tactic used to gain their compliance.

In the jurisdiction we studied, with an Indigenous population of 4%, the majority of children in foster care are children of Indigenous women. As later discussed in detail (see section “Historical Context for this Study” for discussion on Social Harmony, Colonization and Violence Against Indigenous Women), the widespread removal of Indigenous children from their families in the boarding school era, and subsequently by child protection agencies, has made the threat of removal a powerful instrument of institutional control over Indigenous women. The threat of losing the children—made either implicitly or explicitly—appears to factor prominently in women's decisions about how to use the system.

### *The Use of Force or Hostility by Intervening Practitioners*

In a small community connected by its sense of relations to each other, one that holds a collective history of military, government, and institutional use of violence, a police attack on one member of the community has far-reaching effects. During our study, a police officer assaulted an Indigenous woman. Almost every woman in our focus groups knew about the

incident and talked about it as if it were a common occurrence. The action of one police officer, left unchallenged by his supervisors, intimidated the entire community. The women indicated that they were now even more hesitant to call the police, at least in part due to their anticipation of this kind of violent backlash from law enforcement. The woman who was assaulted tells her story below:

I was at my house, and me and my boyfriend started drinking, with a couple friends. Me and my boyfriend got in a fight, we were fighting out in the driveway, down the road, and my mom noticed and she called the cops once and they came, told us we had to get back in the yard and then warned us. And she called again, they came and warned us again, if we have to come back again, you're both going to jail.

*Facilitator: Now, when you say they warned you, they say get back on your own property and fight, or what did they do? (laughter)*

They tried to tell him that he had to go home and I had to go inside, but

*Facilitator: So they did that separation business again, and then left.*

Then we went back outside, started drinking again, then my mom called the cops, he ran off in the woods, the cops chased him for awhile, couldn't catch him, so I jumped in my car and I drove down to see where he was.

*Facilitator: You knew where he was?*

I didn't know, but he was on a trail out in the woods. Then I parked the car at that trail and I went up the trail and the cop pulled up next to us and came walking down the trail and tried to arrest me, ask my name, and I didn't want to talk to him...

*Facilitator: The cop tried to arrest you?*

Yeah. And then he said, 'Whose car is that?' and I said, 'Mine'. He's like, well, if you don't tell me what you're doing here, you're gonna get in for a DWI. So, I just kept walking, and he said, 'Well you're under arrest.' He slammed me on the ground and we wrestled for a while, then he got the cuffs on me, and he started dragging me out of the woods. He was reading my rights to me and telling me all the charges I was getting charged with, and he tried to get me in the back of the squad car and my mom and her sister are standing outside the car, and he told my mom that if she could get me in the squad car that she could take my car home. So she got me in the squad car and he was telling me what I was being charged with, we start pulling out in that squad, and my mom was going to bring the car home, and she seen someone drive by, and she said, 'Can you follow that squad as far as you can,' to make sure they make it? So we got down to the end of the road and from my language, being intoxicated, he pulled over on the side of the road, and said, 'I've had it now,' and he jumped out and he tried to mace me once, and that didn't work, so he slammed me in the backseat, and that didn't work, and he pulled out and he was going to go a little bit further and he stopped right down the road

again and he got out and he suckered me in the face, split my lip wide open. Then I laid in the back of the seat, and I tried to kick him like that, and then he had me by my hair, and he was holding me out the window, trying to make me spit all that blood out. By then there's two people outside, and he looked and he noticed her and then when he was holding my head out the window like that, I bit him in his wrist, and then he jumped back in the squad after he had seen that there was people watching, and he floored it all the way to the jail, and they put me in a holding tank for two and a half days and none of the people around in the jailer, or nothing, asked me what was wrong or nothing, it was the second day I was there, they booked me and that jailer asked me what happened to me, if was from my boyfriend or what, and I said no. I told her some of the story like that, and she said, well this cop's pressing charges and everything. I've been going through court for the last, let's say, two months now, for this back and forth to court.

*Facilitator: For fighting back the cop.*

Um, hmm.

*Facilitator: So, when you got to the jail and they booked you, and you obviously had been hit in the mouth, or whatever, did they offer you medical treatment?*

They didn't have no idea what was wrong with me. The cop put it in his statement that my boyfriend beat me up.

*Facilitator: So you got put in jail, and two days later, they ask you what happened to you?*

Well, they didn't really ask me, I was on the phone with my free, whatever, phone call you get, and I told my mom that, what the cop did to me and that jailer was like, 'No way, really?' (Focus Group 1, October 2000)

There is no indication that the jailer reported the alleged misconduct to her supervisors or that anyone conducted an investigation of her claims of being assaulted.

While the use of physical abuse by practitioners seemed to us to be very rare, other forms of intimidation by practitioners were not. The report below was the most blatant example of a police report that showed overt hostility toward Indigenous women. The officer appeared to be more than willing to act in an intimidating way. The report is clearly one individual's act of bias and unprofessionalism. More problematic, however, is the lack of accountability in the legal system to draw attention to this officer's rather blatant disregard for the public he is charged to serve. It was signed by a supervisor indicating that it was an institutionally adequate report.

Complaints of a domestic at address1 between CARL NESJE and the same woman as icr####. We went there and found a houseful of drunken idiots. The only sober ones were the two women moving belongings out of the house. While that was going on there was a sideline dispute over the car she was using. No physical violence had transpired and things were moving along until NESJE threw a temper tantrum over a cat. The woman even conceded the cat to him but before she could leave a loud-mouthed harridan claiming to be NESJE's mother pulled in the yard and began screaming at everyone there. She even used the old white man prejudiced bit on 610 until he told her to be quiet. She still almost got herself a free ride to jail. Neither side admitted to calling us and we felt this was a ploy on the part of the virago to get the car from NESJE's girlfriend and make her leave on foot. (Community I, Police Report 41)

We had to look up the words \*harridan\* and \*virago\* to fully capture this officer's message. A \*harridan\* is an old horse; a gaunt woman. A \*virago\* is a loud and overbearing woman. Understandably, women become less inclined to utilize services such as these that claim to "protect and serve" them.

### *Turning a Call for Help into an Unrelated Enforcement Opportunity*

Women were also arrested for minor infractions while the police responded to a "domestic call." For instance, observers related the following case:

The call was sent out as a domestic between a young couple, but it was changed to an arrest of an older woman (she was in her 20's) for serving alcohol to minors. So she was arrested, brought to jail, and her four year old son, crying, 'When am I going to get my mommy back?' He actually had just gotten back with her from foster care, and so he was taken to Bethany Crisis Shelter, the minors were taken to Detox, though they weren't legally drunk, young girls. The girls' ages ranging from 10-15 years. (Community Team Meeting, July 2000)

In this case, the "domestic between a young couple" was never investigated nor addressed by responding officers.

In our discussions with advocates from other states we learned that it was common practice on \*dry reservations\* to arrest for drinking women who called for help, or to arrest an undocumented worker calling for protection from her abuser.

As we raised this issue on our ride-alongs, one deputy on a review panel for his department's arrest policy began to examine the impact of such arrests. He found a number of

cases in which battered women were arrested for outstanding warrants on minor offenses. He proposed new language to this department's policy that was eventually adopted. The new policy now reads, "When responding to a domestic assault, a deputy should avoid arresting the assault victim on an outstanding misdemeanor warrant. Deputies can arrange a court date with the victim and advise the warrant office accordingly as soon as possible."<sup>15</sup>

### *Failure to Curb Abusers' Use of Intimidation*

Most practitioners we talked to were aware of how abusers intimidate victims, yet we still saw countless examples of the abuser being able to use the system to intimidate their partners or to intimidate her during an institutional intervention. Observers noted examples like this at almost every debriefing session:

That is what I was appalled at. One of the first things I noticed in criminal court is these men have no shame. They stroll around with headsets. Here she's sitting here meek as a mouse by herself kind of huddling over. He comes strolling in with headphones on and there is no shame to it. He should be crawling up there with his tail between his legs. He comes walking in like he's you know. She has no direction. She is lucky she's even there. There is this aura of arrogance that is sickening (Researcher Team Meeting, December 2000).

This community observer is reacting to the lack of any kind of a separate waiting room for victims or any kind of an information service for citizens who come into the courtroom and have to find their way around a intimidating building with courtrooms and offices that are unfamiliar to them, and whose purposes are unfamiliar to them.

Two community observers returned from protection order court amazed at the ability of an offender to read a statement to the woman that was obviously intended to control her.

Right in the hearing he asked the judge if he could read her a letter. The judge said ok? Now how could that be? He's been told he can't have any contact with her then in a hearing to clarify the order he actually violates the order with the judge's permission. It

---

<sup>15</sup> Department H. (2001). *Domestic Violence Handbook and Training Guide for Patrol Deputies*.

was this total guilt letter and it went on and on and she was just getting more and more upset (Researcher Team Meeting, December, 2000).

The following is from the transcript of the hearing that the observer is describing:

MR. MEREDITH: Okay. And now this is to you, DANIELLE, okay?

MS. HALL: Uh-huh.

THE COURT: Sir, you have to be very careful about what you say.

MR. MEREDITH: Yeah. Oh, I'm not --

THE COURT: 'Cause it --

MR. MEREDITH: No, no, no, this is all sweet and from my heart.

THE COURT: MR. MEREDITH, there's nothing wrong with dealing with the issues that are before the Court within the courtroom, but if there is anything else, it could be considered a violation of the Order For Protection and you'd have another charge against you and we don't want that.

MR. MEREDITH: I wrote this up real nice so I know how to word things correctly. I'm an intelligent person, even though I do a lot of stupid things. I make bad choices.

THE COURT: All right. Here's what I'm going to suggest, without it being considered a violation, if you wish to provide a copy of that to the advocate and then the advocate can make a decision on whether it should be provided or not, all right.

MR. MEREDITH: I'd rather just speak it. That's --

THE COURT: How --

MR. MEREDITH: It comes from my heart.

THE COURT: All right. Go ahead, MR. MEREDITH.

MR. MEREDITH: DANIELLE, I'd just like to say I'm sorry for the way things worked out but I'm sure you can see what two very sick individuals can do to each other no matter how strong a love may be. I've decided to go try to get psychiatric help, maybe treatment and deal with these issues that I've carried around for so long that I keep getting in these sick relationships and I suggest you do the same. It seems pretty apparent to me we're very good at hurting people and ourselves. We do not -- do not get me wrong, I love you very, very much. The time we had was the most special time in my life. I'll always be there for you if you need someone to talk to. Don't forget we were the best of friends before we had this relationship. So if you ever some day we can talk or work these problems out, you can just call my mom and find out where I was at, you know, because you are my cosmic groove and you know that in your heart. And -- and for right now I just can't handle the pain any more of this -- at this point in time and I -- I'm just saying good-bye, Sweet DANIELLE. I'll love you forever. Your best friend MICHAEL MEREDITH. You see, this is really hard for me. DANIELLE, remember the magic will

always be there whether it shines or not. You have always lived in my heart, baby doll, peace and heaven to you. May you find someone to love you like I did without the pain, but I doubt you will until you get some help for yourselves. Please be good to yourself, baby. You deserve it. Letting go of you is going to be the hardest I've ever had to do. That's all I got to say. (Community H, OFP Hearing 1)

Probation officers, therapists and police officers are all trained not to interview offenders and victims together because of the intimidation factor yet no one, not the judge, the supervisor, the prosecutor, or an advocate present in the courtroom, raised the question about intimidation when this probation officer offered the following comments to the court. Mr. Belknap was being sentenced for an assault against his partner Amanda. His history of violence was summarized by the probation officer.

I'll kind of run through the - his history, just to update the Court in case you don't have all of this. In 1984, defendant was charged and convicted of theft. In 1985, another theft. An assault and a violation of probation during 1985. In 1988, a contempt and a DWI. In 1989, a theft, a gross misdemeanor theft, a violation, a DWI and an escape from CORRECTIONS FACILITY. In 1992, a DWI, driving after revocation. In 1993 and 1994, there were two third degree burglaries and one -- it looks like a felony theft. In 1996, that was the last felony charge for which he was violated in 1998. And that was a felony terroristic threats and there was also another order for protection violation, I believe, at that point. In 1998, again, that was the last violation. Aggravated DWI, March of this year, he was charged with and is currently on probation for that. (Community H, Sentencing hearing B)

According to the probation guidelines on sentencing in misdemeanor domestic assault cases, the probation officer should have recommended a jail sentence, but does not.

Probation Officer: Your Honor, as I looked through his record and his history and his history with our department on paper, I wasn't very hopeful about the situation. And, to be honest, I had no intentions of even considering him for probation. I talked to Mr. DAVIS (probation officer) who had done the last violation on Mr. BELKNAP in 1998. And Mr. DAVIS's opinion, as well, was he's not amenable to probation. And, then, Mr. BELKNAP and AMANDA came in to talk to me and I've had a little bit of change of heart about the situation... He's had some opportunities for some programs and things, but it sounds like he's feeling like he needs some therapy and AMANDA seems to agree. In terms of his drinking, they have made an agreement he won't drink. And I feel that if he does drink, he will put AMANDA at risk. And I think she understands that as well. And I don't see her being the kind of person who would just let that slide if anything should happen again. She's told him I will call the police and you will go to jail. And it's simply the way that it is. She seems to feel very confident about being, you know, being able to deal with this situation. Defendant seems very willing to do therapy. He also seems very willing to do



chemical dependency -- a chemical dependency evaluation and whatever he needs to do to follow through with that. (Community H, Sentencing hearing B)

While one may conclude that this probation officer is simply ignorant of the dynamics of domestic violence, the more crucial question is how a report to the court becomes legitimate. Why was the probation officer not stopped as soon as she reported to the court that she interviewed the couple together? Why was she not questioned about her assumption that because Amanda is a strong woman, Mr. Davis—who has a fifteen-year history of abusing women—will suddenly stop his use of violence?

In these ways, institutional processes inhibit telling the stories of women who are victims of domestic abuse to tell their stories. This prevents the judicial process from taking into account their experience of violence and hence responding appropriately to their needs. These effects are intensified by the institutional distrust built into the legal system of the United States. The nature of the adversarial process leads to cover-ups, lies, misrepresentations, obfuscation, and distortions of events. Parties seeking redress do not necessarily tell the truth to practitioners. It is certainly not always in their interests to do so. Dispatchers, police officers, and judges must assume that both offenders and victims may lie to them and that they give only their own version of an event. We found obvious instances where male offenders and female victims manipulated the “truth,” presumably in an effort to control the outcome of the case. Women who are victims of abuse cannot risk telling their story since it may well be used against them, particularly if they have resisted violence physically. Their stories, treated selectively within the institutional process, may well become a basis on which their custody of their children can be questioned.

### *Conclusion*

Our inquiry helped us to see how Indigenous battered women’s experiences are stripped of their context when the legal system develops its institutional account of events that considers

each incident to be a discrete act. Similar de-contextualization occurs when the civil system negotiates arrangements without hearings or considerations for how, when, and with what impact violence is used against Indigenous women. As discussed earlier, this disconnection from our collective history and background became clear to us when we perceived institutional actions through the eyes of Indigenous community members. Often, community observers and the women who experience institutional actions viewed the processes that were taken for granted by practitioners as “odd.”

Everybody knows this guy beats on women so when the police officer started to question her about her drinking, then asking her why she wouldn't let him have the car, then asking if she assaulted him I could see her just shut down. She just went quiet. Why couldn't he sit next to her and say something comforting and tell her we know how dangerous he can be, we know what you're going through and we want to help. But no somehow that would bias things and instead he [the officer] ended up walking away and saying 'most of them are like this they just won't talk.' (Community Team Meeting, August 2000)

Indigenous women cannot trust the judicial process to hear their stories and respond to their needs. When the police respond to a “domestic” call and start questioning the victim in a fashion that suggests that she is at fault, she knows that her story will not be welcomed or listened to and that those who question her are not concerned with or attentive to the realities of her experience and the violence she is undergoing. This is so even though we found many of the officers we rode with to be very concerned.

At first we wondered about the humanity and ethics of the people responding to these cases, but we gradually shifted our thinking, recognizing that the individual practitioners were not as problematic as the routine institutional processes for dealing with this widespread social phenomenon. Often, what seemed like a callous response from a dispatcher, prosecutor, or jailer was due to institutional frameworks that transformed actual events into institutionally-actionable items. Criminal codes, Supreme Court rulings on probable cause and self-defense, legislative

definitions of assault and abuse, and liability considerations have defined the parameters of data selected by practitioners as they process cases.

As we have shown, the process begins with dispatch and police responding to a domestic violence call. Practitioners tend to recognize only those aspects of the situation that fit the requirements of criminal codes and court rulings. Consequently, only the features of a domestic incident that would lead to successful prosecution are retained for record, and the more complex aspects of the situation are effectively erased or only minimally documented. Eventually, such massaging of information for institutional purposes obliterates the complex history and contours of actual events. Separating institutional accounts from the everyday world facilitates the processing of a case, but it distorts real events and thus thwarts the abilities of intervening practitioners to provide sustainable, comprehensive protection to victims.

We recognized that the organizing principle that directs practitioners' behaviors emerged not from everyday conversations. It was embedded in the institutional discourse itself. This framework organized how practitioners viewed an incident of domestic violence, constructed the story, and unequivocally identified someone as victim or offender, cooperative or hostile, helpful or problematic. Most of the frameworks operating in the system emerged out of discourses that have clear rules regarding relevancy and appropriateness. None of them correspond to indigenous values of holism, respect, balance or correctness. None of them correspond to Indigenous values of holism, respect, balance or correctness. The institutional story was thus created out of excerpts of the real event that would make the framework visible to the already initiated reader. In this process of selecting pieces of the event that would best fit the framework, Indigenous women's stories were plucked from their nests of local setting and placed in the discourse of the ruling institutions.

*Sidetracking Violence*

## Introduction.

Our research has exposed how legal processes inhibit victims of domestic violence from expressing to the police and the courts the extent, nature, and persistence of the violence they experience. It follows, then, that because the police and courts do not know the extent of the harm being done, there is a gap in how women's experiences of violence can be taken into account in the processing of a case. Institutional practitioners work in an institutional manner; their work engages them with the abuse, but not with the abused. An advocate on the research committee spoke to the problem:

Before we started this project, I used to think of people in the system as uncaring but that's not at all what we are finding. The sidetracking of women's needs is systemic in the way the institution works. First of all, the workers are organized in ways that they never really get to see women as people, they deal with very specific steps in a complex system and the woman is either helpful, invisible or obstructive to what they are doing. Actually battered women are more the problem in case processing than the abusers are. And the worker keeps doing the same thing over and over again, always locked into one step in the process. One deputy's only involvement in these cases was to serve protection orders, his whole understanding of these cases comes from that perspective. And the cases are endless, if anyone looks up from their paper work to see what lays ahead it's just more of the same. Then comes Friday, 4:30 and they go home. They return at 8:00 on Monday and it all starts up again. (Community Team Meeting, February 2001)

As the advocate indicates, our research taught us that the lack of awareness of the kinds or level of violence a woman may be experiencing is not a problem of individual practitioners' failings. The outcomes for women are produced by practitioners' work and their work is done under limitations of resources and time. In their work their responsibilities and practices are institutionally defined and regulated. Learning and informing others of the nature and degree of violence experienced by women and of its familial and social context is not in general an essential component of practitioners' work nor of the law itself. As we shall see, the work of getting such information is in every case marginal to practitioners' primary responsibilities. Even if a particular

practitioner sought to make a dangerous level of violence known, there is a lack of avenues through which such knowledge could become effective and consequential within the process.

All fifty state legislatures and the federal government, as well as hundreds of local communities, have changed how community responses to calls for help involving domestic abuse are processed. Most of those changes were initiated with the intent of increasing the safety of victims (Frederick, 1998). During the 1980s and '90s, the newly organized victim-advocacy groups were successful in convincing state legislatures to insert a number of safeguards and rights for victims of crimes into criminal case processing procedures. For example, several states, including the state in which we conducted this study, have passed legislation guaranteeing the rights of victims. In these safeguards, the victim has the right to: (a) be alerted of the imminent release of a dangerous suspect or offender from correctional facilities (Arraignment hearing), (b) be notified by prosecutors of the charging and dismissal decisions regarding the offender (Pre-trial hearing), and (c) have a voice in the sentencing process (Sentencing hearing).

In what follows, we examine the implementation of the legislative changes in these three areas as they become institutionalized in the work routines of practitioners.

#### Notification of Release—Arraignment.

The law in the state of our study affirms that correctional facilities must make “reasonable attempts” to notify victims of violent offenders prior to their release. Three sequences of notification following the arraignment were observed by team members who identified the following steps in the process: (1) immediately after a suspect was arraigned, he was returned to the county correctional facility for release; (2) the suspect changed into his street clothes while the correctional officer completed his release paperwork; and (3) if the victim’s name and telephone number had been recorded on the original booking sheet completed by the

arresting officer, the correctional officer made phone calls to notify her of the offender's imminent release. Most releases occurred in the mid-afternoon and the process took approximately thirty minutes. In all three instances of notification observed, the victims did not answer the phone call by the correctional officer.

We were able to observe the documentation of the cases we observed and look at an additional five files on domestic abuse related releases. In the first case we observed, the file showed that the correctional officer had called the victim three times: 1:06 PM, no answer; 1:08 PM, no answer; and again at 1:16 PM, still no answer. According to departmental policy, three attempts to contact the victim are considered as expending reasonable efforts to notify the victim. Three other files showed a similar pattern of three attempts to contact the victim by telephone within a fifteen-minute period. The correctional officer explained this rapid cluster of calls by stating that once the judge releases a suspect, he does not have the authority to hold him in order to locate the victim for notification. Thus, he makes three calls to comply with the requirement of "reasonable attempt" and allows the suspect to go. Notification becomes especially difficult in practice when, as is often the case, the booking sheet that the officer relies on shows only one and sometimes no number. In Indigenous communities, it is not uncommon for people to have no phone at home. The scheduling of the release may also be a problem as many people are at work during the day. As a back-up in each case, a form letter is filled out and mailed to the victim on the day of the suspect's release. A prosecutor interviewed in the course of our research described her own experience of how the notification requirement is met in practice:

We were at the jail, and they're supposed to contact the victim before they release them. That's another safeguard, so victims know what's going on. When we looked up the files for calling victims, [at] 1:06 [they] 'called-not home,' 1:08 'called-not home,' 1:16 'called-not home-released.' They met the letter of the law, making three contacts to the victim, released him, and it's the same thing with these letters that go out when you're looking through the probation files—no response from victim. It's not because they're really trying to get it. We're seeing all sorts of places where the victim is supposed to

have a way of saying something and this is a good example. This is a good example of the way that it's in there, but it's so routine, so institutionalized, that it's meaningless. It's almost like a routine that you do. (Interview Prosecutor, November 2000)

The notification process proposed by victim-advocacy groups and introduced by state legislation has been incorporated into practitioners' work routines in ways that are not reliably useful to the victims. Undoubtedly, the process can be improved upon and it would make sense to consult with correctional officers on how to make the notification effective in practice. For instance, in all but a few of the misdemeanor cases, the suspects arrested on misdemeanor assault charges were released only hours after the arraignment. Hence, it might well be possible to have victims contacted the night before or early in the morning to advise them of the offenders' anticipated release. It would also make sense to have alternative numbers of family, friends, or neighbors who could contact the victim directly.<sup>16</sup>

This is an example of how institutions can technically meet regulations introduced to protect the interests of victims, without affording any of the protections its advocates had hoped for. We found the system's accountability mechanisms to be extremely weak, with almost no active engagement by practitioners to notice those practices that fail to protect victims of domestic abuse and promote their change.

#### Prosecutor's Consultation with Victim Pre-trial.

State law requires prosecutors to contact victims regarding decisions to dismiss or reduce charges of offenders. The state statute follows:

---

<sup>16</sup> Recently two law enforcement agencies, Communities E and H, have rewritten their documentation guidelines to require arresting officers to obtain the phone numbers of at least two relatives or friends that can always find the victim. This procedure is being implemented to enhance the ability of the system to keep victims informed of all case status changes, including release from jail (Report to X Bench on the Status of the Civil and Criminal Processing of Domestic Violence Cases, February 2001).

Subdivision 1. Notice of decision not to prosecute.

(a) A prosecutor shall make every reasonable effort to notify a victim of domestic assault or harassment that the prosecutor has decided to decline prosecution of the case or to dismiss the criminal charges filed against the defendant. Efforts to notify the victim should include, in order of priority: (1) contacting the victim or a person designated by the victim by telephone; and (2) contacting the victim by mail. If a suspect is still in custody, the notification attempt shall be made before the suspect is released from custody.

(b) Whenever a prosecutor dismisses criminal charges against a person accused of domestic assault or harassment, a record shall be made of the specific reasons for the dismissal. If the dismissal is due to the unavailability of the witness, the prosecutor shall indicate the specific reason that the witness is unavailable. (State Statute, 611A.0315)

Compared to the correctional officers, who have only hours to locate a victim for notification of release, prosecutors have a fairly long period of time between the arraignment hearing and the pre-trial hearing to consult with victims. Nonetheless, there were still failures to comply when decisions were to be made that would change the charge. We found three main problems: (1) lack of resources to make contact with victims regarding these decisions, (2) the reluctance of most victims to participate in a prosecution of their abusers, and (3) the possibility that victim input could actually weaken rather than strengthen the prosecutor's case.

#### Lack of Resources.

In many states, including the state in which we conducted the study, the legislature had passed laws giving victims of violent crimes new rights in the legal system. The onus was placed on prosecutors to implement these new regulations but no financial support was allocated to support these new responsibilities. As individuals, the prosecutors we interviewed and observed were committed to complying and were concerned with the interests of victims, but lacked an infrastructure to facilitate the process.

A prosecutor spoke about how the legislative mandate to notify victims of a decision not to prosecute actually has worked to weaken her position on a case. In her interview, she



discusses the positioning of prosecutors and defense attorneys in these cases. She explains that she might have no idea where the victim is or how to reach her and does not want the defense to know that. She has no resources that would enable her to deploy personnel in her department to search for her. When the judge asks questions about victim consultation, the prosecutor is totally compromised if s/he has not been able to work with the victim.

With luck, I'll be able to work out some sort of plea agreement, to a reduction of disorderly conduct or something and try to get something out of it. The judge will say, 'Is the victim aware of this?' What am I supposed to say? I don't want to lie, but what am I supposed to say? I can't hand her over. The defendant hears that, and is he going to plea? And I can't ask the judge, 'Oh, would you please not ask us this question.' There's got to be a better way to handle it. It's kind of a general thing that works perfect if you've got a traffic accident victim who wants the money to pay for their car repairs, it works out perfect for them. It will be a good check, and the judge can do it, yeah this victim is being heard. Again, it's just one of the many things that work against battered women. The victim might be saying, 'I don't want this to happen, I want this dismissed, please leave us alone.' On the flip side of what's happening that day, the judge hears that the victim wants it dismissed. What do we do with it? (Interview Prosecutor, November 2000)

The lack of resources to support implementation of the legislation may in fact make it more difficult for the prosecutor to secure an outcome that recognizes the degree of violence effectively. The prosecutor doesn't have the information s/he needs from the beginning to contact the victim, no time/resources to do it herself or have her staff take it up, and then her failure to locate the victim negatively affects the outcome of a case.

#### Reluctant Victims.

The women themselves sometimes contribute to the sidetracking of violence in the U.S. legal system. In the Indigenous community, traditions of working through conflicts, vulnerability when government inserts itself into one's private life, and, more generally, the subordinate gender roles assigned to women in the wider society combine to make it difficult for most women, and especially Indigenous women, to carry through an action against a partner which may result in his being jailed. Thus, when a woman is asked to testify, she may minimize the

impact of the violence she has experienced at the hands of her partner. Since it is generally only the victim who witnesses the complete violence perpetrated by the offender, her reluctance to testify to the extent of violence she's experienced creates problems for the prosecution.

I am listening to her out in the hall like, 'How is she going to come across in the trial?' ...I can put this in front of a jury and they're going to feel it wasn't really that bad. He didn't really push her down; he just kind of tapped her... You end with the jury, if they're a good jury, who is going to see right through what she's saying. Otherwise, if she says it's no big deal they're going to wonder why they're here. I knew she was minimizing it.  
(Interview Prosecutor, November 2000)

The courts assume that whoever seeks its protection is free to speak about what has happened to them. Yet, the playing field is not level. Various social, emotional, financial, physical, and psychological constraints curtail each person's capacity to present their experiences, not to mention the power and control dynamics of a woman's relationship with a batterer. The court's lack of means to recognize conditions such as these obscures the extent of the violence they have experienced.

### Victim's Voice in Sentencing.

In the study state, the law requires the court to order assessments in domestic assault cases in order to discourage the old practice of misdemeanor sentences that do not include fines for damages. The law is quite specific about what information probation should put into a pre-sentence investigation report regarding the impact of the crime on the victim and the victim's considerations on the disposition. The information to be gathered includes, but is not limited to, damages. It states:

A pre-sentence investigation report prepared under section 700.115 shall include the following information relating to victims:

(a) a summary of the damages or harm and any other problems generated by the criminal occurrence; (b) a concise statement of what disposition the victim deems appropriate for the defendant...; and (c) an attachment to the report, consisting of the victim's written objections, if any, to the proposed disposition... (State Statute, 611A.037)

None of the reports we reviewed met these standards. In the sixteen pre-sentence investigations (PSIs) involving Indigenous women as victims in felony convictions that we examined, we found only five women were contacted directly by probation officers. The contacts were cursory, and the information was reported in a line or two that revealed little participation in the sentencing recommendation process. We found that probation officers included information from the victim in only two of twelve misdemeanor pre-sentence investigations we analyzed. When women's opinions were reported, it was for providing input on financial compensation, even though the intent of the law was to include victim participation in the sentencing process.

Under the heading "Victim's Version/Restitution," the typical PSI reads "A victim Notification Letter and Affidavit for Restitution were sent to Ms. X. No response or request has been received at the time of this writing." In no instance was there evidence of further follow-up by the probation officer when a woman did not respond to this letter (Appendix 15). Considering the very personal nature of this crime and the complex dynamics involved in asking questions about the court's case against one's current or former partner, this very impersonal and rather narrowly focused solicitation for input reflects how marginal the victim's input is to the court. The individual probation officer is responsive to the administration and the court to which his or her work is accountable. If the court does not consider the victim's contribution crucial to the sentencing process, probation officers cannot responsibly use the scarce resources of the probation department tracking down information that will not be used.

Court Proceedings in General.

Institutional categories, as discussed previously, restrict what can be selected and recorded to become what is recognized as the institutional reality. Institutional time, also

discussed previously, relates to an organization of institutional proceedings regulated legally or produced in the work processes of practitioners as they balance scarce resources, particularly of time, with legal requirements.

As the legal system places the single incident of abuse by the offender in the legal category that renders it institutionally actionable—such as assault in the 5th degree, gross misdemeanor, or misdemeanor—a woman’s experience is reduced as the incident is stripped of its context. It is removed from the chain of similar behaviors that have occurred before. Categorization of the single incident can neither effectively assess nor convey the actual dangerousness of the offender. It is only by listening to the stories of violence experienced by the victim and understanding its pattern that the risk to the woman’s safety may be evaluated. As a woman walks into the courtroom and participates in the case proceeding against her abuser, the violence she has experienced is already made invisible by these categories, as well as by the limited ways in which practitioners are able to involve victims in the proceedings of the case. The processing of cases is often prolonged, and victims of repeated violence feel their urgent safety needs are not being met or even recognized. The victim remains open to further threat and abuse.

We do recognize that the legal system would quickly grind to a halt if every defendant pursued his/her legal right to trial. In fact, very few do so. Instead, cases are settled in a system where the attorneys on both sides of cases (prosecutors and defense attorneys) have worked together for years, while cases, defendants, victims, and witnesses come and go. The latter are not around long enough to learn the language, to understand the rules, and to figure out the way it all works. The long-term relationships and familiarity with the language and process exist for those who work in the hallways, offices and courtrooms of the county court house every day.

Some of them own hunting shacks together, some are friends, some are long time opponents, and some have been lovers or married or still are.

Defendants and victims come and go. Most citizens learn what they think they know about the law from television. The process of “disposing” cases before a trial can shake one’s concepts of the legal system to the core. Hallways become trading posts. Defendants trade their right to a trial, the right to force the state to prove beyond a reasonable doubt that they committed a crime. The chief bargaining chip for the defense is the extreme reluctance of the woman who was assaulted to testify against the offender at the trial. Therefore, the state trades away, in many instances, her right to safety by failing to secure a conviction that carries any consequence for the defendant. It is, in the end, a very cynical system.

This trading and bargaining become so routine that even when it is not necessary it occurs. We found that even when there were independent witnesses to the assaults, cases were pled down almost as a matter of routine. In over a third of the cases that were pled down, there were witnesses to the assault and the police had collected evidence, documented injuries, etc. Charges against offenders were dropped even though there was no indication that the state proved a crime did not occur.

Generally, what we found was that the state, represented by the prosecutor, could negotiate for a promised leniency: no jail time; limited rehabilitation; no assault conviction; no removal of their weapons; no fine, no record indicating any involvement in domestic abuse –all this in return for some admission of guilt to something, in most cases something like a disorderly conduct charge or a criminal damage to property charge. In this process, the woman and her experience completely disappear, as do all records of it. So, too, does any kind of authentic

attempt by the community to hold an offender accountable for his or her unacceptable behavior or crime.

But it happens quite frequently in the “real world.” We found even when there were independent witnesses to the assaults, cases were pled down almost as a matter of routine. In five out of seven cases that were pled down, there were witnesses to the assault and the police had collected evidence, documented injuries, etc. Offenders’ charges were in many instances dropped to the level of “disorderly conduct” [Community E Case Follow-up (CF) 3, CF5, CF6, CF7, and CF14]. A prosecutor we interviewed discussed this phenomenon:

There’s a presumption in the system that whoever is going to come into court has the independence to talk about whatever happened to them. Nothing about the legal system is constructed to have the truth about battered women...If she’s cooperative, I assume she’s telling the truth. If she’s uncooperative, I’m assuming that she’s not going to get up and tell the truth at that point. For any witness a police officer can testify and the defense attorney is going to try to make the police officer look like they are exaggerating or lying. Again this falls on battered women, because someone else does not witness the majority of these. (Interview Prosecutor, November 2000)

While it seemed obvious that a victim’s reluctance to participate in a prosecution was a major factor in the strategy to plead cases out at pre-trial, the decision to plea bargain was not necessarily based on the merits of a particular case. It appeared that routines became expectations and expectations became part of unwritten inter-agency agreements of what is efficient. A report to the chief judge by the local advocacy group criticizes these practices:

We currently negotiate pleas agreeing to no jail time whatsoever, even for second offenses, instead of simply revoking probation, giving a partial jail sentence, and continuing probation. Some cases involving serious repeat offenders are pled to disorderly conduct. Judges accept these plea agreements, advocates do not resist them, victims accept them, probation officers sometimes object to but are usually resigned to them, and defense attorneys have come to expect them. (Report to X Bench on the Status of the Civil and Criminal Processing of Domestic Violence Cases, February 2001)

Such practices erase the stories of horrific abuse experienced by victims, simply because they are not permitted to play a role in the legal decision making process. But equally important

they subvert significant opportunities to help abusive men recognize and change their destructive behavior. The goal of restoring a sense of harmony to the community is thwarted.

In situations where the victim and the abuser have been drinking, the case gets even more complicated. We notice this problem beginning with the 911 call and continuing with the police investigation of the case. For us as researchers and the community team, the high rates of alcoholism in Indigenous communities, not only in North America but also across the globe, is directly seen as a destructive result of forced colonization. It seemed the abuse of alcohol made the woman more vulnerable to violence and therefore required extra procedures and precautions, not fewer, in responding to the case.

We found that throughout the processing of a case, from the responding police officers to the jury, references to alcohol consumption caused the violence to be sidetracked. Alcohol use by the victim was regarded as contributing to the abuse, while alcohol use by the batterer became a mitigating factor. More importantly, abuse is not perceived as “real” domestic violence when alcohol is involved, regardless of which partner is intoxicated.

#### Civil Justice System.

There are the contradictions between the rules and laws intended to protect women and the ways in which these rules and laws are applied in the institutional process. We found legislation to protect women but in the local setting of its application practitioners who met the legal mandate of performing certain tasks did so in ways that both thwarted the legislative intent and ignored the danger of the violence to women. We found that jailers who are required to make reasonable efforts to notify victims when an offender is released, would make three calls within 15 minutes to a victim. The jailers did not do this due to a lack of concern, but because there was no system built into the case processing procedures to apply the law. Judges would set bail at

arraignment and jailers were ordered to release the defendants. There was no opportunity for a reasonable effort to be made.

While state law requires prosecutors to contact victims regarding decisions to dismiss or reduce charges of offenders, in practice, this rarely occurs. A lack of resources to locate victims, and the process of plea negotiations as well as the reluctance of women to participate actively in prosecution, explain why this requirement for notification is frequently not met.

To offer battered women a non-adversarial process of securing state protection from abusers, victim-advocacy groups designed a law that allows victims to file for orders of protection from the court. The law includes provisions of relief that should permit the victim to live independently from the abuser. Most state provisions are broad, allowing Courts to order any relief that is deemed necessary to protect the victim from the possibility of future abuse. Possibilities include arrangements for the temporary division of property, child support payments, use of automobiles, and exclusive occupancy of the residence by the victim, setting visitation schedules, and ordering the abusive party into counseling.

During our study, however, we discovered practices that were disturbing in their failure to consider violence. We repeatedly observed cases where judges refused to rule on granting relief that would prove to be essential for victims' bids to live independently of their abusers. For example, often judges would not order temporary support, visitation conditions, and division of the property. In one case, the judge responded to a victim's inquiry about her request for temporary child support by the preemptory statement, "I'm not going to deal with that here." By delineating the parameters of the ruling as exclusion and restraining orders only, the judge not only abandons the victim to negotiate child support, child visitation, and the use of automobiles with her abuser, but also requires the abuser to violate the protection order by taking part in the



negotiations. It is a strong example of how the system erases the complexities of a woman's life. It fails to see and act holistically, recognizing that her economic situation is tied to the violence and why for some women it is near impossible to live independently of their abusers. Moreover, statistics show repeatedly that to leave could in fact be a life-threatening act. Most women who are killed or hospitalized by their abusers are in the process of leaving them (USDOJ, 1998).

In our consultation with national advisors, we found that this practice by judges is common. As one expert put it, "judges don't want protection order cases to become property cases. They see it as a very temporary step and all of these other issues should be taken up in a divorce court." The responsibility of the abuser is not just to be non-violent but also to assist in providing for the economic needs of the family. Frequently, the economic and the physical safety issues of a family are divided. We found both in protection order court and in the criminal court, the practitioners routinely did not want to deal with the messiness of people's lives and discussions about anything other than the overt safety of the parties involved. In case after case, the court failed to attend to the problem that the safety of women is intimately bound to their economic and familial social relationships.

In the forty-two Orders for Protection (OFPs) we reviewed, it appeared that no women had attorneys, and only three men were represented. Nine petitioners had advocates with them, six of them did not; in the remaining twenty-seven cases the presence or absence of an advocate was not mentioned in the case file. As Indigenous women and men represented themselves, they were exposed without challenge to treatment from the bench that subverted the legislative intent of the law. Furthermore, very few victims have the financial or emotional resources to obtain an attorney let alone appeal a decision made by the judge.

The introduction of attorneys to the case does not guarantee a better outcome. Attorneys in this system are trained to vigorously defend the interest of their client: no consequences, no money to pay, no time in jail, no requirement to go to any rehabilitation program. Presumably, a competitive relationship between two attorneys will produce some public safety, justice and fairness, but we found this to be false.

Appendix 13 shows a chart that tracks the relief requested by petitioners and the relief granted for the forty-two Orders for Protection filed by Indigenous women. Of these, only fifteen women received their OFPs. Nineteen of the cases were dismissed, despite the evidence of severe brutality and violence. However, as discussed earlier, because the petitioning women did not appear at the hearing many of these cases were dismissed without any inquiry into the reason for their absence at the full hearing. The violence had become invisible, buried under heaps of bureaucratic red tape and cumbersome court routines (Community H, Orders for Protection 19, 22, 24).

In the most common layperson's terms, we saw that women were coming to an official representative of the community, saying that they had been beaten, raped, choked, threatened, that the children were being threatened, wrote all of this down in a story to the court, and then were unable to come to court to speak this in front of the person who was threatening, choking, kicking, raping her. The result of her request for help became a dismissal, and a closing of the case, without any apparent intention to find a solution that would help protect this woman and her family, including the batterer.

The everyday bargaining process in the courtroom can have deadly results. Yet, upon close observation of the system, it is easy to understand how routine practices can lead to fatal decisions—the ones that appear alarming to people unused to the system—seem normal. In fact, these decisions are made dozens of times a week, hundreds of times a year. Cases are bunched

together for expediency, supervised release is ordered to prevent jails from filling up with poor defendants who cannot afford bail or good attorneys, details of the violence are rarely mentioned because they are not yet established as facts, overloaded workers with highly specialized jobs perform routine tasks and pass cases along. No one sees the homicide coming. When someone is killed and the flag of inquiry is temporarily raised, people ask, “How could we have picked this one from all the others?” In hindsight, it seems as if anyone could have seen the murder coming. Nevertheless, in reality, bureaucratic processes make such foresight impossible.

As community members who live, work with and know many of the abusers in these cases, we looked for indications that the institution charged with upholding community standards of behavior would actively intervene. Indigenous abusers who themselves have been the objects of violence, brutally turned on the mothers of their children, their partners, the women of our community. We looked for a system that would act compassionately, yet stop them. What we found instead was a legalistic routine that left the human qualities of Indigenous women’s and men’s lives out of the process, and ignored children almost entirely. We did not find this to be the work of thoughtless or uncaring people, but a process that is inherently flawed, and produces neither protection nor the seeds of change for Indigenous communities.

### Promotion and Protection of the Indigenous Mother-Child Relationship

Mothers provide cultures with their most valuable resource: their children. Understanding the interdependence and connectedness at the heart of an indigenous worldview is essential to appreciating the Indigenous mother-child relationship. This study was interested in the civil and criminal judicial system response to abused indigenous women with children. Basically, we wanted to know how the safety of indigenous women who have been abused and their children is promoted by the legal system in domestic abuse situations. This interest is based on the

indigenous worldview where it would be inconceivable to deal with the child's needs without attending to those of the mother, because their needs are strongly interwoven.

To explore how the legal system responds to indigenous women who have been abused and their children, we examined any reference to children or women as mothers that existed in this study's data sources. The visibility or invisibility of children in relationship with their mothers who have been abused was explored in each phase of the legal system in the four jurisdictions of this study. We found that two of the communities under study require that police reports mentioning children be automatically forwarded to social services. Also, State Statute §626.556, for the state in which we conducted this study, requires that information be forwarded to child protection services for assessment if a petitioner for an order for protection (OFP) suggests that an incident of child abuse took place. Social service child protection records are confidential and we were not able to obtain access to any social service information based on police reports or OFPs for Indigenous women (we did have access to some child protection files for non-Indigenous women). Beyond statutory requirements, the only other reference we found that expresses concern for the Indigenous mother-child relationship was in focus groups with Indigenous mothers. In sum, a wall built on the value for confidentiality prevented a holistic exploration of the Indigenous mother-child relationship in domestic abuse cases. The remainder of this report on the Indigenous mother-child relationship will begin with the voices of Indigenous mothers who have been abused. Their stories will be followed by an exploration of the continuum of services provided by the civil and criminal legal system in domestic abuse cases.

### *Focus Groups with Indigenous Mothers*

In the focus groups held with Indigenous women who have been abused, every mother expressed the same concern—the fear of losing their children—anytime they called the police. In

fact, many stated that this fear kept them from calling the police when they were being abused. It was clear that when one child was removed from the home, a fear reverberated through the small, close-knit Indigenous communities that a potential existed for all children to be removed in domestic abuse situations. This fear is anchored in historical relations between majority society service providers and Indigenous families, as discussed later. Women in the focus groups expressed this fear in this way:

*PARTICIPANT:* But, it did get to be where I didn't want to call the police anymore. Why should I, if I was going to end up in jail too and risk losing my kids?

*RESEARCHER:* In any of those times did they threaten you about your children, or did they offer to take your children to grandma's, or whatever?

*PARTICIPANT:* My children have ended up in the shelter, got them taken away, because of the fight we had. (Focus Group 1, October 2000)

Another woman expressed a similar sentiment:

They didn't even know I had him (her son) until I said, 'You've got to let me out of here, my baby is down the street.' They said, 'You can call, otherwise, we're taking him, he's going to a shelter too.' (Ibid.)

A woman who lost her kids told us the following:

My kids were placed in foster care because he [ex-boyfriend] broke in my house. He brought in some beer bottles and stuff, the county attorney wanted to pursue parental rights, I had been sober for twenty-four months right after a halfway house. Still I got very scared I did not know when they were going to come and get my children, they came and got them within twenty-four hours. My head was cracked open with a beer bottle, my kids seen all of this. My small little boys are five and eight years old and my girls ran out, my twelve-year-old was hysterical. Still to this day they are scared, they are scared of social workers, scared of police, because the police went back and said it was my fault and put the blame on me. (Focus Group 8, March 2001)

### *Police Reports*

We looked to police reports that included data on children to try to locate documentation of the removal of children from the home. The data sifted from police reports indicate that the removal of Indigenous children from their home by police in domestic abuse situations is an exception. The reader is cautioned against generalizing this finding beyond the scope of this

study. While police reported transport of children, it was most common to take the children to a relative, neighbor, or friend's house. In cases where one parent was arrested, the children would be left with the other parent, most frequently the mother. No police report documented police officer threat to remove children. It was not expected that police officers would document such threats. Such threats were reported, however, by the Indigenous mothers as a common experience. These threats reach into an intergenerational fear carried by Indigenous mothers. Fear of child removal is no longer a fear of Indian agents, missionary or boarding school agents, but a fear of social workers and police officers. Contemporary statistics on Indigenous child removal from the home show this fear to be well-founded (see section "Historical Context for this Study" for further discussion on Social Harmony, Colonization and Violence Against Indigenous Women).

Police officers do document the presence of children in the family. We reviewed forty-one police reports that included documentation of children. Twelve documented that the children witnessed the assault, and seven reported that the children did not see the assault. Twenty-two of the reports were silent about children after documenting children resided in the home. None of the reports noted whether children required a police hold—a 72-hour, out-of-home placement. None of the reports indicated referral to social services.

In a separate kind of domestic dispute case, police responded to thirty-seven reports of domestic abuse where children were involved in the dispute. These were most often cases of siblings fighting with each other or where one party was an adult in dispute with a minor. The most common examples are: parent—minor child dispute, and a young woman, under the age of 18, being abused by an adult boyfriend. In three of these thirty-seven cases however, children

were involved in the dispute between parents. The common reason for child involvement in adult disputes was the child's attempt to help the mother who was being abused.

It should also be noted that Cheryl's (Victim) and Larry's (Suspect) two children were present when this occurred. At one point during the assault, one of the children said to their dad, 'don't fight mommy, fight me' and then threw beer cans at him. (Community H, Police report 11)

Janice (Victim) sent her daughter to contact the police... We were then let into the upstairs apartment by Janice's daughter... I looked at the Order For Protection, and it stated Anderson (Suspect) was to have no contact whatsoever with Janice or her children at ADDRESS nor be in a six block radius. (Community E, Police report 20)

I asked if there was anybody in the house at the time and he said his son was sleeping in the other room. Mr. Myers (Suspect) spontaneously uttered he was worried his son might say he broke into the house. I asked him why his son would say that and he said his mother would say that... Myers and Wilcox (Victim) have a child in common. (Community E, Police report 32)

In these three police reports, there were no indications of referral to support services or child protection. The lack of referral flies in the face of an alarm that has been sounded by the professional literature since the 1970s about the impact on children witnessing domestic violence (Dobash & Dobash, 1979, Gelles & Straus, 1988, Finkelhor, et al., 1983, Jaffe, et al., 1990, Kemp, 1998, Pagelow, 1984, Shepard & Pence, 1999, and Walker 1979). This disjuncture moved us to ask, "What is the purpose of this type of documentation?" The implication is that if such documentation is not to promote the well-being and protection of children, then why document children's presence? One apparent purpose was to document children as a way to establish that a domestic relationship existed. The following are examples of the most common documentation of children in police reports:

DEWING said they do have a nine-month-old daughter together. (Community E, Police report 3)

LABOUNTY stated he has been living with HUSTAD for some time and they have children together. (Community E, Police report 23)

I asked MAUNSELL a short history about the two of them and she said they had been dating for approximately four to five years and have a child together. (Community E, Police report 58)

These examples of police report reference to children not only demonstrate the more common type of police report documentation regarding children, they also exemplify the silence which makes it impossible to determine any concern or action taken regarding child well-being or protection of the mother-child relationship. It would not be unreasonable to hypothesize that no action was taken. Given the police officer requirement to make a case actionable and to document institutional text that supports any action, the silence indicates no action. This position is supported by the following examples of police report documentation of concern and action:

#### Example 1:

At that time he had 2 small children under the age of 3 in the apartment with him and arrangements were made to take them to his mothers house in CITY by Officer 1... There was a young, approximately one or two years in age, Indigenous American male running around who WARPULA (Suspect) stated was his and SEMORE'S (Victim) child in common. We later determined the child was present during part or most of the incident. We were also advised there was another child that WARPULA and SEMORE have in common sleeping in the bedroom who did not witness the incident. Officer 2 checked on the child and found him to be sleeping... He stated he believes at approximately 2315 hours, he heard someone pounding on the door and heard SEMORE'S voice yell something about wanting to see her kids... He stated SEMORE forced her way into his apartment, saying she wanted to see her children... He stated she backed out to the threshold of the doorway, continued to insist on seeing her kids, and he threw water at her two or three times while SEMORE was in the doorway... He was also advised we first needed to make arrangements for his small children whom he was taking care of at this time. Several phone calls were made to family members and we eventually were able to track down his mother who stated she was willing to take the children, but refused to come over and get them. It was decided that Officer 1 would transport the children to WARPULA'S mother for the night... Officer 1 got the children dressed and drove them to WARPULA's mother's house... When asked what happened, SEMORE stated she had gone to WARPULA'S apartment to put her kids to bed and see them for a little while... She stated she put the youngest child to bed, and the oldest child was still up when she and WARPULA got into some kind of an argument... At that time, her child came out in the hallway and was playing with some boards in the hallway as if they were blocks. She stated she spent some time with the child in the hallway when WARPULA came out of the apartment, grabbed the child, put the child back in the apartment, and told her to leave... SEMORE stated she and WARPULA broke up about three weeks ago after being together for approximately three years, and they have the two children, mentioned earlier, in common... SEMORE was told her children had been taken to WARPULA'S mother's house, which she was okay with. (Community E, Police report 12)



## Example 2:

Officer 1:

I checked the upstairs and determined it was clear and proceeded downstairs with Officer 2, where we encountered three Indigenous American children playing video games. Officer 2 remained to speak with the children while I proceeded back upstairs to locate KAHN (Victim) and speak with her reference the incident...I asked KAHN if the children in the basement are children in common between MCDONALD (Suspect) and herself and she said they are not, as those are her children and MCDONALD is not the father of any of them...KAHN said she and MCDONALD were arguing, as she was upset with him because he was angry with her children about running in and out of the house and had been speaking inappropriately to them about the problems he was having with their behavior. KAHN said she told MCDONALD they are not his children and he had no right to treat them the way he was treating them. KAHN said the two separated for several minutes and when they came back together in the common living room/kitchen area, they began arguing about the children again...From the Domestic Abuse Checklist: 3. Emotional state of victim and suspect - were high, as the two were arguing over the discipline of KAHN'S children...8. Three children were present during the incident. The children were the original source of the argument, which escalated into the assault. Two of the three children witnessed the actual assault...15. Additional witnesses included two of the three children, GILDERMAN, and COOK...I asked KAHN how many children live in the home or are involved in this situation. She said the three children were present in the basement at the time of the incident.

Officer 2:

... We cleared the house and with Officer 1, we spoke with two children who were home in the basement and witnessed what had happened...The reason for that is because MCDONALD was yelling at the children, telling them to go outside and get out of the house at 11:30 at night. The children said they were very scared of MCDONALD refused to leave the house and got very agitated and threw LINDA to the floor...The children said they ran back downstairs at this time because they were so frightened of what was going on and shortly after, the police arrived.

Officer 3:

...It was determined that MCDONALD would be charged with Fifth-Degree Domestic Assault and KAHN would be left at the scene to care for the children at the residence.  
...(Community E, Police report 26)

In both of these reports, it is clear that the police officers took action to secure the welfare of the children for the evening. We know which of the children witnessed the assault, and in the second example, we have a brief summary of an interview with the children. This quality of documentation was rare in the police reports secured for this study. The exceptional nature of these reports, as contrasted with the majority of police reports reviewed in this study, suggests

that these police officers made it their personal priority to incorporate meaningful information about children in domestic abuse cases.

Whether police reports are silent about the well-being of children in domestic abuse cases or whether the reports are exceptional in documentation, the fact remains that either is institutionally acceptable. This means police supervisors are reading these reports, approving them and allowing this wide range of response. In other words it appears as if a gray area exists where police officer documented response to children in domestic abuse situations is discretionary.

In this study, we found information about child well-being is not the norm. The following are typical examples of police documentation about children in the other three communities.

Squads arrived on scene and spoke to Rosemary Chiles, the RP. RP stated Chapin already left and her mom, Laura, was sleeping. RP said her mom wasn't hurt and doesn't wish to pursue charges. (Community H, Police report 1)

A 6 year old at the NESJE residence reported her mom and dad were fighting...The two mutually agreed to stop arguing, put the children and themselves to bed. (Community H, Police report 9)

When I pulled into the residence, I was met by five to six young children sitting out in the driveway. They said that their mom had just got beat by their dad...I asked CHERYL what had happened and she said that her boyfriend and father of two children, who was identified as LARRY DANIEL CARLSON, DOB/091875, had beat her up...It should also be noted that CHERYL's and LARRY's two children were present when this occurred. At one point during the assault, one of the children said to their dad, "don't fight mommy, fight me" and then threw beer cans at him... (Community H, Police report 11)

We entered the residence and observed an adult female and a juvenile female (16 years old) in the south bedroom...Also in the living room was a young male (8 years old)...She did say that DANIEL NELSON (8 yoa) was in the home during the fighting. She said he heard the arguing, but was in his bedroom and did not see any fighting. DANIEL NELSON is KEITH NELSON's (Suspect) biological son, however, RUTH ANN NELSON (Victim) is not his mother. DANIEL's mother resides in the state of STATE. I did speak with KRISTINA KEMP, RUTH ANN NELSON's daughter. She said she was not at home for most of the fighting, but did hear the arguing as she had gotten home at approximately 2130 hours...RUTH ANN NELSON told me she was at home when KEITH arrived home with DANIEL at approximately 1630 hours today. ... RUTH ANN said she did leave to pick up her daughter, KRISTINA, and returned home several hours later, approximately 2130 hours...It should also be noted that KEITH NELSON has

custody of another child, MATTHEW MCCALL, 11 yoa, who also resides in the home, but was not there this evening. (Community J, Police report 11)

Per Domestic abuse charged because complainant and Headberg have one kid together. (Community I, Police report 84)

It was explained to her a signed statement would not be taken from her as they both reside together along with their five children. Dena Schall was contacted and she came to the residence and brought Linda (Victim) and the five kids to her residence in NEARBY CITY. (Community I, Police report 111)

Mildred swore several times at Dennis: before gathering some of her belongings and her son and leaving. (Community I, Police report 119)

Lack of documentation and inconsistency in documentation of child well being compromises access to other community supports and agencies that can take up concern for the child and the mother-child relationship. While there is a legal mandate to have a direct relationship between law enforcement and social services regarding child endangerment, the connection seems to be weak. Perhaps there is an invisible parallel process where institutional documentation and referral to support services and child protection exists. If so, looking for it from the law enforcement side does not document its existence. Our conclusion is that law enforcement is not designed to document child well being on a consistent basis in domestic abuse cases.

Whether looking at the civil or criminal court pathways, both begin with police reports. Having done that, we will address the criminal court pathway next.

### *Arraignment*

At an arraignment hearing, facts about a case are set before a judge to aide dialogue and deliberations. Early in our observations of the criminal courtroom where domestic abuse cases were being heard, we noted the absence of discussion about children. The following case study is a common example of criminal court oversight of children in the family where domestic abuse has occurred. In this case, the adult mother of a minor had asked the civil court and received an

order for protection (OFP) against the minor daughter's ex-boyfriend, an adult. The OFP had been violated by the ex-boyfriend because he came within two blocks of their home. The following police report sets the context of the case for the judge at the arraignment hearing:

Upon arriving, we met with SARAH BRISSMAN who stated at the following times, DARREN OLSON phoned her home in violation of the Order For Protection. The first call was at 1:00 a.m. on 01/29/99 from Hospital. The second two calls were made from ADDRESS3, one at 10:50 a.m. and one at 11:44 a.m. on 01/29/99.

BRISSMAN stated the order also forbids DARREN OLSON from being within a two-block radius of either her or her daughter.

After reading the order, Officers 1 and 2 saw the order did in fact state DARREN OLSON was to remain outside the two-block radius of either of the petitioners. With this, Officer 1, 3, and I went to ADDRESS where we were met by TIMOTHY MARCUS. We asked MARCUS if DARREN OLSON was in his residence. He stated he was, and he would get him for us.

In speaking with DARREN OLSON, we asked him if he knew why we were there. He stated he did not. I then asked DARREN OLSON if he had dated RACHEL OLSON and he stated he did. I then asked DARREN OLSON if he knew there was an order For Protection against him. He stated 'yes,' he had been served with it by the Sheriff's Department but had not yet read it. With that, I placed DARREN OLSON under arrest and informed him he was under arrest for Violation of Order For Protection, because a clause in the order stated he needed to remain two blocks away from her, OLSON, and at the time he was well within one block of her location. (Community E, Police report 19)

In the fifteen minutes that it took to arraign the ex-boyfriend, officers of the court discussed at length the need for electronic monitoring. The electric monitoring issue was related to an alcohol related charge before the court as well. Brief mention was made of the gross misdemeanor domestic assault charge against him. Following is the transcript of the discussion of the violation of order for protection, for which he was arraigned:

*THE COURT:* Mr. OLSON, you're here on a misdemeanor violation of a protection order, charged on a citation.

*DEFENSE ATTORNEY:* Your Honor, we're going to request to enter a not guilty on that charge as well, and ask for a jury pretrial setting on it. Then I would like to address the issues of release at the appropriate time.

*THE COURT:* All right, we'll set the matter for February 25th at 8:30 in the morning for pretrial. What would you like to say about bail?

*DEFENSE ATTORNEY:* I don't want to get too far into the facts of the case, Your Honor. I do want to outline Mr. OLSON's reaction to the file as we've discussed it. I note there's not a copy -- at least I didn't see a copy, which at least alleges a violation. Mr. STOLLE (*Prosecuting attorney*) is representing only a separate file, which apparently is pending; and we're asking the Court to consider release without any monetary consideration.

I don't think this man has any money to his name. Although he's a student at COLLEGE -- and I mention that because for the court releasing him on conditions rather than monetary conditions. Apparently, the young girl's mother is the motivating force behind this order for protection and wants to make sure that Mr. OLSON not have contact with the daughter. Apparently, they went into court and got a restraining order keeping him two blocks from their residence. I see no allegations in the file that he has called this young girl or attempted to visit with her. In fact, he tells me now that he hasn't spoken with her since some time in October. He did indicate in the reports, and I think the investigators outlined that, that he did get a copy of the order for protection but didn't read it, assuming it meant no contact by phone or have contact with the family. Well, it turns out, at least as I understand it, that he's going to school with TOM WACHTLER, who lives at the address that's listed at the location of the offense.

Mr. OLSON would go to TOM WACHTLER's home -- TOM WACHTLER being a fellow student -- and would drive up to COLLEGE, so he was at the home; didn't have -- actually, as he will term it he was within two blocks.

He was not there intending to harass anybody, and he was there intending to get a ride up to school. So given what Mr. OLSON's position is, what the main problem he had, number 1, was not reading the order for protection; and number 2, not going to the original hearing so he could tell the judge he wanted to go to Mr. WACHTLER's house to coordinate rides; and with that information, Your Honor, we'll ask the Court to consider release on whatever non-monitor conditions the Court deems appropriate. (Community H, Arraignment of OFP Violation, Case D)

After the court hearing, research team members discussed the case with the prosecuting attorney and learned that the ex-boyfriend had a previous violation of the OFP with this same family. This previous violation was not mentioned in the arraignment and thus not used in the assessment of endangerment for the victims. In the previous violation, the victims (mother and minor daughter) expressed fear of him because they believed he was stalking them. Below are excerpts from the police reports of the previous violation:

Upon arrival we spoke with the complainant, SARAH LYNN BRISSMAN, who stated she was with her daughter, RACHEL OLSON at RESTAURANT in SHOPPING CENTER when they saw DARREN JOSEPH OLSON outside RESTAURANT. BRISSMAN stated she and RACHEL both had an OFP against DARREN OLSON, and she felt he was not to be within two blocks of them at any time....

BRISSMAN went on to say DARREN OLSON has been repeatedly calling their residence from different phones around the city, and she stated that unless her daughter RACHEL answers the phone, he hangs up right away. BRISSMAN stated she felt this was a violation of the OFP, but stated if, for some reason it was not, she wanted this documented to pursue stalking charges at a later date...

180 and I advised BRISSMAN to contact the phone company to have line blocks or call traces placed on her line and pursue charges of phone harassment through the phone company...

BRISSMAN also stated this is not the first time this has happened and DARREN OLSON is continually stalking RACHEL. (Community E, Police report 18)

Making a case for violation of the OFP would have been strengthened if the police report included evidence of the phone calls and the victim's names in that incident had been stated in the courtroom. Six weeks after this arraignment hearing, the prosecuting attorney dismissed the case. The point being made here is to show the invisibility of children in cases before criminal court in domestic abuse cases. In fact, during observations we always knew more about the abuser and his/her needs than anything about the victims—one a minor in this case. This invisibility, however unintentional, perpetuates vulnerability and does little to promote the safety and well-being of children.

### *Pre-Sentence Investigation*

The purpose of the Pre-Sentence Investigation (PSI) is to present information that supports: (1) public safety, (2) rehabilitation to prevent or correct behavior, and (3) punishment for criminal behavior. The PSI is a *pro forma* process, making lists, filling in blanks, and issuing a standard sentence, sometimes three to four times for the same individual over a span of time. It goes unnoticed that the sentences are ineffective for the individual from previous convictions. The stops built into the PSI to take notice of victim safety and the harm done lead nowhere. Probation officers put copies of the Victim Notification Letter and Affidavit for Restitution Form in the file and note “no response or request for restitution has been received” (Appendix 15).

They have met the requirement of the law; the letter was sent. There is no requirement to ensure that it was received or that the victim understood the letter or the process by which she can state the cost of the crime to her. Whether the file is complete or not is irrelevant to the sentence or to follow-up with the victim. Repeatedly, PSI files take note of an offender's increasing violence and threat but this remains a notation in the file. It prompts no additional contact by the system with the victim to discover what is happening to her and her children.

Whether intended or not, it appears that there is an expectation that a woman who has been abused will sever her relations with a violent partner. Where she does not, system practitioners draw a connection between her behavior and this expectation—a connection where she is seen as pathological and problematic. As in police reports, children are sometimes listed by name and age on the PSI report. This report does not always make clear whether the defendant and victim have children in common or whether the victim has children. There is usually no indication whether children were present during the incident. The invisibility of children continues in this phase of the justice system as well.

It is clear the PSI is made up of fragmented information about the offender and the particular crime under court consideration. The fragmented bits of information in the PSI report are never connected in a manner that presents a holistic understanding of the particular case under consideration. This has a costly impact on battered women and their children because no connection has been made to safety or consequences.

### *Sentencing*

The purpose of sentencing is to allow the court the opportunity to impose a consequence for violation of society's laws. Imposing sentence is the responsibility of the judge hearing the case. The judge, presented with a verdict or plea, determines the level of punishment or

rehabilitation or both with the intention of deterring further violence by the individual being sentenced. This judicial opportunity is supported by mandatory guidelines, and numerous policies. The abuser is there with legal counsel, the prosecuting attorney is there to represent the interests of the state, and numerous other court staff are in the courtroom with various duties and interests in the case. The victim is located at the periphery of the sentencing process. She has no distinct standing as a party in the proceedings and as such has no representation. The marginalization of her and her children is furthered where domestic abuse charges are plea-bargained to a lesser charge—often disorderly conduct. 11 of 16 PSI files analyzed for this study involved plea bargains. Some argue that this process diminishes the seriousness of domestic abuse and minimizes the impact of violence on victims and their children. In some ways, the process seems to enable a false consciousness in our society about the breadth and depth of domestic violence in our society. In our review of cases, we noted that the fact that many of the men standing before the judge for sentencing in domestic abuse charges are fathers gets lost. This obscuration of the relations involved heightens the vulnerability of women who have been abused and their children.

In those domestic abuse cases where the charges were not reduced, common sentences were alcohol and drug assessment, to be followed by treatment if indicated by the assessment; no contact with the woman who has been abused, under this charge; stayed jail time, payment of a fine, and probation. Sometimes, but not consistently, judges ordered counseling, domestic abuse classes, anger management classes, and attendance at a victim impact panel. The omission of those sanctions directly related to domestic abuse stand in stark contrast to the stability of the domestic abuse charges. As observers to the process, we made the assumption that sentences which make public and directly address the domestic abuse in order to advance deterrence and



enable offender accountability and rehabilitation. Doing anything else seemed to have the effect of collusion with a process that minimizes domestic abuse charges and cuts off any opportunity to re-educate and rehabilitate men who abuse their partners and children. Deterrence, accountability, and rehabilitation were in fact the very safety factors articulated by both women we spoke with and representatives of the system we interviewed.

The forgiveness of the court regarding plea-bargaining and the omission of sanctions directly related to domestic abuse suggest that some other purpose is actually being served by the criminal court—something other than safety of women who have been abused and their children.

One tribal judge offered the following story on sentencing a man who abused his wife:

This is the third time you've been in here for family violence. One time for child abuse, another was child neglect, and now I've got this report of domestic violence. This shows me a pattern that you are going to cause harm to your children if we don't do something about it. I want to help you help yourself. What I'm going to do is provide you some guidance with these programs. You can learn some skills about how to behave, how to act like a proper father. I'm telling you that you need to go through these programs. "I'm not going to do that. I don't want my kids. I'm going to terminate my kids." That is what this guy told me one time. It is not that easy. You will go to these programs whether you like it or not. I'm hopeful that you will keep an open mind. I am hopeful that you will understand the importance of your behavior. They want a father. I don't know how it can be so obvious to everyone here that you need to do something about it. A lot of these guys say no, it's her fault. She is the one who created this... You hope through these programs that they will develop some sense of responsibility and accountability. One out of ten of these programs actually works. I am a shameless manipulator as a judge. Unfortunately that is not always positive. Then they can say you are controlling me like I'm controlling her. I guess it is power and control. You need to start understanding that this is for you and this is for your family. It is not for me. My job is to make sure that your family is safe. You need to make some changes. Don't blame it on the judge. Don't blame it on me, don't blame it on the social worker, and don't blame it on mom. Take a look at yourself. Look what you are doing. Look in the mirror. Figure out why it is that you are here. You are here for a reason. It is not because all of these people in the room are lying about you. We're here because there is something very wrong with the situation. (Interview Judge, November 2000)

This judge's response shows the individualized character of what should be embedded into aspects of case processing. It was rare that we saw the bench use the power of the judiciary to convey a social message to abusers about their responsibility as a partner or father. Our point

is that children are invisible from the very beginning of system response (police reports) and that no other step in the criminal court system addresses children's needs or well-being in domestic abuse cases.

In sum, it appears as if the criminal court system holds no impression of itself as playing a role in the lives of children whose mothers have been abused. The marginalization of battered women in the criminal court process and the invisibility of children heightens their vulnerability, colludes with a society that refuses to take domestic violence seriously, and allows the criminal court system to be easily maneuvered to consider needs other than those of the victims of domestic abuse. The invisibility of children and fracturing of relationship with their parents does not amplify the alarm sounded by human service professionals in the literature. The invisibility plays a significant role in muting the alarm and silencing mothers.

One rationale for the invisibility of children and the marginalization of their mothers in the criminal court system is that judicial concern for them is addressed by a different court process—the civil court system.

#### *Civil Protection Order Court*

The civil court, in hearing and granting requests for Orders for Protection (OFP), is designed to address the relationships of battered women and their children in domestic abuse situations. OFPs can serve as an instant temporary respite from abusers for women who have been abused and their children. In the state under study, Statute §518B.01 gives the civil court a broad range of powers to intervene on a temporary basis. The intent is to provide an opportunity to take a more holistic regard for women and their children who look to this system for help. Specifically it offers opportunities to strengthen the relationship between a woman who is being abused and her child(ren) through these means of relief:

- Temporary custody to mother
- Child support mandate
- Limited visitation for respondent with children
- Prevention of further abuse by respondent through counseling, chemical and alcohol dependency assessment, anger management classes, batterer's education classes, and so forth.

We were very hopeful in conducting observations of the civil court because of the court's focus on the family and its well-being.

In reality, we found that civil courts hearing requests for OFP did not consistently mandate the relief resources with any depth. We did find that requests for an OFP made by women who were being abused were consistently granted by the court. The basic needs and concerns of the women making the request, however, were consistently ignored or dismissed. We believe the primary reason is that there is no intermediary position within the institutional structure to follow through on civil court mandates in a timely manner. In the current chain of events, a woman files for and is granted an OFP. It is the responsibility of the sheriff's office to serve the order to the alleged abuser. Two weeks later, there is a hearing, usually ten to twenty minutes in duration. Frequently neither party is represented by an attorney, which either party can use to ask for a continuance and delay the hearing. Advocates were typically with the woman, but often had only a cursory understanding of her situation. In sum, this means that by the time the matter gets before the court a significant amount of time has passed where the woman who has been abused and her children are not being provided with support for basic needs by the alleged abuser.

Where the families are dependent upon the financial support of the alleged abuser, this is a significant matter. For example, in this study, we reviewed forty-two petitions for an OFP. We found eight cases where the court was asked to mandate child support from the father. The civil court refused the request for child support in six of the eight cases. Two cases were referred to social services. Assuming that requests for child support are not frivolous, this leaves the mother who has been abused in a vulnerable position in meeting her children's basic needs and in making decisions about a relationship that is harmful to her and her children.

Visitation between the allegedly abusive fathers and their children is often as contentious as the matter of child support. In some cases, it holds greater priority than child support for women who have been abused. In forty-two orders for protection we reviewed, six requested that the respondent have no visitation at all with their children. Only one had the request granted by the court. Nine mothers who had been abused requested supervised visitation. Again, only one was granted. This was particularly interesting in light of the fact that a free visitation center was available for this purpose. This center was specifically requested in three petitions. Only one of these three were granted supervised visitation, and arrangements did not include this center. This speaks to the interdependent relationships between resources designed to serve the court and the court's utilization of resources.

It appears that very little, if any, assistance is provided to women who have been abused and their children in the time period between the court's temporary OFP and when the matter is considered at a full hearing by a judge. The intervening time period is utilized to address the rights and needs of the accused. The voices of the professionals engaged in the civil court process where orders for protection are granted, served, and enforced is very informative:

She [dispatcher] said, 'Here's one thing I can tell you... the Indigenous American cases, a lot of them that we get calls on, don't even go to OFP. They just don't.' (Community H, Debriefing of sit-along 1, October 2000)

When we got back in the [police] car, I [research team member] was asking him [police officer] some questions about serving OFPs. He said... most of the guys that he usually serves are nice guys. He said that in the OFPs the women can say anything they want. So, its really a one-sided thing. (Community E, Debriefing ride-along 2, July 2000)

Prosecutors look at both the safety needs for that woman, as well as the safety needs of the community, and try to balance that. We don't want to turn individual women into sacrificial lambs for the greater safety...It can go so far as to put individual women at greater risk because we're definitely doing some things that are interfering in that home. (Interview Prosecutor, November 2000)

There appears to be no awareness of how the ineffectual nature of orders of protection is a structural or institutional problem. Instead, discussion about the ineffectiveness of orders for protection appears to center on women who request them. Outright victim-blaming, and veiling the structural problems as concern for the well-being of women are common. This is in contrast with the fact that neither women who have been abused nor the professional literature has been silent about the ineffectual nature of Orders for Protection or silent about the impact on battered women and their children.

The advocacy is very good and very informed and...the attorney's involved and everyone kind of knows what is available but under(lying) that and what we don't recognize is that it's a very small community. And what is going through their head(s) is 'If I do this then what is going to happen when I leave the courtroom?' (For Indigenous women who have been abused,) the order isn't worth the paper it is printed on. It doesn't mean anything. (Reported by a Judge, Focus Group 5, February 2001)

It is this time period that is most dangerous for a woman contemplating leaving an abusive relationship. The structural nature of orders for protection is that system response generally does not occur until after an order for protection has been violated. When she is harmed or dead, the order for protection is meaningless to her. When the abuser has made it very clear to her that he can get to her or the children anytime he wants, the order for protection no longer has meaning to her. What is particularly disturbing about the perceptions held by the professionals serving the civil court in domestic abuse cases, is the absence of what women who have been abused find important to their children's and their own well-being – acknowledgment

of their fear, and a systemic response that realistically and meaningfully addresses their fear.

Briefly listening to Indigenous mothers who have been abused we heard the following:

Incident abuse last fall of '97 - May '98 (Home). Ex - been strangling me and drinking. My oldest son saw him strangling me on the floor so he called Police, police came, and Resp. had to leave out of my apartment. No arrest. We separated, Resp. grab my sons by the arm by hurting them to get to him, so he thinks it his rights. My sons don't like him. They also don't him yelling at them, they also sees him abuse me when he's drinking. Michael isn't very good to his sons, he's mean to them. I need protection for my sons and I. I'm tired of looking over my shoulder, and staying up a little late to watch the house and my children. And I don't need him by us. (Community H, Order for Protection 2)

I'm afraid for my life and for my children's. So Resp. called the police last night after I told him I was going to call. My children heard and seen everything. I need this order of protection because I'm afraid of him because he will physically hurt me or my kids. (Community H, Order for Protection 13)

I believe for my daughter's protection, there should be no visitation whatsoever. He scared her many times by yelling at me and trying to pick her up. She doesn't even know who he is. Resp. is very dangerous. I need this OFP for my safety and the safety of my daughter. (Community H, Order for Protection 14)

I want to feel safe for myself and my daughters. (Community H, Order for Protection 29)

Besides assuring that the rights and needs of the accused have been attended to, the order for protection is also intended to provide a period of safety to battered women to make decisions about the needs of her children and herself, as well as to consider her relationship with an abusive partner. Safety and child support are significant basic needs for mothers who have been abused. These needs are generally followed by concern for family relationship. This is especially true for those mothers who want the option of family preservation.

Civil court hearings on orders for protection allow a judge the opportunity to mandate education classes, alcohol and chemical dependency evaluations, and father's parenting groups. Court mandates to include these family support services provide the family with a better chance to support the relationship between a mother and her children as well as to move the entire family toward ending the abuse. Twenty-seven of the forty-two orders for protection reviewed in this study indicated that the woman/petitioner wanted the abuser/respondent to attend education

classes on family violence and batterer's education groups. Judges hearing this request in orders for protection mandated these classes in only three of the petitions. Similarly, twenty-four of forty-two petitioners requested that an alcohol and chemical dependency evaluation be done on the respondent. Three were granted. A multitude of reasons may explain the courts actions in these forty-two cases. What is clear is the desire for family preservation services by women who have been abused. It is also clear that the court was not able to support these requests for family preservation services. This means the order for protection's greatest strength is its symbolic value. Our society gets to believe that women who are abused and their children have a means of gaining protection by being granted an order for protection. This is true for some families. In a class-based society, an order for protection may be a big deterrent for some abusers concerned about having their names in the newspaper. For too many other abusers, public exposure holds no concern. In any social class, the exposure only exacerbates an already difficult life for battered women and their children.

In summary, one of the grand tour questions of this study was to work toward understanding how the civil and criminal court systems promote the Indigenous mother-child relationship in families where the mothers are abused. This interest is based on the Indigenous worldview where it would be inconceivable to deal with the child's needs without attending to those of the mother because their respective needs are strongly interwoven. We have concluded this review of the criminal and civil court system's response to battered Indigenous women by finding that no phase or step in the legal system directly promotes their relationship with their children. When significant protections are instituted, it is the exception rather than the norm. The highly bureaucratic and fractured nature of response to domestic abuse prevents a response that is culturally sensitive or culturally appropriate. This, more than any characteristics of Indigenous

families where abuse occurs, needs to be recognized to promote a legal system of integrity, a system that is more than symbolic to Indigenous people.

### The Disposition of Cases: An Opportunity for Accountability and Safety

#### *Introduction*

From our earliest discussions with advocates, battered women and practitioners in the legal system, we were barraged with stories of cases that had gone wrong. In our investigation, we focused on some of the features of the system that we identified as producing these negative outcomes. In this section, we leave the analysis of a single feature of the system and turn toward an analysis of case outcomes. We had access to sixteen felony pre-sentence investigations and all public court files for the years 1999 through 2000. Jane Sadusky, an advisor to the project, met with us to discuss the PSIs, our interviews and observations, and wrote the following section. Following is a description of five case outcomes involving indigenous women. These cases were frequently cited by advocates and practitioners as failures. We review them here because we saw the failures as caused by the features discussed in the previous sections.

#### *Pre-Sentence Investigation Analysis*

##### The Purpose of Sentencing.

In the U.S. legal system, imposing a sentence on someone convicted of a crime is at the judge's discretion, within penalties and guidelines set by state law. Various mandatory minimums, "truth in sentencing" provisions, and guidelines frame judicial decisions, as do varied philosophies of sentencing. The judge, presented with a verdict or plea, determines the level of punishment or rehabilitation, or both, with the purpose of deterring the individual, deterring general wrongdoing, and improving public safety.



Principles of retribution, incapacitation, specific deterrence, general deterrence, rehabilitation, or restoration might underlay sentencing policy. In the state under study, a “just desserts” philosophy supports sentencing guidelines, with increasingly severe sentences, based on the conviction offense and on the offender’s criminal history (Sentencing Guidelines Commission, 2001). Other states emphasize incapacitation: removing those offenders who are likely to commit further crimes. Different and even conflicting philosophies can exist within a single sentencing system. In North Carolina, “structured sentencing” means different types of sentencing for different offenders, each reflecting a different philosophy. Incapacitation is the rationale for incarcerating violent and career offenders. Notions of rehabilitation and restoration sit behind the community-based punishment for nonviolent offenders with little or no criminal history. Rehabilitation and deterrence support intermediate punishments for those in between (Lubitz & Ross, 2001). A large segment of the public seems to favor a “binary” system: (1) punishment is central and (2) only imprisonment is punishment (Bayda, 1997).

While the judge is looking to deterrence and public safety, the defendant, or offender, represented by the defense attorney, looks for the least invasive and least restrictive State intervention. Whenever possible, the defense attorney will emphasize mitigating circumstances, positive character attributes, and the promise of specific deterrence and reformed behavior.

For the prosecutor, representing the State, the sentence is the culmination of efforts to further public safety and general deterrence of similar crimes. Guilty pleas are the prosecutor’s preferred route, thereby avoiding the time, expense, and uncertainty of a trial. Negotiated plea agreements are therefore common. A defendant offers a guilty plea in exchange for fewer or reduced charges and a less severe sanction (usually less jail or prison time) than might otherwise have been likely. With a plea agreement, sentencing is in essence displaced from the courts to the

prosecutor. It is unusual for a judge to counter sentences determined in this manner. Eleven of the sixteen pre-sentence investigation files analyzed for this study involved plea agreements, all of which were accepted by the court.

The victim is located at the periphery of the sentencing process, having no distinct standing as a party in the proceedings. Unlike the State and the offender, there is no one person to represent her. Her involvement is primarily as a witness, as someone who is in relationship to the defendant, and a possible target of his criminal act. The court's interest and the prosecutor's interest is the particular crime before them. They may seek out information about the impact of this particular, individual assault, for example, but they are not looking for the ongoing impact of ongoing violence, threats, and intimidation.

The victim is also at the periphery of the public safety purpose of sanctions. "Public" safety as seen through the lens of the larger public and its criminal justice institutions tends not to extend beyond the more visible spheres of sidewalks, parks, and roadways.

Where the victim is represented at all in the sentencing process, it is via a Victim Impact Statement or similar document. Where crime-victim advocacy groups have pushed for victim standing in criminal proceedings, the Victim Impact Statement is the textual representation of the victim and her experience. The scope of interest, however, is narrow: "You have the right to submit a Victim Impact Statement, which is a summary of the effect *this* crime has had on you" (emphasis added). It is also a generic crime document, where robbery and domestic assault are presumed to have the same dynamic and impact.

#### The Purpose of a Pre-Sentence Investigation.

In the chain of work-text-work links, the pre-sentence investigation sits between adjudication and sanctions. Its purpose is to guide the court in deciding appropriate sanctions.

The pre-sentence investigation report, or PSI, presents information that supports (1) public safety, (2) rehabilitation to prevent or correct behavior, and (3) punishment for criminal behavior. Any one of these purposes may predominate, or they may work in combination, influenced by the prevailing sentencing philosophy.

Judicial expectations and sentencing philosophies vary and shape the points of emphasis in a PSI. One judge may expect the PSI recommendations to reflect the maximum sanctions available, and have little interest in information about the defendant. Another may want to see a detailed social history that highlights the defendant's background and connections to the community. Some may want to see only a brief PSI and recommendations while others expect a detailed report with substantiating documents. Another judge might value Victim Impact Statements and expect to see them completed and included in the PSI.

The court relies on PSI information to accept or reject a plea agreement and to fashion the appropriate sentence. The judge uses the PSI to determine the combination of incarceration, probation, fines, counseling, and other conditions that fit a particular criminal act. It assists the court in assessing the circumstances surrounding a convicted person's criminal behavior. Is this offender suitable for probation? Is he employed and can he pay fines and counseling costs? What is his history of alcohol and drug treatment? What is his prior criminal record? These questions are addressed in the pre-sentence investigation.

The PSI also informs the probation officer's decisions. In addition to determining whether probation is appropriate, it assembles information that the officer will use to supervise the defendant if the court grants probation. It also presents information that others who work with the defendant can use, such as those who provide chemical dependency treatment or conduct batterers' treatment groups.

### The Process of Constructing a Pre-Sentence Investigation Report.

The PSI is built around the probation officer's interview with the offender. Each probation officer has his or her own style of interviewing. Some prefer a "cold" interview, and collect little information up front, prior to the interview. Others prefer gathering as much information as possible from the prosecutor's file, criminal history records, and prior probation and parole contacts.

The probation officer will typically attempt to establish rapport with the offender and try to "get a picture" of the person during the interview. For example, the probation officer will be looking for any indications whether the offender is willing to change his behavior or whether he generally reacts to questions with anger and resistance. The officer will be looking for patterns of behavior, such as chemical dependency, violence, probation violations, and violent or unstable family relationships.

During the interview the probation officer will obtain or update the individual's social history (parents, siblings, employment, marital, financial, education, and health/disabilities), based on the offender's self-report. He will have an opportunity to give his version of the incident and related criminal charges. The probation officer will review the offender's criminal history during the interview and inquire about what has happened since any previous pre-sentence investigation was prepared, such as chemical dependency treatment, mental health issues, or changes in social history.

The victim does not have a direct role in the pre-sentence investigation. Prior to the defendant interview, the probation officer may have sent the victim written notification of the right to submit a Victim Impact Statement or attempted to reach her by telephone. If she does not return a written statement or cannot be reached by telephone, however, the PSI will not contain

any direct information from the victim about the crime. Instead, the “Victim’s Version/Restitution” section of the PSI report may be completed based upon police reports and information supplied by the offender.

Much of the information in a PSI report is based on that provided by the offender during his interview with the probation officer, plus a variety of documents and sources of information compiled by U.S. legal system agencies and other entities. In this study, the texts and sources available to probation officers, though not necessarily utilized, included the following:

- Prosecutor’s files
- Police reports
- Correspondence between the defense attorney and prosecutor
- Criminal history records
- Previous pre-sentence investigation reports
- Probation and parole records
- State sentencing guidelines worksheet
- Victim Impact Statement
- Victim’s Affidavit of Restitution
- Domestic Related Offense and Information Referral Sheet
- Order for Protection history
- Batterers’ treatment program records
- On-call victim advocate’s interview form
- Chemical dependency treatment records

Documents more directly linked to the victim’s experience and impact of the crime were often missing or incomplete in the PSI files.

The completed pre-sentence investigation report includes the offender's criminal, social, and chemical dependency history, the sentencing guidelines worksheet, and the probation officer's sentencing recommendations. Some PSI reports may have copies of the criminal complaint or police reports attached and a Victim Impact Statement if it has been obtained. Some may reference as an attachment the domestic violence supplement form that includes assessment of factors related to risk of further violence. The result of any plea negotiation is entered on the front page of the report, prior to any details about the crime, criminal history, or the victim's response. If the probation officer disagrees with the plea agreement between the prosecutor and defense attorney, that would be noted in the recommendations on the last page of the report. None of the PSI reports examined for this study showed any disagreement between the probation officer's recommendations and the plea agreement.

All of the PSI reports emphasize criminal history over the specific incident. Criminal history determines sentencing under state guidelines followed by the probation officers and the courts. Therefore, the criminal history is the most complete and detailed section of the report.

Copies of the completed PSI report go to the judge, prosecutor, and defense attorney prior to the scheduled sentencing. The victim does not receive a copy of the PSI, nor does she know its recommendations unless the probation officer has been in contact with her.

#### Pre-Sentence Investigation Files as a Data Source: Findings.

This analysis rests on sixteen felony pre-sentence investigation files drawn from the four counties in the study area. The files included a variety of documents: the PSI report submitted to the court, copies of the criminal complaint and police reports, probation and parole records, supplemental domestic violence forms, copies of the victim notification letter, and correspondence between the probation officer and the district attorney, defense attorney, and

treatment providers. Not every file included all of these documents, although each of the sixteen included the PSI report. The files varied in size, from six pages to ninety-two.

The information in each file was coded under twelve analytical categories (Appendix 16). Overall, we found files with many gaps and points of disconnection between the level of violence and the sentencing recommendations, with no recognizable attempt to ground the recommendations in an Indigenous woman's or man's tribal and cultural connections. In none of the data did we find attention to the children involved in these cases.

1. **Description of This Crime:** *How was this crime (the subject of the PSI) described in police reports and the criminal complaint?* In the misdemeanor cases, the PSI reports had at most a one- or two-sentence description of the crime, i.e., "Put cigarette out on victim's forehead; punched her in the head." The PSI reports in felony and gross misdemeanor cases do not directly describe the crime, but refer to an attached copy of the criminal complaint as the "official version." The judge reading the PSI report cannot determine the details of the crime without also reading the criminal complaint. The complaints and police reports typically note whether the victim and defendant had been drinking. It is often unclear from these documents whether there were any witnesses to the crime and whether police interviewed them.

2. **Violence toward This and Other Women:** *What does the PSI file tell us about defendant's history and pattern of violence?* Information about violence toward this victim and other women is scattered throughout the PSI file and consists primarily of references to other criminal charges. There is no coherent chronology of the violence, nor is there information about the pattern and extent of injuries, threats, and intimidation involving this and other women. Where the file includes a domestic violence supplement, it is frequently blank or incomplete. A judge reading the PSI report will not find much information about the history and pattern of violence.

3. **Related History:** *What has been the defendant's experience with probation, chemical dependency and batterers' treatment, and other acts of violence? What does the defendant say about the crime?* The PSI files contain a variety of related information that may or may not be reported to the court in the report. Many of these defendants have long criminal records, with charges that may have been domestic violence related, but were not identified as such. Probation violations are common, as is a pattern of unsuccessful chemical dependency treatment. Offenders often blame the victim for the violence, casting the problem as her use of alcohol.

4. **Information about Children:** *Does the defendant and/or victim have children? Were children present during the crime?* Children are sometimes listed by name and age on the PSI Report. It is not always clear whether the defendant and victim have children in common, or whether the victim has children. There is usually no indication of whether children were present during the incident.

5. **Past Interventions:** *What kind of past punishment and intervention has the court ordered?* Courts have ordered various combinations of jail or prison time, fines or community service, chemical dependency assessment and treatment, and batterer's treatment. Probation and stayed sentences are common and periods of incarceration relatively short (less than 90 days). Sentences on multiple charges run concurrently and sanctions for probation violations are often concurrent with new charges. The emphasis is primarily on rehabilitation, with probation and directives to attend treatment, regardless of the failure of such intervention in the past.

6. **What Did PSI Find Important?** *What did the PSI report (to the court) emphasize, spend the most time discussing or presenting to the court?* The PSI reports devote most of their space to the defendant's criminal history and social history (names, addresses, and



occupations of parents and siblings; employment, education, financial status, marital status, military service, and health/disabilities, all of which is self-reported). The probation officer's comments consistently focus on the defendant's alcohol use, treatment history, and compliance with probation.

7. **What is Missing in PSI Report?** *What are the gaps between the PSI file and the PSI Report? What is missing from the file and the report?* The PSI file often contains details about the crime that are not included directly in the report that the court receives. Direct contact with and information from the victim is almost universally missing from the file and the report, as is detailed information about the defendant's history of violence. Typically, the PSI Report notes that the "Victim Notification Letter and Affidavit for Restitution" have been sent out, but without response. There is no follow-up to this letter. The domestic violence supplement form is often blank or partially complete. Where it has been at least partially completed, the information comes from police reports and/or the defendant. It is seldom (two of twelve) based on direct victim information or contact with on-call advocates. The supplement may check several risk factors (i.e., threats to kill and violence becoming increasingly frequent or severe), but there is no apparent action and the information is not highlighted in the PSI Report to the court. Safety planning is almost non-existent and no-contact orders are rare. Seldom does the PSI reference protection orders or communication with community-based advocates.

8. **What Was in the File That Court Did Not Receive?** *Does the PSI file contain documents that were not attached to the report?* The judge sees the PSI report and any referenced attachments (a page or two in misdemeanor cases and four to six pages, plus attachments, in felony cases). The PSI file typically contains numerous documents that do not go to the court, although they may reach it via other routes. Some of this material consists of

duplicate copies of reports. It also includes forms from various sectors of the U.S. legal system that frequently duplicate information, particularly criminal history. The files often contain information relevant to the case but not referenced in or attached to the PSI report, such as incident reports from other assault or harassment charges, bail evaluation forms, sentencing worksheets, referral forms and correspondence with chemical dependency treatment providers, supplemental domestic violence forms, and the victim or defendant's correspondence with the probation officer.

9. **Offense to Sentencing:** *What is the length of time between the offense and the sentencing dates?* These cases moved from offense to sentencing between six weeks and eleven months, with an average of four months. There is little indication of any contact between the probation officer and victim within that period. The Victim Notification Letter typically goes out shortly before the sentencing date.

10. **Court Order / Sentence:** What was the sentence for this crime? Was it the result of a plea agreement or trial? Is there information about what has happened post-sentencing? Eleven of the cases involved plea agreements. In no instance did the probation officer's recommendations challenge the plea agreement, nor did the court issue a sentence different than the prosecutor and defense attorney had agreed to. Juries found two of the defendants guilty and in the remaining two, it is unclear whether he pled guilty or was found guilty after a trial. The sentences in all sixteen cases are similar: a period of incarceration (twelve months is the most common, ordered in nine of sixteen cases), stayed for a term of probation under conditions involving a shorter jail term (frequently time served), no use of alcohol or drugs, random urinalysis, and chemical dependency assessment and treatment. Sentences on all multiple charges, plus several probation violations, ran concurrently. Ten of sixteen sentences included batterer treatment. Two included no-contact

orders. None of the sentences directly addresses ongoing victim safety. In twelve of the files, there is supplemental information on continued violence and probation violations after sentencing. Six involve new assaults against the same victim.

11. **References to Tribe-Family-Cultural Connections:** *Does anything in the PSI file acknowledge Indigenous culture and community/family connections?* The PSI files do not refer to Indigenous culture and community or family connections, other than a standard identification of the defendant as “Native American” or “American Indian” on reports and forms and occasional references to tribal affiliation or services.

12. **Discussion Centered on Safety & Respect of Women and Her Relationship to Her Children:** *Does the PSI take notice of the woman and her children, and with what approach?* There is almost no reference in any of the PSI files to ongoing consultation or contact with the woman. There is no information on what has happened to her or her children since the incident central to the PSI. The PSI Report does not address her safety or that of her children. There is no indication of any safety planning involving the woman or anyone who might be of support to her. Only two of the domestic violence supplemental information forms included in twelve of the files appeared to be based on any interview or direct contact with the victim. All highlighted significant risk to victims—for example, “assaults are becoming more violent, brutal, and/or dangerous”—yet there was no indication that the information went anywhere other than the file.

Pre-Sentence Investigations: Absent Qualities.

Throughout this study, we have articulated the qualities that are absent in the U.S. legal system as it affects Indigenous women. This is evident at the point of the pre-sentence investigation.

*A System that is Fragmented, not Holistic*

Pre-sentence investigation reports are comprised of fragments of information about a defendant and the particular crime that led to the conviction. The fragments are listed section by section, but are unconnected to any coherent understanding of safety or consequence. What would make this woman safe? What would make his violence stop? Forms are filled out, filed, and reported without connection, as we see in the analysis of what is missing in the pre-sentence investigation (Column 7 in Appendix 16).

Information about current and past violence toward this or other women may be listed, but with little detail or connection (Column 2 in Appendix 16). In file P6, for example, we find at least four domestic related assault convictions, plus two protection order violations, and two convictions for terroristic threats. The PSI notes two prior convictions of assaulting this woman, plus seven separate police incident reports of reported violence against her in the seven months preceding this crime. The domestic violence supplement notes that assaults have become more frequent and violent and the defendant has threatened to kill her. None of this information, however, seems to influence the plea agreement and PSI recommendations. The PSI notes that the “defendant continues to reside with the victim and her children, and they appear supportive of him,” without any comment on how the level of violence, threats, and intimidation, or economic need, may influence that apparent support.

The PSI report takes time to list a defendant’s criminal history: offense, date, and disposition. It enumerates a quantity of crime, filling in a score under the sentencing guidelines. It makes little connection, however, between individual acts and any larger practice of violence or construction of safety for Indigenous women. There is nothing in the sentencing worksheet for file P2, for example, that articulates the defendant’s long history of violence toward women,

including his partners and mother. Nor is the worksheet linked to the information on the domestic violence supplement that reports multiple blows, severe abrasions/injury, and increasing violence, including choking. The risk level on the pre-trial bail evaluation is blank, in spite of at least eight arrests on domestic violence related charges in the previous five years. The sentence is automatic, based on the worksheet calculation: 21 months, stayed.

The report includes names, addresses, ages, and occupations of parents and siblings, but only lists them. The report lists employment, education, financial condition, military service, and health, but without connection to safety or consequence. This information stands isolated and fragmented. The offender is not connected to the parents and siblings listed; they are not called upon to support either the offender's accountability for his violence or the victim's safety. The pre-sentence investigations repeatedly describe offenders with little education, only the briefest periods of employment, little or no income, and histories of chronic alcoholism. They describe defendants as in "good health," yet two lines later describe them as "chronic alcoholic, no recent period of sobriety," with six Detox stays in twelve months.

One PSI after another recommends that the offender attend treatment, find a job, and pay a fine. There is little connection between the conditions of their lives and the requirements of the sentence. There is no alternative suggested to the rote sentence, which each offender has received once and sometimes many times before: jail time, suspended with probation; chemical dependency treatment, batterers' treatment, drug testing, fines, or community service; concurrent sentences.

### *A System that Disrespects Women*

To be visible and acknowledged—to have a voice—is to be respected. In the pre-sentence investigations, women are nearly invisible (Column 7 and Column 12 in Appendix 16). Their

lives, relations, children, economic circumstances, and vision of safety are unseen and unspoken. However, the forms and reports always note if she was drinking.

Women remain one-dimensional figures, recipients of the Victim Notification Letter or a phone call. If they do not return letters or phone calls, the PSI notes little more than “no response or request for restitution has been received.” If she does not respond, the entry suggests, she must not care about this crime or her future. When she responds, she is represented by two or three sentences under the heading Victim Version/Restitution: “She will not be requesting restitution. She and the defendant are cohabitating together. The defendant has assaulted her on several occasions. She is requesting the Court impose a lenient sentence” (P11).

Probation agents have minimal contact or consultation with women. There is minimal discussion of safety. In many PSI files, the very form intended to ensure that discussion, the domestic violence supplement, remains blank or incomplete (Column 7 in Appendix 16), with the defendant or police reports the source of whatever information has been collected. Chronologies of probation officer actions may have 39, 68, or 105 entries, but no more than 3 contacts with victims, and those primarily to leave a message.

Repeatedly, PSI files take note of offenders’ increasing violence and threats to kill, but it remains a notation in the file. It prompts no additional contact with the victim, no action to discover what is happening in her life, whether she is being threatened, or what she might need to be safe. The question, “What do you need?” is not asked.

A thread of dismissal and blame runs through much of the PSI text: because she is alcoholic, because she still lives with the offender, because she herself has been violent. “Victim is not willing to leave the relationship [as she should]” (P12). File P4 emphasizes the victim’s drinking and implied unfitness as a mother. The PSI presents the victim as a problem for the

defendant: “[he] seems incapable of extracting himself from the victim.” The probation officer supports his attempts to gain custody: “[he] really is pretty softhearted; but he looks like an animal on paper now!” This is the offender who punched and kicked her in the head, threw a gallon of water over her head in -19°F weather, and hit her on the foot and back of the head with a two-by-four piece of wood.

There is a particular tone of disrespect for women who have themselves been violent, and a failure to question the circumstances surrounding their use of violence. The defendant in P13 seriously injured her male partner after he broke a screen window to enter the apartment because she had locked him out. Read alongside other PSI files, the tone is noticeably harsher than that of reports involving male defendants with a similar level of alcoholism and extensive records of violence against women. The PSI emphasizes her alcoholism and poor attitude, repeatedly characterizing her as lying, manipulative, and unlikely to change. There is no similar characterization of the male defendants. There is no inquiry into why this man was breaking into her apartment, whether there is a pattern of violence toward her on his part, or any indication of whether her violence or his is escalating. There are references to, but no details about her “history of violence” and “sexual assault issues,” which suggests a high degree of trauma, including periods of homelessness and multiple deaths in her family. After a cluster of charges involving disorderly conduct, contempt of court, littering, and prostitution, she had no arrests for ten years. The PSI does not provide any information, however, or question where she was during that period, what was happening in her life, and what might have been working for her. Her next arrest, for simple robbery, coincided with meeting this man.

*A System that Lacks Integrity*

The purpose of the pre-sentence investigation is to present information that supports 1) public safety, 2) rehabilitation to prevent or correct behavior, and 3) punishment for criminal behavior. By its own measures, it lacks integrity.

The pre-sentence investigation functions as a *pro forma* process, making lists, filling in blanks, and issuing a standard sentence, sometimes two, or three or four times to the same individual over a span of time (Column 5 and Column 10 in Appendix 16). That this sentence made no difference previously goes unspoken. Even where a probation officer acknowledges that the standard response has made no difference, the elements of the sentence remain the same.

In file P11, the offender has been convicted of domestic assault five times in a three-year period, apparently against the same woman (although the fragmented nature of the files leaves this unclear). In this crime, he kicked the door in, hit her, grabbed her by the hair, threw her to the floor, and threatened to kill her. Past intervention has included stayed jail time and probation. At least twice, he has been ordered to batterers' treatment, the Violence Impact Panel, and chemical assessment and treatment. The probation officer expresses frustration: "This agent is at a loss in making recommendations since he has been afforded all of the programming that we have available. He has been given every opportunity available and has been treated leniently by the judicial system." The sentence: one year in jail (concurrent), stayed, and placed on probation for two years; six months on work release, no alcohol or drugs, random urinalysis, no same or similar incidents, chemical dependency evaluation and treatment, and take all medications as prescribed. Approximately eight months later, he committed another assault against this woman and her fifteen-year-old daughter.



The steps built into the PSI to take notice of victim safety and the harm done lead nowhere. Probation officers dutifully put copies of the Victim Notification Letter and Affidavit for Restitution form in the file and note, “no response or request for restitution has been received.” They have met the requirement: the letter was sent. There is no requirement to ensure that it was received or that the victim understood the letter or the process by which to state the cost of the crime.

The domestic violence supplement is blank or incomplete in some files and dutifully completed in other files. Whether it is completed or not, however, is irrelevant to the sentence or to follow-up with the victim. Numerous risk factors might be checked, but it does not lead to continued contact with the victim to determine the nature of ongoing violence, threats, and intimidation. Similarly, the criminal history is carefully listed, but repeated evidence of domestic violence is not necessarily linked.

Subsequent to the specific crime examined in this study, six of the sixteen PSI files contained information about a new assault against the same victim. In five of these (P4, P9, P10, P11, and P12) the domestic violence supplemental information form was completed without any victim interview. Drawing only on police reports or information from the defendant, the information warns of significant risk and likelihood of further violence: serious injuries; assaults that are more violent, brutal, and dangerous; intimidation; threats to kill her; more frequent assaults; isolation; separation or attempts to separate; and fears that he will seriously injure or kill her. This is all duly reported, but its impact on the sentence is negligible.

Women are peripheral to public safety in the pre-sentence investigation. Longstanding patterns of violence against a particular woman or several women go unnoticed or unconnected. The PSI “goes through the motions” in recommending rehabilitation to prevent or correct

behavior. The same sentence for chemical dependency treatment or batterer's treatment is repeated two, three, five times for an offender. The PSI goes through the motions again in recommending punishment for criminal behavior. Jail time is stayed, sentences are run concurrently, and probation violations go unpunished or are rolled into another sentence for another assault.

*A System that does not Honor Relations among People*

Both victims and offenders stand in the U.S. legal system as isolated individuals. The PSI reveals little about where they stand in relation to their communities, to tribal and clan memberships, to their children, to their families, or to each other. Who is important in their lives? Who will hold a violent man accountable? Who will protect a woman? What resources and strengths exist in their communities and relationships?

The expectation of the PSI is that a woman who has been the target of violence will sever her life with a violent partner – sever her relations. Where she does not the connection is drawn as pathological and problematic. Because she “continues to have contact,” there will be “resultant altercations” (P4). The victim “takes some blame for the situation” (P8). The victim is unwilling to leave the relationship, “as she should” (P12).

The PSI does not honor relations with tribal resources and connections. There are hints that such relations are present, but no exploration of what they might offer to an offender or to a victim, or what barriers they might present in a close-knit community. What might the Indian Education Community Center, the Indian Resource Center, the Shelter for Indian Women, the Indigenous Men's AA Group, or the tribe offer? What might make someone reluctant to use them? The PSI files note reference to these connections, but only as mentioned by the victim or defendant. There is no link made between the potential of these relations and safety or

accountability. One of the two female defendants (P13) states her need to be in a Indigenous chemical dependency treatment program, but it does not happen.

The relational disconnect begins with that between the probation officer and the victim. The woman is peripheral to the pre-sentence investigation, she does not shape the process; she is another information source, along with police reports and criminal history records. Her experience and safety are not at the center of the PSI, and the probation officer's job is not constructed to be her ally.

If Indigenous Nations were to step aside from the U.S. legal system, to take a different path, how might what we describe here as a “pre-sentence investigation” look in a system that addresses the absent qualities? Because our language would change, even the terminology, *pre-sentence investigation*, would change. We might speak instead of sanctions and consequences. We would speak of wholeness and connection and relations.

If we are looking to start a process or system from the beginning – one which would serve to keep Indigenous women safe, promote their relationships with their children, and hold offenders accountable for their violence: one which would *centralize safety* – we would have to include features which have been missing from the pre-sentence investigations we examined.<sup>17</sup>

- A woman's account of events would be elicited and made relevant. What happened and what she now wants to happen would be central to the process. We would “paint a picture,” not only of the event but also of its history and context.
- It would replace what is relevant to institutions with what is relevant to the woman. It would be tuned to her life and understand the supports and relations that are important to her, not only with the offender, but also with the broadest network of tribe-family-culture.

---

<sup>17</sup> Acknowledgement to Justice (retired) Mary Louise Klas for suggesting this approach.

- Real time would govern institutional time. Safety would be built with an understanding of the day-to-day time people live in and how it affects decisions. It would challenge any minimization of the impact of violence on women, children, men, and the community.
- It would account for and be grounded in Indigenous culture: ways of thinking, acting, and doing; ceremonies, spiritual practices, and ways of experiencing relations.
- Protection of children and Indigenous women's relationships with their children would be a grounding quality.

We would, in other words, restore and make central the status of women in Indigenous Nations.

### *Domestic Violence Case Outcomes in the U. S. Legal System*

#### The Proof is in the Pudding.

If you ask me can this system work for Indigenous women, I would simply respond with an old English saying: The proof is in the pudding. If you really look at what ends up counting as a resolution, you know there is a fundamental flaw in this system for all women, but especially for Indigenous women. I say that because there is almost no inch of space in this system that can account for Indigenous perspectives on relationships. (Community Team Meeting, non-Indigenous Advocate, December 2001)

In previous discussions in this report, we have examined how workers are organized to manage cases in problematic ways: ways that fail to capture or reflect the experience of Indigenous women who have been abused. We will now explore how the problematic features of the U.S. legal system and the conceptual practices used to process these cases converge in judicial decisions that routinely under-utilize community institutions when protecting victims of battering and controlling men's use of violence against their intimate partners.

On page 315 of this report on Indian Tribes and the Safety of Native Women, we recount the history of sovereign Nations losing our right to maintain our own mechanisms of social control over violent offenders. For decades, many have assumed that the U.S. legal system can do it better than we can. There is a further assumption that if Indigenous Nations were to recapture our lost right to govern, we should do so by gradually assimilating to and replicating the U.S. legal system. However, we found few signs that the U.S. system actually protects women from the historic form of violent control.

#### The Product as a Reflection of the Process.

Below are six cases which show how the U.S. legal system produces outcomes which are either irrelevant to the protection of women, or actually act to collude with, embolden, or simply ignore men's use of violence against Indigenous women.

##### *Case 1: Ben Matthews*

Ben Matthews was convicted of three separate offenses that he committed during the same event: driving after cancellation (of his driver's license), driving under the influence (of alcohol), and 5<sup>th</sup> degree domestic assault (a misdemeanor). The judge, defense attorney, and prosecutor discussed at length whether the imposed sentences should run concurrently, meaning that Ben would serve all the jail sentences at the same time. They finally agreed that, in this case, the defendant would not serve any jail time at all. However, if he were to re-offend, any or all of these sentences—or a partial sentence—could be imposed.

*THE COURT:* All right, I guess it's...the sentence in the Driving After Cancellation is a year at the Correction Center, and a \$500 fine. And the \$500 fine is an executed sentence. And the rest of it is stayed in favor of two years of probation. And on the Driving Under the Influence, it's 90 concurrent and \$700. And I guess the end result, there is a \$700 fine, is what we're looking at. I don't know why we make these things so complicated. The fine on the other, if it's concurrent... the domestic adds absolutely nothing. I won't even announce it. It's another 30-day sentence concurrent. All of it is stayed for

probation, concurrent. Conditions are: abstain from the use of alcohol, enter and complete the treatment program, do the aftercare, do 30 on the monitor, submit to testing as required or requested, complete the Domestic Abuse Program, and don't have any incidents. Obey all laws over the course of the two-year period. Now, did I miss anything? Okay. (Community H, Sentencing Transcript I3)

In summary, driving on a suspended license netted Ben a one-year sentence that he did not have to serve, even though it was a repeat offense. He was fined \$500. Driving under the influence resulted in a 90-day sentence that, again, he would not serve unless he violates the conditions of his probation. He was fined \$700, \$200 of which he was required to pay. The assault against his partner added “absolutely nothing” (Ibid.) to his sentence. It did not even merit a comment from the bench. He is instructed to complete a series of classes on battering and advised to not “have any incidents” (Ibid.). According to the police report,

She had a slight swollen area to the back of her head apparently caused by a baseball bat....She had a slight red area on her lower left jaw from being slapped. HERMANS (victim) had a black and blue mark on her upper left arm from being bitten and an abrasion on her right forearm that was slightly swollen and turning black and blue. ALL of these injuries were caused by MATTHEWS. ... Photographs of HERMANS' injuries were taken...HERMANS states that she believes MATTHEWS could seriously injure or kill her. (Community E, Police report 57)

This case is not unusual. The fact that the assault ultimately receives little notice, and no thoughtful consideration, is normal. Indigenous women are criticized for not actively pursuing (or even participating in) cases with this kind of outcome. The human experience of being beaten by, or of beating, a person you love(d), is lost in the endless counting and tabulating that characterizes this process.

### *Case 2: Erik Belknap*

Erik Belknap head-butted his partner and broke her nose. He was arrested and charged with domestic assault. Eric has a long history of violating probation. Over the years, the court has issued several protection orders against him, which he has violated on several occasions. He was convicted of assaulting his ex-wife two years prior to this event. The following plea

agreement was made in this case: if the probation officer found the defendant amenable to probation (that is, probation appears to be an appropriate sentence), Eric would not serve jail time. During the sentencing hearing, however, the judge expressed concern about the victim's safety and the record of recidivism of the offender and stated that she wanted to change her mind. The judge, who had not had a chance to read the file before approving the plea agreement, stated, "...I think I gave away my jurisdiction to do anything" (Community H, Sentencing Transcript B). She goes onto say:

This wasn't an isolated, only incident. He's been convicted of terroristic threats. The assaultive behavior in this case was extreme. I think it's undisputed that AMANDA was head butted and dragged and punched and she thought she had a broken nose. It continued over a period of time. I'm just very, very concerned. And I don't think that there's anything I can do about it right now because I accepted his plea. And it's not my role, I guess, to talk probation out of an opinion. (Ibid.)

Nonetheless, the judge did not believe that she could change her decision to one that would centralize the safety of the victim and her children. Here, she asks some important questions,

Why do we have to approach these from an all or nothing approach? Why does it have to be 90 days in jail or complete probation? Why aren't we building in some kind of punishment component from time to time in the appropriate case? Some jail time and then he gets out and the balance is stayed and hanging over his head? (Ibid.)

The questions go unanswered, but moving the case along prevails. If the judge had rejected the plea, she would have had to start the whole case over, and nobody wanted that.

Practitioners seem to be at a loss for appropriate responses when offenders and their victims reunite after violence, perhaps indicating that the system is scripted to work better when victims decide to separate from their abusers. It seems to not have a clear means of ensuring the safety of victims who stay with their abusers. In the Belknap case, the defendant and the victim live together and, even though he has assaulted her many times, they have long-term plans together. Amanda has told the probation officer she wants Eric to move with her to another city.

Although the court is aware of the extensive history of abuse, it also knows of their plan to move together. During the sentencing decision, it gives that fact more significance than the safety of the victim and her children.

PROBATION OFFICER: Your Honor, I met with Mr. Belknap today and I also had an opportunity to meet with his girlfriend, Amanda Dunlap, who is the victim in the domestic assault. The two of them are currently living together. They've just rented an apartment in CITY2...Apparently, Amanda has gotten a new job working for CITY3 prison and so she's going to be starting that real soon. So they needed to be down in that area. (Ibid.)

The probation officer offers a rather bizarre argument that Eric—who recently separated from another woman he abused and has a long history of alcohol abuse—is going to be the primary care taker of Amanda Dunlap's children, while his latest victim goes to work everyday.

PROBATION OFFICER: The two do plan on staying together. Ms. Dunlap, the three children that she has, the third of which is his child, as well, she said that he cares for them during the day when she's working. The children very much like Mr. Belknap. They are very close to him. He's very good with them. She says when he's not drinking, he's just a very nice man. (Ibid.)

This, of course, is the same legal system that removed Angelina's children from her for living with an alcoholic batterer (see "Data Analysis" section for a discussion on Are you a Good Parent?). In this case, the probation officer presents Amanda as a strong woman, ready for any eventuality. She says,

And I don't see her being the kind of person who would just let that slide if anything should happen again. She's told him, 'I will call the police and you will go to jail.' And it's simply the way that it is. She seems to feel very confident about being, you know, being able to deal with this situation. (Ibid.)

The defense attorney echoes this sentiment: "[A] very strong woman, who very much takes control...[S]he has been very strong in showing and knowing what needs to be done and in helping Mr. BELKNAP to understand what needs to be done" (Ibid.). The assumption that a "strong" woman has the power to stop her abuser's violence emerges from the troublesome belief that women participate in their own victimization.



*Case 3: Marianne Willis*

Marianne Willis was convicted of assaulting her partner who had been abusing her for a number of years. Her sentence transcript illustrates the futility of trying to communicate with “the system,” spoken of by many women in our focus groups.

Marianne is expected here to provide “yes” or “no” answers, not to talk about her opinions. The judge circumvents a discussion by assuming her problem with the Alcoholics Anonymous program is actually a problem with God. The probation officer makes a different assumption and Marianne becomes silent as the two debate the source of her problem.

*THE COURT:* Ms. WILLIS, have you attended AA in the past?

*THE DEFENDANT:* Yes, I have.

*THE COURT:* How do you get along there?

*THE DEFENDANT:* Just fine.

*THE COURT:* Does it help you stay sober?

*THE DEFENDANT:* Yes, it does.

*THE COURT:* Given any thought to going back?

*THE DEFENDANT:* I’ve given it some thought, but there are some of the AA philosophies that I just don’t agree with.

*THE COURT:* You don’t have to agree with them all. You can still go there and benefit from -

*THE DEFENDANT:* Yeah, um-hum.

*THE COURT:* -- being near and around and visiting with people who stay sober. Right?

*THE DEFENDANT:* Right.

*THE COURT:* I mean, I recognize there’s a lot of people go to AA that don’t quite buy into the God/spiritual part of it.

*THE DEFENDANT:* Well, that’s not the part--

*THE COURT:* But they still get a chance --

*THE DEFENDANT:* -- that I was referring to--

THE COURT: -- to talk to and deal with --

THE DEFENDANT: -- but...-

THE COURT: What's that?

THE DEFENDANT: I said that's not the part that I was referring to but I --

THE COURT: Well --

THE DEFENDANT: -- I don't have a problem with attending AA.

PROBATION OFFICER: Your Honor, I think again that piece has to do with her identifying with Indian culture. And it may be more helpful if maybe like INDIGENOUS SHELTER has a women's group or something. So it doesn't necessarily have to be AA, but maybe some other --

THE COURT: Well, --

PROBATION OFFICER: --group that's available.

THE COURT: --in the event that there is not an indicated need for a formal or structured alcohol or substance abuse treatment program, the Court would order that Ms. WILLIS and the probation officer sit down then and agree on some other support system that's agreeable to both parties. Okay?

PROBATION OFFICER: (Nods head.)

THE DEFENDANT: (Nods head.) (Community H, Transcript A1)

#### *Case 4: Michelle Petuin*

In another sentencing hearing, we watched Michelle, an Indigenous woman, try to talk about what had happened to her. But the judge, who presumably had already made a decision, wanted to cut the conversation short. Michelle begins to tell her story:

And Mr. LARSON, from the time I met him, was really nice and sincere. And I didn't see any negativity in him, and I also didn't see any hostility in him. And I just felt that we could have a good relationship....he grabbed my hair with his left hand, and like this [indicating], and he sucker-punched me as hard as he could in the face twice... (*Off-the-record conversation between judge and defendant's attorney*). (Community H, Sentencing Transcript F)

It was after 4:00 p.m. on Friday. Even though Michelle had rambled a bit in her statement to the court, she had only talked for a few minutes. She continued:

And he grabbed my feet off the couch, just straight out like this [indicating], and I landed really hard on my head on the floor. And I felt like I was part of the carpet. I couldn't move. And all of a sudden up, and Richard Larson took his left hand and slugged me in the nose again and again and again and again in the same spot, right on my nose, and I felt my nose was crackin'. And on the fifth punch, my whole face exploded, and I had blood going everywhere, and I was trying to move my face so he couldn't punch me anymore in my nose. (Ibid.)

The judge and defense attorney have a second off-the-record conversation. During these interludes, people come forward and speak at the bench while Michelle waits to finish her statement. She then continues her reaction to the plea agreement, a right she has by law.

MICHELLE: ...All I -- all I tried to do is like somebody and help 'em. And the only thing I had, that I really discussed with the parole officer is that, why do they let men out of prison when they don't give 'em a mental -- a mental evaluation to see if they're ready to go out? Richard beat me up within 23 days of release out of work release. And if it wasn't for me, for me saving those kids, I don't know what would have happened to them. And I believe that Richard was on something else other than drinking. He didn't even act --

THE COURT: Ma'am, I'm going to interrupt. You know, I--

MICHELLE: That's fine.

THE COURT: You know, I think we all understand that there is no fair or reasonable or rational explanation for what's happened to you. I mean, you know, nothing I can say here today is going to make you feel good about it or better about it, because there is no reason to feel good or better about it. All we can do at this point is do the best we can to do justice, I guess, and follow the law that applies, and then make the best of it and go on.

MICHELLE: But why is it that -- why is it that when I -- when Richard pleaded guilty to Third Degree Assault, I had -- I was told that I had no rights from that point on? Richard has the rights. I was the one that was beaten. I was the one that was humiliated. I was the one that had to walk around. Richard doesn't know how -- how it felt for me to have no face. And Richard needs to take responsibility for what he does. I take responsibility for what I do. And I taught my kids that. But I'm sorry, Richard does have responsibility, and I'm not -- I'm not the reason for this. I do have rights. And I don't feel that since this has all gone on, I have any rights at all. I believe I'm just a pawn, I was a victim. I've got victimized for a year. I'm not a victim anymore. I'm a survivalist now. And even though this may not help my case, I'm going to be an act- -- activist for domestic violence.

THE COURT: All right, thank you, ma'am.

MICHELLE: That's all I have to say.

...

MICHELLE: Well, I have all the slips here. But it states that if I didn't --

THE COURT: Ma'am, please, just -- we'll be here till midnight. Is the order still in effect, the Order for Protection?

MICHELLE: Yes, for two years.

THE COURT: Okay. Ma'am, like I say, there's nothing I can say that's, going to make you feel better about this, and I suspect that there's nothing anybody can say. The Court has -- has to follow the law that is provided. You know, I don't get the opportunity to make the laws, and I have to apply the law as it's given to me.

...

MICHELLE: Can I ask him one thing?

THE COURT: Certainly.

MICHELLE: Can he see those pictures (a set of six pictures showing severe injuries to her nose, chin, left ear, both eyes, legs and back)? He's never seen what he did to me.

THE COURT: Certainly.

... (Proceedings concluded at 4:37 p.m.) (Ibid.)

This sentencing hearing culminated a process that began with a 911 call over one year ago. After several surgeries, six hearings, months of waiting, a number of threats, and interviews with at least nine different practitioners, Michelle sees the judge as having the power to bring some kind of justice and closure to her horrifying experience. Instead, she was treated as a nuisance in the process. Hearings like Michelle's illustrate how problematic processes bring about a case resolution that is detached from the human experience of women who are abused by their partners.

#### *Case 5: Frances Zonia and John Rider*

An advocacy organization wrote a report to the chief judge of the judicial district in which this study was conducted. The report highlighted cases in which intervention processes failed to centralize victim safety. Three of the cases involved Indigenous women, one of whom is Frances Zonia. The information that we are citing from police reports, court records, etc. came from this report.

In March of 1996, John Rider was charged with two 5<sup>th</sup> degree gross misdemeanor domestic assaults. His victim was Frances Zonia, an Indigenous/Latina woman. The police report stated, “Zonia had bruised eyes, chin and lips, and scrapes and marks on her back and shoulders.” According to the police report, witnesses saw Rider punch Zonia four times. Zonia stated to the police that she had been beaten and kicked, and that the scratch on her throat was caused by a butcher knife. Rider was released with supervision and no bail the next day, under conditions that he: report weekly to a probation agent; use no alcohol or drugs; maintain a separate residence from the victim; and refrain from harassing, threatening, or harming the victim. The advocacy report does not indicate whether these conditions were met, nor to what degree Rider was supervised.

In April of 1996, while Rider was on supervised release, police responded to another 911 call. According to the police report, Rider hit Zonia twelve times in the face with a closed fist, and twice to each side of her head with a bottle, but he left the scene before the police arrived. Zonia told police that Rider kicked her and tried to choke her. She said he was intoxicated at the time of the assault. No warrant or charges were filed. Detectives tried several times after the incident to interview both Zonia and Rider, but could not locate them. According to the advocacy organization, both Zonia and Rider were considered by the police and the court to be “alcoholics” who had ongoing problems with violence. “In many ways, Zonia was seen as a victim because of her alcoholism and her dependency on Rider for alcohol. The talk in the courtroom was that she had a ‘street lifestyle’” (Interview with report’s author, December 2001).

In June of 1996, Rider was charged with another 5<sup>th</sup> degree domestic assault and released after arraignment, even though that assault clearly violated the conditions of release previously imposed. Rider’s criminal record shows he has committed many assaults over the years. He was

convicted of 1<sup>st</sup> degree murder in 1968. Other convictions included assault with a deadly weapon (1978), battery (1982), and battering and endangering the health of a child (1982). He is not typically the kind of person who would receive supervised release rather than tighter forms of control (such as being held in jail). The involvement of alcohol and his perceived “lifestyle” may be why Rider was not treated as a potentially lethal person.

On June 27, 1996, Frances Zonia’s beaten body was found in her apartment. She had been dead for approximately three weeks. The following week, Rider failed to appear for a pre-trial hearing on the charges for assaulting her in March. In August of 1996, Rider’s probation was revoked and he was arrested again for violation of probation. In September, three months after Zonia’s death, he pled guilty to 5<sup>th</sup> degree misdemeanor assault from the March incident. No practitioner mentioned, in any hearing or court appearance, that the victim had been murdered and that Rider was a suspect in that murder. He was sentenced to 56 days in county jail. Two years later, he was found guilty of murdering Frances Zonia and sentenced to life without parole.

#### *Case 6: Mike Schultz*

Mike Schultz was charged with two counts of 5th degree domestic assault in July and September of 1997. His victim was his partner, Amy Keil. One arrest report stated that there was “a large amount of blood on Keil’s (victim) face due to a number of blows which occurred in front of the children.” Schultz pled guilty to one count, and the other was dismissed.

In March of 1998, less than four months after his first conviction, Schultz was arrested again for assaulting Keil and, this time, her daughter Sarah. Her youngest daughter ran to a nearby hospital and called the police. According to this arrest report, Keil had a “swollen eye and a cut lip that appeared to need medical attention,” and she had blood coming from her mouth and

a large bite cut on her hand. Keil reported to the police that Schultz slapped Sarah on her face. Five months later Schultz pled guilty to assaulting Keil, but the assault case involving Sarah was dismissed. Schultz was sentenced to one year at a local correctional facility, but the sentence was stayed. Instead, he was placed on probation even though he was already on probation for the first assault. He was ordered to pay a \$900 fine (that was later reduced to \$50) and attend both alcohol counseling and a batterer's education group.

Four months later, in December, Schultz was arrested for a felony assault. The police report indicated that Keil had a semicircular cut on her cheekbone from being punched while she was wearing glasses. In the police report, Keil reported that, "she was scared because she didn't know how badly she would be beaten. Keil stated that her cheek was held in place with screws due to a beating by Schultz in 1996." During the arraignment, Schultz was ordered to have no contact with the victim, and bail was set at \$8,000. Schultz was released after posting an \$800 bond. Schultz's probation officer, disturbed by his release, charged him with violating the "no drinking" clause of his probation. Schultz pled not guilty, and was again released. The court decided to hear both cases—for the assault and the violation of probation—at the same time and set a trial date for the following August. This time while Schultz was out on bail, he killed an Indigenous woman, Kay Benson, who was in town to testify at John Rider's trial for the murder of Frances Zonia. Kay Benson, who was found face down in the sand at the edge of a lake, died from multiple blows to the head.

Both Kay and Frances were alcoholics. Kay had a history of being violent towards her partners and others in the "street community." She was also a former lover of Frances'. A number of Frances' partners had physically abused her; one of them was Kay. During John Rider's trial for Frances' murder, his defense attorney tried unsuccessfully to convince the jury that Kay murdered

Frances in a fit of jealous rage. The media had a field day and Kay was vilified as a violent, alcoholic, Indigenous lesbian. Mike Schultz and two of his friends were unconvinced by the jury's decision that Kay was not, in fact, guilty of murdering Frances. They were presumably looking to get some "street" justice for Frances when they sought and killed Kay.

The deaths of these two women were reported by the press as a convoluted mixture of alcoholic lifestyles and domestic abuse gone to an extreme. However, both murders were committed by repeat domestic violence offenders who many thought should have been incarcerated at the time of these murders. Kay and Frances were both killed by men who had repeatedly abused women but who were free on bail, despite the court's knowledge that they had both violated the conditions of their release on numerous occasions.

#### Remarks on Alcoholism.

Frances Zonia's case is not an anomaly. While we could not have predicted that Frances would be killed, we could have predicted the death of someone who lives under these conditions, given a system that has such crude mechanisms for identifying who needs protection. Frances' case plainly illustrated what we had repeatedly glimpsed: when a woman is an alcoholic, her situation is considered a "lifestyle." This term implies choice, and makes invisible or irrelevant the ongoing illegal abuse. From the 911 call through each step of the process—including police reports, pre-sentence investigations, psychological evaluations, and case notes for social workers—we found a constant pressure to reference alcohol as a contributing factor to the violence. Alcohol, as a cause of violence, creates a common understanding among practitioners: if the woman will not stop drinking, we cannot help her.



It is important to understand the role of alcohol in the violence that Indigenous women experience.<sup>18</sup> The use of alcohol can make a woman more vulnerable to serious injury for two reasons: it compromises her ability to protect herself, and makes him likely to use more violence than he intended. However, we found its presence to be a predictor of less, rather than heightened intervention. Police reports are peppered with information about alcohol, but no consistent documentation guidelines seem to apply. Sometimes references to alcohol subtly redefine the domestic-abuse situation as “normal” marital conflict, requiring no more intervention than separating the feuding parties until sobriety takes over. Here are some examples:

Complainant called and wanted ROBERT POLLA removed from the home. Officers arrived and found LISA had been drinking. Both were arguing. ROBERT volunteered to leave the house for the night. (Community I, Police report 102)

In another report, officers wrote:

Responded to a verbal domestic at ADDRESS. Upon arrival, we spoke with NESJE and WISNESKI, both stated they were just arguing and that there had been no physical altercation. Both parties appeared to have been drinking. Both parties were advised on their actions and told to go to bed. (Community H, Police report 6)

In those and similar cases, the parties’ use of alcohol appears to preclude the officers from investigating the woman’s level of fear, let alone any history of violence between the couple. In the two examples above, officers do not identify a victim, nor do they interview the parties separately to determine if either is in danger. Their use of alcohol appears to allow the responding officers to ignore the possibility of, or potential for, violence. One of the police officers who participated in our investigation summarized this perspective:

---

<sup>18</sup> Alcoholism is a major problem for us as Indigenous people. It has been a powerful tool of global cultural disruption for Indigenous people. In North American Tribes, it has played a major role in the use of violence against Indigenous women. The imposition of European notions of women as “less than,” dangerous to, or possessions of men, into the consciousness of Indigenous men is inextricably linked to the use of alcohol, as both were instruments of colonization.

It is more difficult to respond to a domestic when there's drinking involved. It's more frustrating. This may not have happened if drinking were not involved. Everything we are working for will be invalid. They will sober up and be sorry in the morning. Those who are sober, are experiencing real domestic abuse. I may not want to arrest someone who is fighting over the last swig of vodka. You see more of a difference downtown than you do other areas. You can't deal with the domestic violence until you deal with the alcoholism. (Interview of Police officer, September 2000)

This disturbing analysis reflects the institution's lack of understanding about the complex dynamics of domestic violence. In particular, it ignores a woman's recurring experience of violence at the hands of her male partner. Implicit here is a redefining of domestic violence when it occurs under the influence of alcohol; neither is the violence serious, nor is the offender fully responsible. According to a one police officer, "Alcohol causes people to flip out. You know, liquid courage. People do very stupid things when they've been under [the influence of alcohol]" (Community E, Ride-along 7, October 2000).

Here alcohol is identified as the *instigator* of violence, implying that otherwise there exists little threat to the victim's safety. It is understood that some people drink too much, and if they could stop drinking, they would stop hitting. There is an implication that the violence against women committed where alcohol is involved does not fall within the category of "real" domestic violence. Women in the talking circle indicated that the responding officers did not believe their stories of being abused if they were drunk. One woman said,

A lot of times, me being a Native American and also being an alcoholic, that they didn't treat me like they would another person. When I've called the cops, they'd come and say, 'Oh, it's just these guys again. Either split up or quit your drinking.' ... And the other times, [they would] just come and talk to us, 'Well, can you guys be OK now and one of you sleep on the couch and one of you sleep in the bedroom or something?' (Focus Group 1, October 2000)

This perspective may be complicated by a gender role ideology that views a woman's drunkenness as increasing her culpability, and men's drunkenness as a mitigating factor. A drunken woman is considered not a "real victim," whereas a drunken man is not a "real offender" (Interview with prosecutor, November 2000).

In one of the communities we studied, police perceived alcohol to be involved in almost every domestic-abuse 911 call from the Indigenous community.

[U]nfortunately, I have to just say that drinking has almost everything to do with almost every call...As far as just specifically domestic violence, the calls that I have personally been on, I'd say that 95% has something to do with drinking...In almost every case we go on, either one or both, or the whole family has been consuming alcohol and wise choices are not being made. Levels of intoxication vary... [but] drinking is involved in almost everything we do. (Community E, Ride-along 7, October 2000)

In cases involving suspects who were intoxicated, the court focuses more on sending the offenders to alcohol treatment programs than crafting sentences that address the intersection of loss of identity, loss of traditional values, alcoholism, and an Indigenous man's use of violence against his partner. One of the prosecutors summarized this point:

[The judge] will be much more inclined to buy the statement that the defense attorney might make that says 'my guy just has an alcohol problem, let's just deal with that.' ...He will buy the argument that everything will be hunky-dory if the guy gets treatment for his alcohol problem. (Interview Prosecutor, November 2000)

Often, promises to "get sober and stay sober" seem to sway the court. Many practitioners in the legal system in this region will accept offenders' promises to stop drinking. The following sentencing hearing involves a man who had beaten his partner severely:

PROBATION OFFICER (PO): ...And then in talking with defendant about this situation, he tells me that, during the event of this incident, that he had been drinking pretty heavily. Very heavily. In fact, he doesn't recall even having done what he did. Apparently Amanda, as you know, had sustained a pretty significant injury from the head butt . . . When he called from jail, he really truly didn't seem to know what happened. And when she told him what he had done, he was very, very remorseful and was wanting, you know, wanting to make things work and was willing to not drink, that kind of thing. (Community H, Sentencing Transcript B)

The prosecutor subsequently agrees with the probation officer's assessment that the alcohol seems to be the culprit in this case, even though the offender has a long history of domestic violence. The prosecutor responds to the judge's questions about a sentencing agreement that includes no jail time, despite the offender's history:

PROSECUTOR: [T]he decision that has to be made or the judgment has to be made is, 'Is this person...sincerely motivated to do the things they need to do to take some positive steps and to avoid the type of behaviors that will greatly increase the risk of further criminal behavior?' ...I think the alcohol problem appears to me to be—it sounds like more significant than an anger problem, per se. The way the victim describes Mr. Belknap it sounds like it's in terms of when he's not drinking, he's fine...And the other question, I think, the Court needs to look at is which is going to be better as far as the likelihood of protecting the victim from further harm: 60 days in jail, of actual jail time? Or being on probation with the risk of doing additional jail time and with the possibility or the probability of some positive steps as far as avoiding drinking, doing treatment, that kind of thing? It sounds to me like there is greater risk to the defendant -- excuse me, to the victim -- of further victimization if Mr. Belknap is simply put in jail at this point, if he's not given the opportunity to do probation. (Ibid.)

Mr. Belknap has been on probation numerous times in the past and has never complied with its conditions. Despite this history, the prosecutor advocates for probation that allows him to leave the county with his fourth known victim and her children to another county where there is no chance of supervision.

JUDGE: Has Mr. Belknap voluntarily done anything since this last incident on July 1st to treat his alcohol? Has he gone to AA?

PROBATION OFFICER: Not that he has told me, Your Honor. But both he and Amanda report that he has not drank since this incident. (Ibid.)

### Conclusion.

The above cases reflect how the everyday courthouse bargaining process seems so dangerous when we look back in a death review. Yet, upon close observation of the system, it is easy to understand how routine practices can make these kinds of decisions—the ones that appear alarming to people unused to the system—seem normal. In fact, these decisions are made dozens of times a week, hundreds of times a year. Cases are bunched together for expediency, supervised release is ordered to prevent jails from filling up with poor defendants who cannot afford good attorneys, details of the violence are rarely mentioned because they are not yet established as facts, overloaded workers with highly specialized jobs perform routine tasks and pass cases along. No one sees the homicide coming. When someone is killed and the flag of

inquiry is temporarily raised, people ask, “How could we have picked this one from all the others?” In hindsight, it seems as if anyone could have seen it coming. But, in reality, the processes in the system do not allow for that level of foresight.

Appendix 1 lists all of the acts of violence committed against Indigenous women in the police reports and protection order affidavits we read. None of us sought to lock up all the Indigenous men who committed these acts of abuse. However, we did look for indications that the institution charged with upholding community standards of behavior would actively intervene with these men—men who themselves had been the objects of violence and who brutally turned on the mothers of their children, their partners, the women of our community. What we found instead was a legalistic routine that left the human qualities of Indigenous women’s and men’s lives out of the process, and ignored children almost entirely. We did not find this to be the work of thoughtless or uncaring people, but a process that is inherently flawed and produces neither protection nor the seeds of change for Indigenous communities.



## FINDINGS

## Introduction: Indigenous Values and the Law

After spending a full year explicating the problematic features of the U.S. legal system and pouring over our data, as described in the section on Methodology, we kept returning to four values that seemed absent in this system. We conclude that a system must *honor all our relationships*, be *holistic* and *respect women* in order to have *integrity* for Indigenous people and communities.

## Honoring Relationships

My family gathers sweetgrass today. We travel to the site where we have always picked. A truck and other conveniences make the trip and preparations much easier now than it was for my father as a child, or for his parents before him, but this short trip, taken over and over again by my family and ancestors, and the ceremony within which we gather the sweetgrass, seem otherwise unchanged. We know all the eagle nests along the way, notice each new patch of wildflowers, observe the water level of a handful of rivers and creeks, and see that young partridges have already gathered along the road to pick at the glacial gravels.

When we arrive at the spot, we know how to scuttle through the muskeg ditch along a path so that none of us will slip and disappear into the muddy quicksand of the bog. My mom and I gather our first twelve green strands of the grass, braid it, and hand it to my dad. My dad offers some tobacco and recites a Cree prayer, then hangs the braid gently on a tree. This I will do someday, as will my nieces and nephews after me.

We each find a spot in the grass and start picking. Each individual piece is pulled gently from the earth and cleaned off until twelve strands can be tied together with one more piece. This time we tie the strands together with red yarn. These braids will be for my giveaway.

Sitting on the ground, I smell the sweetness of the grass and watch as the slender blades brush, bend, and twist together in the slightest breeze. Bear musk hangs over the heavy scent of the earth. Little bugs march around and over my body as though I am no more and no less than the landscape they are traversing. For that brief time, we all exist in perfect harmony.

We place the sweetgrass strands on a sheet and soon have gathered enough. We lovingly wrap up the large bundle and start the journey home. We will lay the strands out to dry at home and braid them a few days from now. I will take care of the braids until it is time to give them to friends and other family members.

In Cree and Ojibwe communities, sweetgrass is a sacred plant and medicine that connects us physically, spiritually, emotionally and cognitively to our present, past and future. When our ancestors died, they returned to the earth to become part of the soil in which sweetgrass grows. Our ancestors are substantiated in each blade of sweetgrass. When we light and burn a braid in ceremony, our relations are released to us. We are connected, protected, calmed and reflective.

In sweetgrass ceremonies, we and all living creatures are drawn more closely together, both within the limited physicality of here and now and across the limitless extent of time. This sense of place simultaneously empowers and humbles us. Our ceremonies honor relationship and remind us that we not only are connected but also are accountable to each other. In burning sweetgrass, we invite our ancestors to be our witnesses.

The centrality of connection and the correlative of accountability are fundamental ethics of indigenous cultures. We learn that all that we do is done for, to, and with others, including our family and community. Our connectedness and the accountability that goes with it are not just a set of behaviors—they constitute who we are. When we gather sweetgrass, we draw on the knowledge our ancestors accumulated, follow the paths they cleared for us, share the gifts they reserved for us, then watch over and prepare the next generation to continue this task. Each of us brings our share to the group. Braided together, the single strands of sweetgrass become a powerful whole, an expression and substantiation of our relationships

These traditional values, however, are difficult to preserve in the legal response to violence against Indigenous women. Throughout these legal processes, assaults against women are treated as the actions of individual offenders against individual victims, or of single offenders against the state. Offenders and, in many cases, their victims are separated from their families and communities and isolated in treatment centers and prisons. From the initial contact of a 911



call through the resolution of cases in civil and criminal courts, many of the legal system's practices value opposition and isolation; and seek justice in ways that undermine relationships, sever connections and abandon accountability between people.

*Relationship, 911 and the Dispatch Process*

Contact between an Indigenous woman who is being abused and the U.S. legal system normally begins when someone calls 911 and reports the abuse to a 911 dispatcher. Based on solicited and unsolicited information provided by the reporting person, the dispatcher typically sends an officer or squad car to investigate. A categorical classification of the incident (for instance, as domestic, disturbance, OFP violation, assault or person with a weapon), a short narrative describing the incident in progress and a priority code reflecting the dispatcher's assessment of the incident's urgency (1 being most urgent and 4 being least urgent) are displayed on a computer monitor in the squad car. The police officers' responses to each incident are directed by this information.

The dispatcher has a tremendous responsibility, which must be completed in no more than a few minutes. She must quickly gather the information she needs from the reporting person, classify and assess the urgency of the incident, determine who should intervene, assign the intervention and communicate just enough information to ensure that the intervention is appropriate. The dispatchers attend only to the safety needs of the people involved in the incident. As one dispatcher stated, "We would all be basket cases if we dealt with everything that comes through" (Community H, Debriefing of sit-along, October 2000). To complete the complex and highly specialized task they have been assigned, dispatchers rely, in part, on standard procedures and protocols that limit their interactions with 911 callers. When asked

about this process, one dispatcher admitted that her responsibilities, in effect, preclude her from offering much more than a scripted response to the person at the other end of the 911 call:

I am always asking questions like have you been assaulted, have you been hitting each other and is there weapons in the house and how many people are in the house. That kind of thing because I am thinking the squads are going to want to know if they have a house full of people or just a couple of people or if someone has a weapon and they are threatening it...you just said if you have just been assaulted you feel like you are being interrogated. It would be nice to be more compassionate. I don't know how to ask the questions that we kind of need to know...in a better way. (Reported by a Dispatcher, Focus Group 8, March 2001)

The dispatcher above expressed some regret at her inability to connect emotionally with the caller—an inability that may result in the institutional intimidation of a reporting person—but does not know any other way to perform her job. In this process, everyone is allowed only one relational context. The roles and behaviors of the dispatcher, the police officers or other first response personnel and the people directly involved in the incident are defined by their relationship to the incident. The roles available to the people involved directly in domestic abuse are limited; they may be the reporting person, an alleged victim, an alleged abuser or another witness. As one advocate pointed out, some abusers may exploit the suggestions of guilt and innocence that are attached to these limited roles: “Males are trying to be one step ahead. They’re saying you’re not going to call 911—I’m going to call 911. They’re trying to make her look like the offender” (Community Team Meeting, December 2000).

In this stripped down relational context, it is crucial that the dispatcher make decisions based on the best available information. This, presumably, is the intent of the script described above by the dispatcher. In the data gathered here, two researchers who sat in on dispatch work reported that, although the dispatchers whom they observed had a similar script from which they are supposed to work when domestic abuse is reported, neither researcher saw a dispatcher use it. Getting the context wrong has real dangers. One researcher rode along with a police officer who

was in the middle of a traffic stop when he was dispatched by 911 to an incident, reported as a man “intoxicated walking down an alley with a dog without a leash.” The officer, who treated the incident as a low priority and finished the traffic stop before going to investigate the 911 call, arrived at the scene to discover that the involved person was in fact fighting with his wife and that the officer and observer were walking into a domestic dispute.

Dispatchers draw on the relationships and body of knowledge they have accumulated about the communities in which they are working. Describing dispatchers in a small county that includes a town and a reservation, an observer from the research group commented that, “They generally know who’s who when they’re calling. Of course they have people who are repeaters” (Community H, Debriefing of sit-along, October 2000). One dispatcher told how, from her experiences at work, she had pieced together some families across generations; in illustration, she offered the name of a family on the reservation who are always in trouble. The dispatchers who serve a large community, the observers noted, do not recognize many of the people who call; however, they do recognize addresses. Regardless of who lives there, these familiar addresses, to some extent, inform their interpretation of the 911 incident.

Observers described several instances in which the relationships and body of knowledge dispatchers have accumulated about the community came into play. In one observation, the dispatcher received a 911 call from a young man who had run away and was possibly in possession of a weapon. The dispatcher recognized that the man was part of a family whose members are frequently involved in 911 cases. The dispatcher’s previous experiences with the family appeared to contribute to her decision not to dispatch any first responders to the 911 location. Instead, officers were directed to watch for the young man. As an observer remarked, “When people called the 911 folks, [the dispatchers] knew the families and stuff. Some people called maybe ten, twelve,

fifteen times a night. I could see how if you get those calls every night or on weekends that you would not take it seriously” (Research Team Meeting, December 2000). Although the observer offered these remarks with some sympathy for the dispatchers, she added that failing to take these callers seriously is disrespectful. This attitude may also endanger the callers.

The relationships with and body of knowledge dispatchers have accumulated about battered Indigenous women become part of the conceptual ground from which they make their intervention choices. When asked if differences in Indigenous culture made 911 services respond differently to domestic calls involving Indigenous people, one dispatcher first stated that they respond just like any other call. She then admitted that she did not really know how to answer the question, because she had noticed that in domestic calls, American Indians more often than not are all drinking. Immediately after this statement (which reveals that in her conceptual ground, Indigenous people involved in domestic calls are assumed to be drinking), she added that almost all their domestics include drinking (which reveals that in her conceptual ground, she either understands that the association should in fact be between all people involved in domestic calls and drinking, or that, more generally, she recognizes that she should not have publicly singled out Indigenous people in association with drinking). In another instance, a dispatcher’s comments suggest that her relationships with and bodies of knowledge she has accumulated about battered Indigenous women have reduced her expectations of outcomes for these women. An observer described an exchange with this dispatcher:

She [the dispatcher] said, ‘Here’s one thing I can tell you...for sure. The Native American cases, a lot of them that we get calls on, don’t even go to OFP. They don’t even go that far for Orders for Protection...we get a copy of every Order for Protection that has gone through the court we get a copy of. They’re right in that drawer and you can read them. In comparison to the amount of calls we get for domestics they don’t turn into OFPs...they rarely follow through with [it].’ Then, even if they do, she noticed that Orders for Protection, if they do go that far, they almost, a lot of the time, don’t show up for court. (Community H, Debriefing of sit-along, October 2000)

The conceptual ground from which this dispatcher makes her intervention decisions now includes an assumption that, whatever choice she may make, Indigenous women who are abused are unlikely to pursue and/or obtain Orders for Protection. The dispatcher clearly feels that the women fail to follow through because they do not use the institution properly. In her conceptual ground, the problem lies with the women, not the system, an understanding that suggests that the dispatcher's relationship with the institutional system is more substantial than her relationship with the women. These comments by dispatchers reveal that, whatever standard procedures, protocols and scripts dispatchers may use, their own ideological practices, drawn from the relationships they have established with members of the communities they are serving, are also engaged during the performance of their duties.

The meaning and experience of relationships in the dispatch process are dramatically different from the traditional meaning and experience of relationships in most Indigenous communities. The relational contexts of Indigenous women who are abused begin to unravel as soon as their 911 call is answered. Regardless of who the involved parties are or what their relationship to each other may be, in this process, everyone's identity and relationships are reconstructed based on their role in the reported incident. The highly specialized and demanding nature of the dispatcher's job shapes and constrains the kinds of relationships that she may develop with Indigenous women who are abused. These aspects of her job also ensure that her relationship with the institutional system is more substantial than the relationships she may develop with Indigenous women who are abused. The dispatcher's job requires that she quickly establish a relationship with 911 callers, but, in these relationships, she is accountable only for the physical safety of the involved people. Her duties and responsibilities do not give her time or space in which to engage with the spiritual, emotional, or cognitive needs of Indigenous women

who may call her. Her relationship and accountability to these women ends when the 911 call does, and her responsibility for the involved parties is transferred to the police officer who is dispatched to the scene. Although the dispatcher's relationships and accountability to the women have ended, her experience of these emotionally and spiritually stripped relationships becomes part of her conceptual ground, guiding her future interactions with Indigenous women who have been abused—as well as the interactions of the police officers she has dispatched.

### *Relationship in the Police Response*

Police officers have assumed a responsibility to protect and serve the public. For officers involved in domestic abuse cases, this responsibility takes a number of forms. An immediate goal of their interventions is to stop any violence that is underway. To prevent the occurrence of further violence and to serve a more abstract need for justice, officers seek the arrest and conviction of people who have committed domestic abuse. Police officers involved in domestic abuse cases also must preserve their own safety and the safety of their fellow officers (in the sense of both immediate physical threats and future legal threats). These responsibilities condition the relationships between officers investigating domestic abuse cases, Indigenous women who are being abused, the people who are abusing them, and other involved parties.

When police officers are dispatched to investigate incidents of domestic abuse, the calls are given high priority. The officers locate the incident, and identify the people or parties involved. If possible, they are provided with backup from other available officers. Once they have entered the scene, the officers determine if any parties are injured or need medical attention, and respond appropriately. They then interview the involved parties separately. Referring to check lists and state statutes, the officers determine if there is probable cause to arrest, issue a

warrant or initiate any other legal procedures for any of the involved parties and collect evidence throughout to support their actions.

The investigating officers dictate or make notes for police reports, which later are transcribed or written, then copied and distributed to the officer, patrol supervisor, detective bureau, county court, and any other involved agencies, such as the Domestic Violence Response Team, a child protection agency or a women's shelter. In cases where no arrest is made, the police reports state the category of the incidents, the date, time, location, and reporting officers. The reports also name the people involved in the incident, assign roles to them (such as 'reporting person' or 'other') and list information such as their date of birth, address, race, gender and age. A brief synopsis of the incidents and their resolution is included. In cases where an arrest is made or further legal action is taken, the reports identify involved persons as victims, suspects, arrestees, complainants and/or witnesses. Parental relationships between involved persons are also indicated in some jurisdictions. The reports specify the charge(s) laid and provide more detailed descriptions of the incidents in which the grounds for arrests are presented. The reports may summarize additional material, such as a Dangerous Suspect Assessment or a Domestic Abuse Worksheet. In some jurisdictions, all officers who attended an incident produce a report.

Aspects of the relationships between officers and people involved in domestic abuse incidents are recorded in the reports generated by the incidents. As with the dispatch process, the relational contexts of people involved in a police investigation of a domestic abuse incident are stripped out, and then reconfigured based on their roles in the incidents. The domestic abuse incident first reconstructs the relationships between the involved persons on the basis of their guilt

(suspect, arrestee), innocence (victim, witness or other) and, in some cases, responsibility (parent), attaching these identifying labels to each involved person at the beginning of the reports.

The relationships between the officers and the involved persons are developed further in the narrative sections of the reports, where officers detail their investigations, establish the grounds for any arrests and record evidence. In these sections, the relational context shifts from the domestic abuse incident itself (during which the primary responsibility of the officer was the physical safety of the involved persons) to the arrest and conviction of the abuser (an institutional process for which the officer must also take responsibility). Descriptive language attached to the involved persons in the narrative sections reveals that relationships are reconstructed based on the new tasks at hand; that is, they now are based on the involved persons' willingness and ability to assist the officers as they investigate and/or build a case.<sup>19</sup> The extent to which the involved persons are reliable (noted as sober, apparently sober, intoxicated or drunk) and cooperative (noted to have agreed, admitted, abruptly refused or replied, "I do not know," or to have been belligerent or unclear) is carefully documented.

As the officers' responsibility shifts from intervention to investigation, their primary relational concern shifts from the women who are being abused to the institutions they are serving. Women who, at the beginning of the report, had been identified as the victims of domestic abuse may now be reconstructed as *uncooperative* victims. As recorded in one report, these women may even "face charges for withholding information from the police department" (Community E, Police report 10). In these transformations of abused women from victims to criminals, police officers shift from their initial accountability for the women's physical safety to, apparently, no particular responsibility for any aspect of the women's well-being and an

---

<sup>19</sup>Descriptive language is not attached to the officers, who are identified only as "I," "me," or Officer X.



overwhelming accountability to the institutional task at hand. If an abused woman proves herself an unreliable or uncooperative witness and cannot assist the officer with the investigation, the officer's relationship with the woman ends. Even if the woman can assist the officer, the nature of their relationship changes as the officer's responsibilities change. In one police report, the narrative describes a woman who is "obviously injured," with an "obviously bloody mouth" (Community H, Police report 2). The officer records that he took a photo of the woman's injuries for evidence, but nowhere in the report is there any indication that the woman was given medical or first aid attention, or even an opportunity to clean up. The initial relationship between the officer and the woman and his responsibility to preserve her safety have been displaced by his relationship to an institutional process and his responsibility to preserve evidence (a record of the woman's injuries) in the case being built against the offender.

The constrained and shape-shifting relationships between persons involved in domestic abuse incidents and the officers investigating these incidents were also illustrated in observations gathered during ride-alongs and interviews with police officers. Like the dispatchers, the officers draw on the relationships and body of knowledge they have accumulated about the communities in which they are working. The familiar names and addresses of "repeaters" condition, to some extent, the officers' responses. As one observer remarked, "They get called back again to the same residence, so he feels like there's a kind of a gap in the system. They keep getting called out and nothing happens" (Community E, Ride-along 2, July 2000). While this observer's remarks suggest that responsibility for nothing happening lies with the system, an officer's remarks bluntly assign responsibility to and problematize the woman who is being abused: "There are times when we go to the same house four or more times a night. We have told her each time about how to file an OFP and get an advocate. I know I'll be there next week. It does go through my mind that there is no

point” (Interview with Police Officer, September 2000). In one jurisdiction, in response to 911 calls from some women who are recognizable because they have been involved in a number of domestic abuse incidents, officers decided not to visit the locations immediately and instead phoned the women as much as an hour after the 911 call was received, to see if they were still needed. These are instances in which the officers’ relationships with “repeaters” have led them to step (in some cases, dangerously) outside of standard procedures.

In many instances, officers who have been called to assist women who are being abused arrive at the scene to discover a disjuncture between what the women want and what their job requires them to do. Ordinarily, officers are dispatched because people have asked for help. When a victim asks for help, his/her primary need is to be protected physically, a need that intervening officers are able to attend to within their defined job responsibilities. However, as one officer pointed out, in many cases, women who are being abused do not actually make the 911 calls, which leaves the possibility that some abused women do not want police intervention. Additionally, the victim’s immediate needs often include a need to protect the safety of the partner who has abused her and a need to honor all aspects of her relationship with him. In many instances, when officers intervene in domestic abuse cases involving Indigenous women, they realize soon after their arrival that, while the woman wants the violence to end, she does not want the abuser to be arrested or convicted. Many officers attribute victims’ reluctance or inability to assist them with the arrest and conviction of their abusers to something problematic in or about the victims. One officer explained that, “We find that Indigenous women don’t want to talk to us. She is really passive about the whole thing. It might be a cultural thing. They’re not an aggressive population” (Research Team Debriefing of observations, September 2000). One

officer attributed the reluctance of many abused women to assist with arrest and conviction to their financial and emotional dependency on the men who have abused them.

Other officers recognized that women's reluctance or inability to assist them might stem from systematic problems, many of which are located in institutional practices. In many instances, an abused woman may fear retaliation; several officers indicated that, when they arrive on the scene, they feel like their presence enrages the involved parties, escalates violence that is underway, or provokes future violence. Other officers recognize that the choices women make reflect their personal experiences with and relationships to the U.S. legal system's response to domestic abuse:

Sometimes you roll up on people who have been the victim of domestic violence repeatedly in their lifetime, and they've been through the system already and they are already frustrated with it and they've lost faith in that. An Order for Protection isn't going to do them any good. As much as you try to explain that it's a beneficial thing for them to do they look you in the eye and say they don't work anyway. So, you run into frustrations there. If you've done this job long enough you can't always say, 'Yes, they do.' Because, you realized sometimes that they're not as effective as . . . you don't want to make false promises to people. (Community E, Ride-along 7, October 2000)

This officer recognizes, as do many others, that their relationships with women who have been abused are constrained by the specialized responsibilities their job entails:

You try to do everything within the letter of the law that you are supposed to do. Sometimes you become almost personally involved, because something or more than one thing really affects you in somebody's life story. You want to try to jump in there and help, you want to go above and beyond [but] you cannot do more than the law allows you to do. (Ibid.)

In spite of this officer's tremendous empathy for some of the abused women he has worked with, he recognizes that in his job, his relationship with the institution must take precedence over his relationship with the victim in a domestic abuse case he is investigating.

As revealed in the police reports and reiterated by these observations, regardless of the officers' empathy or insight, abused women's reluctance or inability to help intervening officers do their job changes—and typically hastens the end of—their relationship with them. Observers

witnessed and heard of instances where, in response to abused women's failure to become "something they can take and win a case with" (Reported in Research Team Meeting, December 2000), officers criminalized, problematized and/or attempted to intimidate (rather than protect) the victims. As with the dispatchers, several officers problematized Indigenous women who are the victims of domestic abuse by associating them with alcoholism; one officer actually distinguished *real* domestic abuse from domestic abuse involving parties who have been drinking. Officers frequently use institutional intimidation in attempts to gain the compliance of problematic abuse victims. Observers heard of or saw officers tell abused women that they were lying, order them to give a statement, accuse them of dealing drugs, force them into squad cars, threaten to call social services, threaten to have their children taken from them and threaten to take the women to jail. In these reconfigured relationships, officers' frustrated responsibility for the arrest and conviction of domestic abusers not only transforms abused women from victims to offenders; it also sometimes transforms officers from women's protectors to their abusers.

Our observations indicate that officers must struggle to balance accountability in their relationships with abused women with accountability in their relationship with the institutions they serve. For some officers, their sense of responsibility and relationship to an abused woman ends as soon as it becomes clear that they will not be able to charge, arrest and convict the woman's abuser. At the scene of one incident of abuse involving an Indigenous woman, the officer told the observer that it was a "waste of time" to be there, then left the scene, leaving behind a form for the woman to fill out. When a call came over the radio describing the car of the woman's suspected abuser, the officer said he was not going to bother. For this officer, his relationship with the abused woman had been only incidental and did not extend beyond (or even through) the discharge of his duties. Fortunately, this officer's dismissive attitude was extremely

unusual. The comments and actions of several other officers reveal that their understanding of their responsibility for women who are being abused extends beyond the responsibilities entailed by their job. These officers clearly want to be able to provide more than the temporary stop to violence that occurs in domestic violation interventions. One officer felt he had let down an Indigenous woman who had been the victim in an incident of abuse he had investigated. At the scene of the incident, the officer had tried to persuade the woman, whose face bore her abuser's shoe print, to press charges. Although the woman eventually did decide to press charges, she communicated this to the officer after the 12-hour limit within which charges must be pressed. The officer then had to tell the woman that he could do nothing for her unless it happened again. In this instance, the disjuncture between the institutional time governing the officer's behavior and the real time of the woman's experience gutted the relationship that they had worked to develop and jeopardized the woman's safety.

Officers' relationships with the institutions they are serving make them accountable for their own safety and the safety of their fellow officers. One researcher observed that, in the institutional culture of the police, the relationship between officers "comes above and beyond everything else. The protection of that relationship goes beyond anything they are doing to protect the civilians" (Ibid.). Officers are protecting each other, in part, from the danger of "uncooperative victims." As an officer warned one observer, "You really have to watch your back for the victim, to physically attack us when we're there" (Community E, Ride-along 7, October 2000). Many procedures followed during interventions in domestic abuse incidents are there "to make sure nothing [goes] wrong" (Community H, Debriefing of civil court observation, September 2000). For example, at least two officers respond to each incident of domestic abuse; project observers saw as many as five officers at a single incident. Since most officers have their

own police cars, the scenes of domestic abuse incidents are often “swarmed” by cars, an effect that one officer suggested is an attempt to persuade the public that even more officers than cars are present. Whether or not this practice protects the safety of officers, it also overwhelms and intimidates many Indigenous women.

As with the dispatch process, the meaning and experience of the relationships between Indigenous women who are abused and police officers that intervene in their abuse are dramatically different from the traditional meaning and experience of relationship in most Indigenous communities. The relationships between the women, the officers, other involved parties and the institutions the officers serve shift throughout the intervention. When the officers arrive at the scene of a domestic abuse incident, their relationships with the women who are being abused are structured by the officers’ immediate responsibility to protect the women’s physical safety. Once the immediate safety of the women is secure, the officers’ focus shifts to building a case against the offender. The responsibilities vested in the officers in their relationship to the institutions they serve, which include both the newly activated responsibility to arrest and convict the offender and an ongoing responsibility to preserve their own safety and the safety of their fellow officers, frequently transform and displace their relationships with and accountability to the women. This occurs because the officers’ relationships to the institutions they serve are profoundly different in nature from their relationships to Indigenous women who are abused. Like the dispatchers, the officers’ duties and responsibilities prevent them from engaging with the spiritual, emotional or cognitive needs of the women, and their relationships with the women cannot extend beyond an institutionally defined present. In their relationship with the institution, however, the officers are protected, guided and empowered and, unlike their relationships with the women, police officers’ relationships with each other require absolute

accountability and responsibility. While the officers' relationships and accountability to the women end when their investigations do, their records of these relationships, in the form of police reports, become part of the conceptual ground that guides and directs the advocates, lawyers and judges who move the women's cases through the legal system.

### *Relationship in Civil Court Processes*

Indigenous women who have been abused may seek Orders for Protection (OFPs) in the civil court system. When an OFP is granted against a woman's abusive partner, the order restricts or forbids him contact with the woman; if the subject of an OFP violates the terms of the order, he may be arrested and charged with a criminal act. A woman initiates an OFP by filing a petition with a courthouse clerk, who then forwards the woman's petition to a judge for signature, a process typically completed within three business days. Once the judge signs the petition, the clerk contacts the woman and schedules a court hearing, which the woman, as OFP petitioner, is expected to attend. At the hearing, a judge grants or dismisses the OFP. OFPs may be granted ex-parte, that is, at hearings attended by only one party, a property that makes them especially useful in domestic abuse cases, where women frequently are in immediate physical danger from their abusive partners. Once an OFP is granted, it may also be the subject of other civil court hearings. A hearing may be held to modify terms of the OFP or women may ask that ex-parte orders be extended or renewed. A contempt hearing may be held if a respondent to an OFP fails to follow conditions of the OFP and an order to show cause hearing may be held, in which the respondent is given the opportunity to show why they should not be found in contempt of the court's order.

The procedures sketched above suggest some of the key differences between the civil court and criminal court systems. Unlike criminal proceedings, which are initiated by police

officers who gather evidence and lay charges against an individual, an OFP results from a civil procedure. It can be initiated only by the person who is seeking its protection, for example, an Indigenous woman who is being abused. Women seeking OFPs often do so with the assistance of an advocate, available to them through a variety of organizations that provide support to women who have been abused. The advocates may advise the women, assist them with paper work, accompany them to court, or just listen. Civil court proceedings are theoretically less adversarial than criminal court proceedings, and judges do not require that a woman who petitions for an OFP prove beyond a reasonable doubt that the order is justified. In OFP hearings, a judge reviews the petition and may ask the woman, the respondent or their attorneys for more information about the context of the woman's petition before making a decision based on the petitioner's apparent need for protection. The hearings are designed to issue relief and to protect women, and OFPs are granted to the vast majority of women who petition for them and attend their hearings. Given this encouraging success rate, why then (as was repeatedly stated by dispatchers, police officers and other service providers) do so few Indigenous women who have been abused actually secure OFPs?

While judges in OFP hearings have assumed the responsibility to provide relief and protection to women who are being abused, their primary relationships in the courtroom are with the institutions of the civil court. Physical features and protocols of the courtroom – such as the judge's robe and gavel, the seating arrangement, or the requirement that the judge be addressed as 'Your Honor'—are clearly there to assert and preserve the pre-eminence of the judge's authority. Observers found aspects of the courtroom and the proceedings harsh, severe, intimidating, and even dangerous. An advocate pointed out that women who petition at the civil court find it "very traumatic at first. It gets better, but first it's very hard" (Focus Group 4,



January 2001). Unsurprisingly, then, the women in court appeared “isolated,” “uncomfortable,” “stressed” and “sad” to the observers, who also remarked upon the camaraderie between judges and attorneys. As one observer noted, “the only people who are comfortable in the courtroom were the institutional people, the lawyers and the probation officers, and the judge and the clerk” (Reported in Research Team Meeting, December 2000).

The primacy of judges’ relationships to the institutions of the court over their accountability to the women who are petitioning the court is reiterated in procedures and laws that guide civil court cases. For example, OFP hearings are scheduled to accommodate the calendars of the court and available judges; they are not scheduled around the calendars of the women who are seeking the orders. If a petitioner fails to appear at her hearing, the OFP typically is dismissed. This occurs apparently without regard to the level of violence against which a woman is seeking protection. On the other hand, the judge’s fundamental responsibility to uphold the legal tenet that a defendant has the right to protect himself when actions are taken against him means that, in the case of OFPs, if a respondent fails to appear at a hearing, judges often grant continuances. These practices clearly make the safety of women who are seeking the protection of the court secondary to the preservation of legal institutions.

When the civil court system takes up an Indigenous woman’s case, the authority of women’s own knowledge and lived experience is frequently displaced by legal discourses and discourses based on the knowledge and understandings that practitioners bring to the courtroom about battering, battered women and Indigenous lifestyles. Most practitioners assume that an OFP is the first step toward taking control for a woman who is being abused. It is true that an OFP can increase the margin of safety of a woman who is being abused. As one prosecutor neatly stated, “She doesn’t have to wait to get beat up to call the police” (Interview Prosecutor,

November 2000). At the same time, she reminded us, seeking an OFP “puts a lot of women in greater danger. It escalates the risk to her” (Ibid.). A judge added these thoughts:

When they come to court, that is what they are thinking about. The advocacy is very good and very informed or educated and [good attorneys] are frequently involved and everyone kind of knows what is available, but underlying all that and what we don’t recognize is that it’s a very small community. And what is going through their head is if I do this then what is going to happen when I leave the courtroom. The order isn’t worth the paper it is printed on. It doesn’t mean anything. (Reported by Judge, Focus Group 5, February 2001)

The fact that the civil court processes that grant OFPs may work well does not mean that OFPs work well for Indigenous women. A concern, obviously, is for the women’s safety. The judge’s comments also reflect his understanding that the ideological practices that mediate the legal system’s understanding and interpretation of Indigenous women’s experiences frequently conflict with Indigenous ways of thinking and values, particularly with reference to relationships. To some extent, these conflicts involve practical considerations that can be resolved once people are aware of them:

We don’t focus on the right issues in the sense of we don’t talk about if we are doing an Order for Protection, it never popped into my mind to talk about how are traditional community feasts or powwows or celebrations going to be handled...can they both go? Is it appropriate that they both go? (Reported by an Attorney, Focus Group 5, February 2001)

Other conflicts are far more profound:

I have experienced in my job a disconnect between what the dominant culture...expects as a good result in a case, and what the Native culture—or Native clients—see as a good result in the case...several times I had Native women clients sort of tell me that all the stuff that I am doing, all the machination of the system, is largely irrelevant because it doesn’t address the need for healing, the mending the hoop, resolving the conflict, it just settles on, you know, you go to jail, you do this or that. So when I advise clients—well, we can go and get an Order for Protection...a lot of times they roll their eyes at me because my language and my solutions don’t really mesh with how they want to resolve this situation...it is kind of irrelevant. (Ibid.)

As this attorney and the clients she is describing here understand, there are clear conflicts between the basic principles of honoring relationship and relational accountability in Indigenous

cultures and the institutional values expressed in OFPs and other legal processes. These legal processes constrain conflict, rather than resolve it. In sharp contrast to this, Indigenous women we spoke with are seeking ways to salvage, strengthen and preserve their relationships with family and community.

The role of advocates in the civil court processes suggests that, to some extent, the legal system understands the importance of relationship. The primary responsibility of an advocate to an Indigenous woman who has been abused is to have a relationship with her. One advocate offered this job description: “Your main job is...not to be doing something...It is to be with the person” (Reported by an Advocate, Focus Group 5, February 2001). The best advocates, practitioners told us, are people who will meet a woman where she is, listen to her story, stick beside her, befriend her, and be willing to commit to working with her. The commitment can be considerable. Advocates may help women fill out OFP paperwork, help them understand the choices and resources available to them, do legal background work, attend hearings that they can’t make it to themselves, or offer refuge.

One prosecutor talked about advocacy ten years ago, before grassroots efforts became institutionalized, “The advocates were just incredible. They were almost making pests of themselves. I wish we had that now. They would just call up and say, ‘Here’s this woman. I’m going to be with her in court.’ There’s none of that now” (Interview Prosecutor, November 2000). But supporting a woman requires knowing what she wants and needs. One advocate described frustration once at her own inability to figure out what a woman she was working with wanted. Finally, she admitted, she had to come out and say, “You are just going to have to tell me what it is and...how I can give it, tell me how to get it back and I will do my best to try and do that. Like, you tell me and I will do it” (Reported by an Advocate, Focus Group 4, January

2001). This advocate accepted that her primary responsibility in her relationship with this woman was first, to understand the needs the woman had identified for herself and then, to support and assist the woman as she pursued them.

Implicit in the relational contract between Indigenous women who are seeking protection from the courts and the advocates who assist them is that Indigenous women's knowledge and understanding of their own lived experience should remain authoritative. However, advocates, like other practitioners, have their own knowledge and understandings about battering, battered women, and Indigenous lifestyles that form the conceptual ground from which they enter into relationships with the women. Their relationships are also complicated by an understandable impulse to protect the women for whom they are advocating. In Focus Group 4 (January 2001), an advocate described a case in which she attempted to initiate a relationship with a Indigenous woman who had filed an OFP petition. A hearing had been scheduled, but before the advocate could contact the woman, the woman filled out a dismissal form. The advocate appeared at the hearing but the woman did not, and the judge, concerned about the woman's safety, released her phone number and 35¢ to the advocate, directing her to call the woman. Because the advocate could not get in touch with the woman, the judge continued the case and asked the advocate to maintain efforts to contact the woman. In this situation, the judge and the advocate were both clearly concerned for the woman's well-being and went out of their way (and outside of court traditions) to monitor it. However, it is quite possible that they also disregarded the woman's wish (expressed by the dismissal she had filed) to drop the petition. As one observer noted, the advocate—and the judge—were in a difficult situation because “if you're really this woman's advocate and she says, ‘make this case go away,’ that's what you should be advocating for her” (Reported in Research Team Meeting, December 2000). In situations such as these, the observer

remarked, advocates appeared to be “screening everything the woman says with the assumption that she’s not speaking the truth because, really, she’s being manipulated” (Ibid.).

Tension between an advocate’s accountability to the woman she is serving and her own conceptual ground may make it difficult for the advocate to maintain or even establish a substantial relationship with the woman. One member of the research team observed a woman in the hallway of the courthouse, who was waiting for her OFP hearing, “sitting alone by herself and her husband was pacing back and forth in front of her, while waiting for his attorney to show up. The advocates [were] sitting over on the other side” (Community H, Debriefing of civil court observation, September 2000). The woman’s advocate, it seemed, had a more substantial and committed relationship with the other advocates than she did with her client. Increasingly, advocacy has become “part of the system,” and for some, advocacy has become “a 9-5 job rather than a passion...like a service-oriented organization” (Interview Prosecutor, November 2000). In some instances, the problems are clearly systemic. As the Community Team discussed, in Community E, even though advocates “get all the police reports and all that information, they work for agencies that have rules against contacting the woman to simply ask her, ‘What do you need?’ She is given a referral card by the police and that presumably gives her the choice to call the advocacy program.” This restriction prevented a number of Indigenous advocates from approaching Indigenous women who they know are in need; they can only work with women who come to them.

The need for Indigenous advocates to work with Indigenous women who have been abused is real. Many Indigenous women who have been abused find it hard to develop a relationship with an advocate who is not Indigenous. One Indigenous woman described her response to the (non-Indigenous) advocates who had been offered to her:

I'm looking at her thinking, 'I don't want to talk to this woman.' I don't know her...She doesn't know me. She doesn't know my culture. She doesn't know anything about my background, my relatives. It's real hard for me and I usually turn away and say no, I don't want to talk to this person right now. (Focus Group 1, October 2000)

Non-Indigenous advocates, trying to work around similar relational impasses, often look to Indigenous advocates for assistance: "We feel very limited and [another worker] has more experience along those lines because she is an Indigenous woman herself and can relate to her."

As one practitioner who supervises advocates readily admitted:

What I do because it works is to get advocates from the Native community to work with the Native community. I wish it didn't matter, but it does, and if I get somebody who is enrolled to advocate...they are accepted instantly in a way that if you are not enrolled, it takes longer. And with people in crisis, you need to connect right away. (Focus Group 5, February 2001)

These sentiments were echoed by another practitioner, who stated that, "the enrolled advocate can usually make a connection...I use their expertise. I am never going to know as much as they do." Women on the reservation, an Indigenous advocate reported, "could tell us anything and we weren't taking their kids away...we were just there to listen...you know, you might have to plant seeds 15 times before they take root." Seeds cannot root, of course, unless they are given the time and opportunity to do so. As one Indigenous woman responded when asked what she would change if she could redo the system:

If they had one woman advocate that's from just in this area...say, 'Hey [you], knock it off!' I think I would listen, I think I would respond, or anyone would respond like that...Afterwards, after the situation has calmed down, have the same advocate go out and maybe say, hey this is what's going on, you know, I know your kids, your kids know my kids...and we don't want to see our kids do this to each other when they get older. Going through the same stuff that we're going through right now...because it's already starting with teenagers—domestic abuse is already starting young, right? (Focus Group 1, October 2000)

What this woman described is a relationship with an advocate in which they are both committed and accountable, to each other, to their families and to their communities, now and in the future.

*Domestic Abuse and Relationships in the Indigenous Community*

In the data gathered here, Indigenous women who have been the victims of abuse, their family and community members, and the police officers, service providers, and practitioners who have sought to assist them, describe aspects of the struggle between traditional values and practices that honor relationship in Indigenous communities, and the values and practices of the judicial system. Values and practices of the judicial system both disrupt and are disturbed by the relationships between Indigenous women, their family and community members, service providers, and practitioners.

A number of service providers and practitioners pointed out that each intervention they make or support they provide to an Indigenous woman who has been abused is also enacted upon the woman's community:

It is a very, very tight community and I think there is a hierarchy situation going on out there where this woman is relation to this one and I can't do this because this one is going to get mad because I do it. And paybacks are going to be personal and within the community. I don't know they worry so much about what kind of punishment or what goes on in the criminal justice system, they worry more about their own internal punishment or their own internal paybacks. And it's very scary for battered women to come out and say, 'Yes, my Native American husband is battering me,' because the paybacks on the reservation can be absolutely hell. It is very scary for them. (Reported by Advocate, Focus Group 5, February 2001)

Service providers and practitioners often must confront the fact that their attempts to protect these women also threaten their place in their community. One worker related the story of a woman for whom, "this process, coming before a judge and airing these issues in public didn't jive with their spirituality. And they didn't want to do the things they could do and were entitled to under the law because it violated the system of, their spiritual system . . . it was just wrong to do the things that it took to do an affidavit about the negative things about the other parent" (Reported by Child Advocate, Focus Group 5, February 2001). This worker, along with many other service providers, seemed frustrated by the limited extent of their ability to provide

protection. As one worker stated, “And what is going through their head is if I do this then what is going to happen when I leave the courtroom. The order isn’t worth the paper it is printed on. It doesn’t mean a thing” (Reported by Judge, Focus Group 5, February 2001).

The challenges of negotiating relationships between Indigenous women who have been abused and family and community members were faced by both Indigenous and non-Indigenous service providers and practitioners. The practices of Indigenous service providers (particularly those who serve in their home communities) may be even more tightly prescribed than those of non-Indigenous service providers: “If you are part of the [Indigenous] community, there are old family ties—loyalties—that make it difficult sometimes to advocate for the child. And if you are from another band or tribe, those old patterns don’t exist” (Reported by Child Advocate, Focus Group 5, February 2001). Some of the service providers and practitioners suggested that, to protect their relationships with community members, women avoid seeking help from the practitioners in their own communities:

... I am required to let them know that there are services available to them on the reservation and they decline those because they feel that they can’t go in and be open without everybody in the community knowing about it. ... I do let the victims know that there are resources available to them on the reservation and if they choose not to use those resources, I am not going to force them. (Reported by Court Practitioner, Focus Group 5, February 2001)

... we get some people that come in and even though they work with the same confidentiality clauses and all that stuff and there are professionals out there, just the stigma of walking over to the mental health clinic or those kind of things. They don’t want anybody to know their kids have those kinds of issues and so they choose to come to us for services... there are some that would prefer to get services off the reservation. (Reported by Child Advocate, Focus Group 5, February 2001)

As these comments indicate, practitioners understand that, in some sense, the services they offer threaten the relationships between the women they are assisting and the families and communities to which they belong. In some cases, practitioners recognize, this threat outweighs other important safety needs. Practitioners also understand, however, that the relationships



between the women, their families and communities are the primary source of support for the women. Many practitioners are frustrated by their inability to make the most of these support networks:

When a woman comes to me and she happens to be an American Indian, I think at that crucial crisis time she couldn't care less. She wants to get something done, she is in crisis and she wants that OFP filed or she needs to file that criminal complaint. I think thereafter, we should be much more sensitive into encouraging her to dip into the support groups on the reservation and there again there is a confidentiality problem. (Reported by Child Advocate, Focus Group 5, February 2001)

We don't recognize extended family placements as early in the process as we should. It feels especially out of place to have the kids that are not with a parent in a shelter or in a foster home rather than with an extended family member. (Reported by Judge, Focus Group 5, February 2001)

The failure of the legal system to use family and community support systems may stem from practitioners' lack of faith in the family or community or it may stem from a simple and profound inability to see how to work with family and community:

I think that one of the big shortcomings of our system is that we don't recognize that each family is unique... We tend to judge their solutions as not fitting into our model and that is a universal criticism that I have of our system, ... We try to buttonhole them into a generic position and then we try to offer a generic solution ... (Reported by Court Practitioner, Focus Group 5, February 2001)

Practitioners are obviously frustrated at their inability to provide services in a way that protects and supports the women at the same time as it honors their relationships with family and community.

The reality described by Indigenous women who have been abused includes many instances where they clearly feel that the process of intervention has undermined their relationships with family and community. A few women angrily described instances in which they felt practitioners had encouraged their children to treat them with disrespect:

This man is coming in here to help us, no he didn't, he just make it worse. He had my daughter turned against me, that she was in the right. When she was underage and talking to me as though I'm someone's old dirty dishes. (Focus Group 1, October 2000)

We have our own way of disciplining our kids. And they come along, and they are undermining everything we taught them. Yeah, it's ok for you to talk like that to your mother. (Ibid.)

Some women clearly felt that, through their interactions with service providers, they appeared to their children as incapable of protecting or parenting them effectively:

It's more of the sexual assault thing with my daughter. I get the feeling that they were treating me like I am the one that, because I didn't know what was going on and I didn't protect my daughter and it's my fault. (Focus Group 8, March 2001)

And it was just me and my little girl standing there watching all this...and I was treated like I was a bad parent immediately and even told that maybe they should take her away from me because I am unable. (Focus group 8, March 2001)

Many of the women in the focus groups related experiences in which they felt that practitioners' intervention in domestic abuse cases had put their children at risk. Women noted that intervening practitioners sometimes failed to inquire if they had children ["they never even asked me if I had kids—I had about 10," "My kids were there and they didn't ask anything about them" (Focus Group 1, October 2000)], a grave (and, we suspect, rare) omission when, as in the case of one focus group participant, both responsible parents are taken to jail.

It is clear, however, that, from the perspective of many Indigenous women who have been abused, the greatest threat to their family in the process of intervention in domestic abuse is the possibility that their children will be taken. Repeatedly, in interviews and focus groups, women described this moment:

They had a child together and the baby was sleeping and she had bronchitis and she wasn't feeling very well...and the cops came in and they forced her to take a breathalyzer and I said, 'she hasn't really been drinking.' ...and they said, 'well, we are going to have to take the baby because she is drunk.' (Focus Group 7, February 2001)

They said, 'you can make one phone call to your son—the babysitter for my son—or we're gonna throw him in the crisis shelter.' (Focus Group 1, October 2000)

The police told me, 'If we ever come back to your house again, we are taking both of you to jail and you won't ever see your kids again.' (Focus Group 6, February 2001)

The women's sense of injustice at the loss of their children and at the practitioners' power to take their children is clear. An additional important subtext in these comments, however, is the suggestion that practitioners' motives should not be trusted or respected. These women, who have experienced loss of custody of their children and loss of their own roles as mothers, do not believe that the involved practitioners acted to protect their interests, or those of their children, family or community.

Fear of losing their children has forced some Indigenous women who were abused to make difficult choices between their own safety, protecting their children and preserving their family relationships:

My daughter's father keeps trying to take me to court for custody... So okay, he beat me, he almost killed her when I was pregnant with her you know but he still has these rights. ... if you don't do this visitation stuff, they are taking you to jail. I said, 'Well fine, take me to jail because I am not going to put my daughter in that position.' (Focus Group 6, February 2001)

You get scared to fight back because if you leave any marks on him...where are my kids going to go if I go to jail? (Ibid.)

These stories confirm the concern stated earlier by practitioners that women (and children) stay in unsafe situations rather than seek interventions in which the women may lose custody of their children.

The distrust of service providers and practitioners that emerged in many Indigenous women's descriptions of the apprehension of their children is only one aspect of a widely shared conviction that service providers and practitioners are not allies of battered Indigenous women. Only one Indigenous woman described her involvement with service providers positively.

Describing her experiences following an episode of violent abuse, she said:

My family wasn't there for me, there was a lot of confusion...And that is when I really needed the women's shelter and the Indian program ... (Ibid.)

Given that service providers and practitioners were the only support network within this woman's reach, we have to ask ourselves if this is the context in which these networks are most likely to succeed—that is, when there are no other relationships that need to be honored or accommodated.

Repeatedly, Indigenous women who were abused revealed a disturbing lack of faith in their relationships with service providers. Asked if advocacy services were helpful, many women's replies were even more negative than a simple "No" would have been:

When you talk about Indian child welfare, they don't help you. (Focus Group 8, March 2001)

They're more destructive. (Focus Group 2, November 2000)

I think they're more against us women. (Ibid.)

One woman stated that, "The only time I've ever seen the ones from the reservation was when I was in jail. They came and made dream-catchers with us" (Ibid.). Most of the other women's descriptions of service providers suggest that they, too, do not know them well. In the women's stories, they had been underserved, abandoned, even betrayed by practitioners:

I've raised my granddaughter since she was a baby. The reason I don't have her is because I have to have a grandparent foster care license and I haven't gone through the clinic or anything...In the first place one of the social workers went over there and lied...she wanted to make everything look good on paper.... She'd rather see these kids taken. (Focus Group 2, November 2000)

I had bruises all over my arms, my lip was busted open but right away it was it's your house, it's in your name and you have control over who and what comes in. (Focus Group 8, March 2001)

These women do not feel protected, cared for, or valued by their workers. In large part, this feeling is a result of the processes through which service providers and practitioners manage the crises in which they encounter the women. Women often feel that their cases have been resolved unjustly, that their abusive partners have been supported by the system and that they and their children have been left with even fewer resources.

They put the blame with the man but they do it back on me. And they said, 'You did this and you did that,' and I was like, 'NO!' I got four kids and my 12-year old was hysterical. And still to this day, she does get scared of people, cops and social workers. (Focus Group 8, March 2001)

They were very angry at their father because we were the ones that had to leave...why did we have to leave the house and he gets to live there and we have to stay some place else? (Focus Group 6, February 2001)

These interactions, the women suggest, are instances in which responsibility for the outcome of abuse has been shifted from the abusers to the victims. Service providers and practitioners frequently encounter and are frustrated by a systematic, process-driven failure to protect or extend women's and children's safety and comfort, often to the advantage of the men who have abused them. Service providers see the limitations of their own dependency on legal processes:

What is the message when you have a family where some of the children are enrolled and some of them aren't? And there is plenty to intervene on behalf of the non-enrolled children, but not...what is the message to the children? That these lives are less valuable? (Reported by Child Advocate, Focus Group 6, February 2001)

There are a number of times that the batterer will call 911 and say he's the victim. The police will go and there will be a small scratch or red mark on the batterer and they think he's the victim. Within the last 2 years, I have had 4 pregnant women, full-term, go to jail because the batterer said 'I'm the victim'. (Reported by Advocate, Focus Group 3, November 2000)

I'm running into women that are trying to defend themselves and the guy will have a welt, and she's not welcome into the program because you can't have a batterer in the program. He gets the kids, she doesn't have any services, she loses everything. (Ibid.)

I am thinking about a woman who I was working with and who really wanted to keep her family together. Wanted to work through their problems and there was no support, there was no support to try to keep the family together. And of course, I think every one of us as advocates in a system of seeing where a Native woman is not given the help that she needs if she is drinking. She is brought to detox or nothing happens because a quote in one 911 report said that no one was credible...I didn't feel she was heard at all about how she wanted to keep her family together. (Focus Group 4, January 2001)

Both the service providers and the women whom they are working to protect could see that pre-established protocol, criteria, and limits of legal jurisdiction guide the interaction between the service providers and the women, to an extent that is frequently destructive. In a

system that manages the experiences of women in crisis through interpretations of property rights, breathalyzer tests, 911 protocols, foster-care licensing, legal aid criteria, sentencing worksheets, and ex parte orders, women routinely feel that they have been reduced to the object – rather than a shaper – of these processes. In the preceding descriptions of their interactions with service providers and practitioners, the women depict practitioners who, rather than responding to the full complexity of the women’s relationships and lived experience, seem to be working their way through a preprogrammed checklist of conditional statements: “Hmm, let’s see, if you drink, you are not ready to be helped,” “If your batterer says he is a victim or looks like a victim, we will treat him as a victim,” “If an abuser is a biological parent, they are entitled to access to their children,” “If a caregiver is not a biological parent, they need a license to parent,” “If you are not in fear of your life, we cannot help you,” “If it happens in your house, it’s your fault.”

The legal system’s reliance on protocol and criteria has left many of the women feeling angry and defeated:

Bring them down to eye level so that you’re not sitting there looking at them like they’re on a pedestal and they have control over your life and you have to do this and that before you get your kids back. And if you fail at one of them then oh well, you don’t get your kids back. (Focus Group 8, March 2001)

You feel like you are in a circus, you have to jump through their hoops and bend over backwards and walk on tightrope to prove to them that I really want my kids back. (Ibid.)

I’m done jumping through their hoops. I’m too old for their hoops. (Focus Group 2, November 2000)

These statements convey a dangerously deep hopelessness—why bother, these women suggest, when you have no control over whether you win or lose?

Service providers and practitioners also described incidents where sentencing worksheets took precedence over victim impact statements, where risk assessments were treated as more truthful and authoritative than the victims’ own words, and where women were rendered

voiceless. “Nothing happens,” one observer noted, “because a quote in one 911 report said that no one was credible...I didn’t feel she was heard at all...” (Focus Group 4, January 2001).

The service providers’ and practitioners’ statements reveal that, in fact, women are being heard. Service providers and practitioners clearly understand the need to protect and honor the women’s relationships to their children, families, and communities, share the women’s frustration with their frequent inability to do so, and want to change practices and procedures to accommodate and honor these relationships. Police officers, service providers, and practitioners are struggling with their own relationships with the women they are serving and see the need to restore trust between themselves and the women and communities they are serving. By bringing connectedness and accountability into their relationships with the women, families, and communities they serve, practitioners will be able to draw upon—rather than push against—the strengths and supports that women find in their own relationships with family and community.

### Holism

All things are interrelated. Everything in the universe is part of a single whole. Everything is connected in some way to everything else. It is therefore possible to understand something only if we can understand how it is connected to everything else. (The Sacred Tree, 1984)

The worldview within which we live and act integrates our conceptions of both human nature and the role of human beings in the universe, and the cultural values that guide our relations. Traditionally, the worldviews of most Indigenous North American peoples are holistic, in that they understand that no experience occurs in isolation from other experiences and that every experience ultimately contributes to our single whole and shared experience of the world. The concept of holism asserts the depth and breadth of relational connectedness and interdependence. In Anishinaabe/Ojibwe cultures, an understanding of the holistic nature of human experience is part of *mino-bimadaziwin*, the call to live life fully, honorably, and with

consideration to others who share the world. To achieve this, people must integrate and value equally their will and the spiritual, emotional, intellectual and physical aspects of their lives. The cultural values expressed in *mino-bimadaziwin* apply to our lives as individuals, but also apply to the lives of our families, communities, and nations. We can live holistically only if our own individual efforts are accompanied by the cooperation and effective assistance of other humans and spiritual forces.

The adoption by the justice system of a holistic worldview would have the potential to radically transform its response to domestic violence against Indigenous American women. From a holistic worldview, the response to domestic violence should place the well-being of the victim at the center of any intervention and do so in a manner that immediately considers, supports, and integrates her volition and her physical, emotional, social, and spiritual needs. Holism implies that our response to domestic violence should acknowledge and value the connectedness and interdependence of the involved individuals. We should also recognize that the best opportunities to prevent domestic violence and provide early intervention almost certainly are held by individuals and systems that are allied closely to women who have been or may be abused.

Unfortunately, the ‘what is’ reality of the U.S. legal and judicial system’s current response to domestic violence against Indigenous American women falls far short of what ‘should be’ or ‘could be,’ were the response to start from a holistic worldview. Recent census data indicate that approximately seventy percent of Indigenous people live within majority society communities and outside of their tribal communities or federally recognized reservations (U.S. Census Bureau, 2000). Consequently, most Indigenous women do not have access to systems that are driven, informed, or influenced in a significant way by values central and specific to Indigenous cultures. This is also true in Public Law 280 states (such as the area in



which this study was conducted), where, even on federally recognized reservations, most policing and judicial functions are handled by off-reservation local, state, and federal police and court systems.

When an Indigenous woman who has been the victim of domestic violence appeals to the mainstream legal and judicial system for assistance, the system's response fragments and partitions her experience and needs. Responsibility for assisting a woman who has been abused is handed off from 911 operators to dispatchers to police officers, then frequently passed on to prosecutors, attorneys, advocates, judges, counselors, and social workers. The victim must deal with a series of practitioners, each of whom is responsible only for specific institutional tasks and whose concern for the victim consequently must be confined professionally to specific and limited aspects of her safety. None of these practitioners is responsible for or professionally concerned with all aspects of the woman's safety and well-being, and none of the practitioners is allied with the victim throughout the response. Because institutional protocols and priorities determine most of the decisions and actions taken by practitioners, the mainstream legal and judicial system's response to domestic violence involving Indigenous women frequently either fails to take up the women's needs and volition, or proceeds beyond them.

### *Holism and the 911 Response*

Staff persons attached to 911 centers typically are the 'first contact' for a woman who is seeking the protection of the U.S. legal and judicial system. Their job is to determine what, if any, assistance should be dispatched to assist people who are the subject of 911 calls. Personnel at 911 centers have two primary responsibilities when they make dispatching decisions: They must determine what emergency services the caller needs and they must assess the safety needs of police officers or other emergency personnel who might attend the call. As one research team

member noted, these responsibilities may conflict: “Here is the woman who has been beaten, and when she calls 911, they are thinking, ‘How dangerous is it [for the police]?’” (Focus Group 8, March 2001) In fact, there is not much of a contest between these needs: 911 personnel are expected to prioritize the safety of police officers and other emergency personnel over the safety and well-being of women who call for their help. Consequently, 911 dispatchers may delay sending officers to a call location until they feel that the officers’ safety is reasonably secure. Law enforcement officers are well aware of how quickly domestic calls can turn lethal; they are some of the most dangerous calls to which officers respond. However, in the 911 process, there is not equal regard for police and victim safety. Both should be central features of the process but police safety is institutionally privileged over victim safety in unnecessary ways.

The 911 system’s response to an Indigenous woman who is the victim of domestic violence immediately fragments and partitions the woman’s experience. The 911 operators are expected to ask a series of scripted questions; they also may review their own records to determine such things as whether the emergency response system has any history of contact with the involved parties or call location, or whether there are outstanding warrants or OFPs relating to the parties. The operators sift quickly through the information they are gathering, assess the institutional meaning of the woman’s experience, and make dispatching decisions based on a quick interpretation of information, institutional protocols and priorities, and immediate resources available to them. The limited information gathered by 911 operators and the limited interpretation they are able to apply to that information may be problematic for Indigenous women. In some cases, because operators have interpreted a woman’s experience inappropriately, the woman’s immediate safety needs are not prioritized. An advocate described an egregious example: a 911 operator, assuming the slurring caller to be drunk, gave a domestic

abuse call low priority. Police arrived 45 minutes and a second 911 call later to discover she had been beaten severely. She slurred because her batterer had broken her jaw (Focus Group 4, January 2001). In this case, more information and a more sophisticated understanding of the woman's situation clearly would have enabled the dispatcher to attend better to the woman's safety. The use of alcohol by victims of abuse is not seen as a factor that requires additional protection, but instead is often treated as an indicator that legal intervention is not what is needed. The abuse of alcoholic women becomes a life style problem rather than a legal problem.

All too often, institutional protocols and priorities prevent 911 operators from taking up a woman's needs and volition. A researcher taking part in a 911 sit-along observed a call from a young woman whose boyfriend was violating the protection order against him. After the dispatcher asked the caller if she had any physical signs of abuse and the caller indicated that she did not, the dispatcher stated that they would send a squad car over when they could free one up. The dispatcher's decision to make this call a low priority reflects an institutional assumption that women are not in real danger until they have been injured physically (Community H, Sit-along 1, October 2000). This paradoxical assumption seemingly disregards the woman's own urgent belief that she was in danger and needed protection (as indicated by her call to 911), as well as the man's history of violence toward her (as indicated by the OFP). Because the one-size-fits-all approach established by institutional priorities and protocols frequently does not fit the needs or will of Indigenous women who are the victims of domestic abuse, it may lead or force some women to abandon their attempts to get help from the system. A team member was observing the 911 process when a woman called to report that her ex-boyfriend had stolen her car. After the dispatcher asked for a description of the suspect, the woman backed off, indicating that she did not want the man arrested. She said that she was afraid he would return, break into her apartment

and damage her belongings. Since the woman was unwilling to have the man arrested, the dispatcher, in the observer's words, just "let that one go" either unable or unwilling to offer the woman any other assistance (Community H, Sit-along 1, October 2000).

In the examples presented above, the failure of 911 operators and dispatchers to respond in a holistic way to Indigenous women seeking protection from domestic abuse contributed to their inability or failure to take up the women's real-world needs and volition. The operators' and dispatchers' responses were constrained by institutional limits placed on their professional responsibility for the women's safety and well-being and by rigid institutional protocols and priorities that direct their dispatching decisions. Similar constraints shape the responses of police officers, the practitioners to whom 911 personnel hand off their limited initial responsibility for the woman's safety.

### *Holism and the Police Response*

The immediate concern of police officers who arrive at the scene of a domestic violence incident is the safety of parties involved in the incident, a group that includes, amongst others, the woman who has been the victim of violence and the attending officers. Once safety is secured, the officers will begin an investigation of the incident and, at this point, the focus of officers' work may start to slide away from the well-being of the woman who has been the victim of domestic abuse. If the officers suspect that a crime against the State has taken place, police actions quickly refocus on constructing a case for criminal charges, a process one officer described to a team member:

We need to determine if there was, in fact, an act of violence and we can obtain circumstances and good information from either witnesses or people involved. We have to then determine who is responsible for having committed that act of violence. We have to then [make a] determination against State statute that dictates what we can and cannot do – arrest, issue a citation, take somebody to jail, all those types of things. We have to go through a checklist. (Community H, Ride-along 7, October 2000)

It is important to note that, in the system's response to domestic violence, police officers are the practitioners who first have the ability and responsibility to create something institutionally recognizable as domestic abuse. In the officer's description above, the woman who was the victim of violence is not mentioned. The victim has disappeared in this process. Both the incident of domestic violence and the woman who has been battered are being reconstructed. The violence is becoming a crime against the State (rather than against the woman) and the woman is becoming a witness to a crime against the State (rather than the victim of violence). The notion of connections in this system is eerily absent of human relations. To build a legitimate and winnable case, officers need evidence. Toward this end, they must gauge the woman's ability to perform as a witness; they will interview her, challenge her story, test her integrity, measure her credibility, assess her sobriety, and record the results of their investigation in a police report.

It is easy to understand how Indigenous women who have been the victims of domestic violence might feel that their experiences and needs are being fragmented and partitioned by the police response. Police officers' power to define whether a situation constitutes an institutionally 'real' instance of domestic assault challenges the authenticity of the real-life experiences of women who have been abused. The rupture between institutional demands on a police officer and the authority of a victim's experiences and needs appears shortly after the officer's arrival. As one officer admitted, "We [are] the good guys for the first five minutes . . . We can turn into the bad guys really quick" (Ibid.). For many Indigenous women who have been the victims of domestic violence, this perceptual shift follows a recognition that, as one woman put it, "The police are there to investigate a crime, not to help" (Community team meeting, September 2000).

Police officers' response to domestic violence is shaped in large part by the institutional context in which they perform their work. Officers generally must attempt to behave and act in ways that are permissible and unassailable within the law. In addition to this, if they are to produce a winnable case, officers must ensure that any criminal charges they initiate are supported by evidence that meets criteria established by and preserved in law, policy documents, protocols, forms, and other institutional texts. While institutional texts such as law, policy, and protocol can provide adequate instructions for specific situations, they often provide only limited guidance through ambiguous situations. Officers' understanding of how to respond to domestic violence typically comes from a combination of formal education and training (which may or may not specifically address domestic violence) and on-the-job learning, similar to that related by one officer:

When I went through and got my undergraduate degree in Criminology, we had a specific class that at least addressed the issue of domestic violence. I had other classes in the education process of trying to get licensed as a police officer that addressed the statutes that exist in [the state] regarding domestic violence. The right to arrest, the different types of misdemeanor, gross misdemeanor and felony. I've certainly had training in that. I've also had training in those same areas when I got hired here... You could call it continuing education, perhaps, within our own department, like an internal training seminar... The rest of my training would be on-the job training. (Community H, Ride-along 7, October 2000)

This officer certainly has been well educated about the legal meanings attached to domestic violence and the construction of a domestic assault as a crime against the State. However, she does not appear to have received much formal education about the real-life meaning of domestic violence; the coursework she describes does not refer to things such as the power dynamics in abusive relationships, the psychological, social, and spiritual effects of domestic violence, or the emotional dynamics of families and relationships in which domestic violence occurs. When asked, the same officer admitted that she certainly had not had a lot of training specific to cultural competency, other than participating a few times in a "diversity

seminar, where we addressed...issues such as different races, ethnicity, religions, sexual preferences, handicaps, -isms, all of the big highlighted ones” (Ibid.). The extent of training described by this officer seems poor preparation for the cultural specificity of domestic violence involving Indigenous women.

In addition to their formal education and training, officers look to fellow officers for guidance on how to respond to incidents of domestic violence. Many of the officers interviewed for this project indicated their respect for the practice wisdom of experienced officers. Ideally, practice wisdom should integrate officers’ education and training with knowledge gained through their personal field experience and the lessons they received from their own mentors on the police force. However, practice wisdom also includes less desirable but equally potent narratives, beliefs, and ways of thinking about domestic violence. Several officers indicated that, to various extents, they did not trust women who have been the victims of domestic violence. For example, an officer told a research team member that, “as police officers . . . you really do have to watch your back for the victim to physically attack us” (Ibid.). One team member was struck by an officer’s apparent inability to refer to women who had been involved in domestic violence as simply victims; instead, he referred to them only with a qualified term (such as “supposed victim”) that suggests that they might not, in fact, be victims. Another officer revealed his limited ability to sympathize with victims of domestic violence who are drinking when the abuse occurs:

It is more difficult to respond to a domestic when there’s drinking involved. It’s more frustrating. This may not have happened if drinking were not involved. Everything we are working for will be invalid. They will sober up and be sorry in the morning. Those who are sober are experiencing real domestic abuse. (Community Team Meeting, September 2000)

This officer’s assertion that *real* domestic abuse happens only to people who are sober flatly denies the reality of abuse suffered by many women. His denial emerges, in part, from dissatisfaction with a common outcome in domestic abuse, that is, that women continue to live

with partners who have battered them. The frustration alluded to by this officer was shared by many others who participated in this research. As one officer put it:

[Y]ou have a boyfriend and girlfriend. Let's say the female, the girlfriend, has been the victim of domestic violence and say it's a nice, neat and tidy situation for us to interpret, where the male is the primary aggressor and there's obviously been a sign of violence and he's...going to jail and there's no ifs, ands or buts about it. It's nice and clear-cut. We take...the male to jail. Two days later, you see them walking down the street holding hands. You know or at least you suspect that the same thing could happen all over again the next day and you hope that the next time it's not going to be twice as bad. It's frustrating to see people staying in violent and unhealthy relationships, day after day, week after week and year after year and you keep responding to the same combatants...you've done everything you can do, but...nothing is going to break the chain. (Community H, Ride-along 7, October 2000)

While this officer clearly is disturbed by the violence repeatedly inflicted on the woman he is describing, his frustration has been amplified to near hopelessness, which has led him, by including the woman in the category of “combatants,” to equate the victim with her abuser. At this moment in the story, as with the other officer's assertion that sobriety of the victim is a defining characteristic of domestic abuse, women who have been the victims of domestic violence are redefined as something other than victims primarily because they have behaved in ways that disappoint these officers' expectations about how victims *should* behave. These expectations include the belief that victims of domestic abuse should help police officers do their job and the frequent assumption that when they are doing their job, officers' interests coincide with the victims' real interests—whether or not the victims recognize and accept this coincidence. Again, the use of alcohol and the behaviors of women who are being beaten in the intimate relationships are not seen as connected to their social conditions, but personal failures of women.

The narrow institutional focus on the legal meaning of domestic violence, along with officers' limited ability to engage with cultural, psychological, and spiritual aspects of women's safety and well-being, make the relationship between Indigenous women who have been abused and police officers tangled and contradictory. Too often, police officers overstep boundaries



established by victims' understanding of their own needs and volition or pressure and intimidate the abused women whom they are 'helping.' To gain compliance from women who have retracted allegations, refused to provide evidence or behaved in ways that officers see as obstructing them, officers frequently use institutionally armed threats, power and control. Several victims of domestic abuse described such instances:

I know a lot of us won't talk about what happened because we are made to believe it is our fault by the system. (Focus Group 8, March 2001)

[The police] treated me almost like they treated the abuser . . . like I was the abuser. (Focus Group 1, October 2000)

Towards the end, I wouldn't press charges because I was ending up in jail too...After that I was kind of scared to call the cops...I called relatives to come and get me when I quit calling the police. (Ibid.)

Why should I [call] if I'm going to end up in jail too and risk losing my kids? (Ibid.)

I was raised with police in our home a lot, social services and at times FBI. It was terrifying when they came in...No matter how severe it was I wouldn't allow the police to come because I knew what would happen. (Focus Group 8, March 2001)

It could happen tomorrow and I wouldn't call. This system is not set up the way I understand things to be. (Ibid.)

Indigenous women who have been abused often find their conceptions of reality distorted, discounted and even dismissed by the investigatory process. Women also feel that their well-being and the well-being of their families are threatened by the police response to domestic violence. After repeated personal (and a community echo of) experiences such as these, many Indigenous women who are abused have simply stopped calling the police. As one observer stated plainly, "The police need to have a helpful way to come into their homes. The women do not want to be afraid of this process" (Community Team Meeting, August 2000).

*Holism and Court Procedures*

Indigenous women who have been the victims of domestic violence and have sought the help of the U.S. legal and judicial system often find themselves involved in court proceedings. Women who have been abused may initiate a civil court proceeding to secure an Order for Protection against their abuser or may find themselves in civil court to resolve child custody issues. Women who have been abused also frequently must take part in criminal court cases. Domestic violence works its way into the criminal court system when police have documented evidence of a crime against the state. Women who have been abused frequently must testify against their abusers in criminal cases. The victims of abuse may also face criminal charges, often for actions they took in self-defense against domestic violence. For example, we heard of a number of cases in which men with a history of violence against a woman get “street smart” and start claiming to be the victims of the woman they are abusing. For example, Alice, a woman in one focus group, told us that she was trying to run away from her abuser. She ran to her car, got in and took off. Her abuser jumped in front of the car and she hit him. After he alleged that she had tried to kill him with her car, Alice was charged. She faced a long jail sentence and rather than risking that a jury would believe her, Alice pled to a lesser charge and was convicted and sentenced to jail time. Although she had no history of abusing him, and her partner had a history of abusing her, the prosecutor pursued a course that resulted in Alice’s conviction. But it is questionable if any sort of justice was served. In this system, the conviction is proof of her guilt and a score on behalf of justice.

When cases involving men’s violence against their partners do arrive in criminal court, they are often dismissed either because there is not enough evidence to support the charges or because witnesses fail to show up in court. Those cases that do make it to court are often plea-

bargained down to disorderly conduct (another legal reconstruction of domestic abuse as something far less than the victim's real-life experience of violence), a charge which, if the defendant is convicted, normally leads to jail time, a fine and/or probation. In some cases, defendants who are found guilty must complete a chemical dependency evaluation or court-ordered attendance at a domestic abuse group. Many decisions that determine the outcome of a proceeding are made before the case arrives in court and, because of this, courtroom procedures may be little more than a formality.

Court proceedings deal only with very specific and narrow aspects of what is entailed in or affected by an incident of domestic abuse and in that sense they further fragment and partition women's experiences of domestic abuse. Whether a proceeding deals with criminal charges, an Order for Protection, child custody or financial need, the role of each actor in the courtroom is prescribed and the tasks for which each is responsible are highly specialized. Each attorney and advocate in the courtroom is there to represent and support his or her respective client. The client may be the State pressing criminal charges against an alleged abuser, an alleged abuser defending himself against the same charges, a woman who is defending herself against charges that arose from a domestic violence incident, or a woman who is the victim of domestic abuse and is seeking protection from the court. Notably, the women who must face their abusers as they testify against them in criminal court are not provided with lawyers and may not even have the support of advocates. This failure to consider and attend to the needs of women who have been abused is particularly troublesome because, regardless of the legal proceeding taking place, many of the Indigenous women who took part in this research found courtrooms and buildings hostile, intimidating places. The oppositional nature of many court proceedings are reflected in the interior design of these spaces. The environment at one courthouse disturbed an observer:

Out in the hallway, there's a very stark, cold, almost sterile environment. The hallway is set up so there are benches along each side... [The] women who were the victims and the men who were the batterers were sitting opposing each other. The men were on one side and the women were sitting on the other side. There was quite a bit of tension in the hallway... The men [had] lawyers. In some senses, they seemed quite comfortable with the court system and using it, whereas the women seemed a little more timid, shy and noticeably scared. (Community H, Civil Court Observation, August 2000)

In the space described here, women who had been battered were offered no support or affirmation. They were obliged to face their abusers, and did so unaccompanied by allies or advocates. As one advocate pointed out, courtrooms may feel even more inhospitable and uncomfortably foreign for many Indigenous women simply because, like most people drawn into courtrooms as witnesses or defendants, they are unfamiliar with most of the language, customs, and procedures used there. The foreignness of these procedures further abstracts, fragments and partitions women's experience of violence, and removes the response to violence from the real-life context in which the violence occurs. There is an assumption that the man violated state law and the state is now prosecuting him. This leaves the woman as a witness for the state case against the man. We agreed that his violation was not of a single person, but of a group. But in this system, the abstract notion of the "state" as the victimized party was not in any sense how we saw the violation of her as his partner, of her relationship with her children, of her as a tribal member, of the community already groaning under the history of violence against a people.

In general, courtroom proceedings provide very few opportunities to introduce or acknowledge the real-life context in which Indigenous women experience violence. The voices of women who have been abused may be heard when they testify as witnesses or when judges, on occasion, ask for a verbal statement from a victim. In the procedures observed by the research team, victims' statements were interrupted frequently by objections and conferences between attorneys and judges. In addition, we witnessed surprisingly few conferences or even interactions between Indigenous women and the attorneys who were representing them. In criminal cases, the

prosecutor has little need, obligation, or time to talk to a woman who has been abused if her statement is already on file. To our observers, most members of the court seemed more comfortable talking *about* the woman than *with* her. And most case management routines ensured that phenomenon was the norm. For example, a public defender, in a pretrial conference with his client, raised his voice to ask an advocate, who accompanied her, “Does Betty know about this?” rather than address his question to the woman, who was sitting with the advocate. (Community H, Criminal Court Observation, January 2001). Team members watched as some representatives of the court addressed Indigenous women in ways that were “rude,” “disciplinary,” and “condescending.” We never observed anyone challenge those practices. As observers, we were frequently bothered by courtroom camaraderie that sometimes included male abusers and always excluded female victims.

When Indigenous women who have been abused are given the opportunity to speak in court, their voices are shaped in part by courtroom traditions and by their abusers. One prosecutor explained that, “Evidence rules were designed to operate under the presumption that people can come into court and talk, which is exactly the opposite of what a battered woman’s situation is” (Interview Attorney, November 2000). Her comments suggest that these rules impede presentation in the courtroom of the whole truth about domestic violence:

If...you had a system where the burden wasn’t on the victim so much to come forward...If you could create a system that didn’t have any of those constraints [about getting evidence into court]...I don’t want to have a system where you are accused of something before you have your day in court. You want to preserve some of that, but it seems like there’s got to be some other grounds—a middle ground is needed to stir some of the truth to come out. To get rid of some of these evidence rules that we have...If you could have something that proves the evidence will come in, instead of proving it’s not going to come in. To presume it is important to hear what family members know about what’s happened to her and friends know what happened to her, what she said in the past—rather than it being, ‘We can’t listen to this.’ (Ibid.)

This prosecutor wishes there were better opportunities for women to speak about the violence they have experienced, but also wishes that opportunities existed for victims' family, friends and community members to share what they know about the woman's abuse. Stories such as these could reveal the context and history of a woman's abuse and give court practitioners a better understanding of the impact of the violence. Additionally, the presence of family, friends, and community members might provide victims with much-needed strength, affirmation, and support.

The truth about domestic violence may also be constrained and obscured by the actions of a woman's abuser. As a practitioner pointed out, reliance on the testimony of women who have been abused is particularly problematic given the timelines that prevail in the judicial system, in which several months routinely elapse between an act of domestic violence and courtroom procedures relating to the incident:

The defendant, the batterer, has so much influence over the victim. No matter what we try to do, so much of the case depends on what she can and is able to say in court. He can basically tamper with the evidence for months and months and months. (Ibid.)

As is true in all groups of women who have been the victims of domestic violence, abusers often 'tamper' with evidence to the extent that they convince Indigenous women whom they have abused not to testify against them. In effect, these women have been put at risk by the disjuncture between the real time in which women experience violence (and in which they must manage its impact on their lives) and the institutional time of the courtroom. Regardless of how the women may feel, the court typically will attempt to go forward with the case. As a prosecutor admitted, "If I were representing the woman, my job would be far different. If her interest is to have the case thrown out, because she is afraid to go forward, if I were her private attorney, that's what I would be doing, getting rid of the case" (Ibid.). However, the prosecutor is *not* the

woman's attorney, and, because the crime has been defined legally as a crime against the State, the trial typically continues whether or not the woman is a reluctant witness.

Given that Indigenous women's experiences of abuse are often misrepresented, discounted or elided in the courtroom, it is not surprising that many of the women are unhappy with the outcomes of courtroom proceedings. An attorney who participated in one of our focus groups for this research recognizes this:

Several times I had Native women clients sort of tell me that all the stuff that I am doing, all the machinations of the system is largely irrelevant because it doesn't address the need for healing, the mending the hoop, resolving the conflict. It just settles on, you know, 'You go to jail. You, do this or that.' So when I advise clients, 'Well, we can go and get an Order for Protection, and this is what we can do and we can do this and we can do that,' a lot of times they roll their eyes at me because my language and my solutions don't really mesh with how they want to resolve this situation because it is kind of irrelevant. I don't know how to put it other than that. (Focus Group 5, February 2001)

The awareness of practitioners is there—what remains is making the response relevant to the women it seeks to protect.

### *Advocacy and the Opportunity for a Holistic Response*

If the U.S. legal and judicial system's response to domestic abuse involving Indigenous women is to be relevant to the women it seeks to protect, it must come from a holistic point of view. This means that it must keep the well-being of the victim at the center of its interest; consider, support and integrate her physical, spiritual and social needs; acknowledge and value her connectedness and interdependence with others; and enlist the people and systems closest to the victim for prevention and early intervention. The system has already created, in fact, the possibility for such a response in the role of advocates.

Advocates are responsible for assisting and escorting women who have been abused through various legal and judicial processes. Advocates provide women with a wide range of supports that may include helping them to fill out paperwork, attending hearings, or just

listening. They are equipped with skills to assess the well-being of the women they serve and have valuable practice experience. Advocates typically are part of the communities in which they work and are generally knowledgeable about available community resources. Advocacy services are capable of providing Indigenous women who have been the victims of domestic violence with effective and accessible allies. Unfortunately, not all advocacy services consistently deliver on this promise.

Advocacy services are not necessarily available to women when they need them. Advocates often do not engage with victims until well after a violent incident has subsided, even though most practitioners and victims agree that a victim's need for support and assistance is greatest in the time immediately after the incident. Advocates do not have the legal authority to appear at the scene of an incident although police officers, at their discretion, may call advocates to the scene. Police services frequently argue against early advocate involvement, on the bases that it would jeopardize the safety of advocates, and that it would increase potential for contamination of an investigation. Notably, both of these assertions suggest that the victim is not necessarily at the center of the police response; the first assertion reflects concern for advocates' safety over victims' safety, and the second assertion reflects greater concern for the integrity of the investigation than for the victim. Advocacy in this system is seen as outside of the boundaries of the authorized interveners. The relationship between advocates and the system is often hostile. The advocate who is the mouthpiece of the victim is treated as an outsider. Advocacy is not well funded and is provided by outsiders without the consent or, in many cases, the approval of the professionals in the system.

In most jurisdictions, police officers are responsible for informing the women who are involved in their domestic violence calls about advocacy services. There are no guarantees that



the information will be communicated effectively. An Indigenous woman described her experience of this information transaction:

They didn't tell me about any domestic abuse anything, any groups or anything like that...they [gave] out a card...It's like a fold-out card...It has these numbers, but they didn't tell me, you know, that you can call this place. (Focus Group 1, October 2000)

Some victims do not even receive a card. A victim arrived at one advocacy service with the phone number written on her skin. These incidents suggest that some officers do not understand the importance of the information they are (or are not) imparting and do not recognize the contribution advocacy services can make toward preserving the long-term safety of a woman who has been abused.

In all the areas included in this research, advocacy services are prohibited from 'soliciting' clients, that is, from initiating contact with women who they recognize may need their support. Advocates may develop professional relationships only with women who go through intake and referral processes. This constraint may make some institutional sense, but it also reduces the agency of women who have been abused and makes it more burdensome for women to seek the support of advocates.

In conversations with research team members, Indigenous women who have been abused, advocates and other practitioners, they noted that, for many Indigenous women, it is crucial that, in the system's response to domestic violence, they have early access to the support and assistance of Indigenous women from their own communities:

I think that the authority presence would have to be there...Someone needs to say 'stop!'...I can see if the cops were going out, they [could have] one woman advocate that's from this area. (Ibid.)

The police are there, fine...but we need someone else there, working as an advocate or liaison...to calm things down to begin with. (Ibid.)

I think they need more female officers that are Native, that know us like neighbors. We would know how to help one another...because we know each other's family and we know our relatives. (Ibid.)

The wish expressed by these women is that someone who knows them—not just as individuals in crisis, but also as people in the whole context of their lives—be part of the system’s first response to an incident of domestic violence. In essence, these women are asking that someone bring a holistic approach into the system’s response. Advocates could fill this role. To enable this, we must ensure that advocates are drawn from the communities they will serve, that they are given appropriate training and professional support, that they are available to women at the earliest point possible in interventions, and that they are able to accompany, assist, affirm, and support them throughout any legal or judicial procedures that result from the incidents. With advocates who are equipped with these skills, authority, and commitment as their allies, Indigenous women may find that the U.S. legal and judicial system’s response to domestic abuse meets and honors their many and complex needs.

### Respect for Women

Thinking about respecting and honoring women, I didn’t grow up with the message you have to respect me or honor me. My mother never said that. And I don’t remember saying that to my kids, either. But when I think about my relationship with my mother, she would speak of our good relationship to other people so I knew we had a good relationship because I could feel it. If we’re looking for a cultural indicator, it’s very hard to discuss because it’s so behavioral. It was like I said before an unwritten rule. I never heard my Dad talk to me about giving honor to women, but I never heard him raise his voice to my mother, my grandmother, or any other women. See, women had their own ways of working in the family and the men had their way. Most of the women there were always honored. If they made a decision about something, nobody said, ‘Oh it’s not that way.’ They would say ‘OK. If that’s how it’s going to be, that’s OK.’ Everybody in our community respected the women. (Anishinaabe Elder Margaret Big George, Community Team Meeting, November 2000)

Respect for women is a foundational value of Indigenous North American cultures. For some of us, (including the family members described by this elder) this value is so well instilled that, simply and powerfully, respect for women has been our daily practice. In keeping with the traditional concept of honoring relationship, respect for women includes acknowledging and valuing their relationships with others. Recognizing that women constitute the core of our

families, communities and tribal nations, we also have acknowledged the authority of their perspective, experience and knowledge. Women traditionally have been decision-makers in their families, communities and Nations, and assumed primary responsibility for passing on languages, customs, ceremonies and other spiritual practices and understandings. In many of our cultures, women are linked to our spiritual understanding of the earth itself. As each of us began our lives in the womb of our mothers, our life as a people began with mother earth. This understanding and its reminder of the respect and gratitude due women are presented in creation stories and reiterated by ceremonies and daily rituals in which we honor and thank the earth for all that it provides.

Since European contact, however, the level of esteem and respect extended to women in Indigenous families and communities—and the strength of our families, communities and tribal nations—has eroded. An observer on our research team described one consequence of the erosion of respect for women: “If you teach people about relations—not just on an interpersonal but on a spiritual level, [then] you learn that if you’re hitting someone, you’re hitting your mother. You’re hitting someone that you would never hit. But people don’t understand that anymore.” Indigenous women today are more likely to experience physical and/or sexual violence than women in any other racial group in the country (USDOJ, 2000). When Indigenous women turn to the justice system for protection, they find too often that their own personal safety and other self-identified needs are not adequately protected. While processing Indigenous women as victims of domestic abuse, the justice system fragments and decentralizes their experiences and frequently appears to operate without considering, honoring or regarding their roles as mothers, grandmothers, and partners in families and communities. When police arrive on the scene, they typically focus on producing a winnable case for the state, operating in a

prescribed way that protects the safety and legal rights of the responding officers and leaves the women seeking protection as invisible and inactive participants in the cases they are assembling.

### *A Story*

“Good evening, Les. Sorry to bother you this evening, but we got a call from the Missus to come check things out here.”

“Sure come right in. No bother at all,” Les stretched the screen door open as wide as the rusty hinges would allow for Officer John to come into the house. The house was quiet and calm, and no evidence of violence or any disruption was apparent. Furniture in order, there was a smell of homemade baked bread and freshly washed dishes were sitting in the drying rack covered neatly with a dishtowel.

“I’ll just take a quick peek around. It won’t take me long. When the call came in the Missus mentioned to our dispatcher something about the son being here. Is he here?” Officer John asked, admiring the trophy trout mounted on the living room wall.

Noticing Officer John’s silent admiration of the mounted brook trout, Les piped up, “Caught that right over here in Outback Creek.” He pointed over his shoulder to indicate the whereabouts of the creek. “The wife hates em’ up there on the wall but they are such beautiful brookies I had to get them mounted. Oh yeah, the boy, he’s asleep just down the hall.”

Officer John walked down the dark hallway, noticing the closed door at the end of the hallway on the left. Quietly he opened the door and scanned the room with his flashlight. Seeing the boy asleep, he pulled the door closed and walked briskly back down the hall.

“Can I get you something to drink, Officer?” Les asked in a tone that implied this was a social visit.

“No, no, thank you though. I don’t want to take up any more of your evening. I can see there is nothing here to keep me or imply any kind of a domestic situation is out of control here Les so I will be on my way. Again, I’m sorry to have bothered you like this—just doing my job.”

“Oh, no bother at all. Like I said, when you want to try your luck at the Creek just give me a call, I’d be happy to show you where those brookies are biting.”

“Yes, I’ll do that. Nice to see you again and take care, have a nice evening.” Officer John tipped his hat as he walked down the front steps to his squad car.

“You too, Officer,” Les said, closing the oak door and locking it for the night.

“The squad car is just pulling out, Anne.” Jean stood in front of the kitchen window that looked directly across the street into the home Anne just fled.

Anne slowly walked into the kitchen from the dark living room where her daughter Dee had been trying to calm her down and draw her attention away from what was happening across the street once the squad car had pulled in to her driveway.

“Oh geez, I wonder what happened. Is the squad coming over here? I hope they put the fear of God in him so this can stop once and for all!” Anne whispered as her grip around her coffee cup tightened.

“Do you think my boy is OK? His father....he’s crazy. He probably just smoothed over the officer like all the other times before, when I know he’s raging on the inside because I actually called the police. I can just hear him: ‘Your mother’s crazy, son.’ Ooohhh, that man.” We could all hear the anxiety, fear and frustration in her voice.

“It looks like the lights are all tuned out over there. Things seem calm. Why don’t we all try and get some sleep tonight? The kids are downstairs with Bradlee and Dee has laid some blankets out for you on the couch, Anne. You will be comfortable there for the night.”

*Respect and the 911 Response to Domestic Violence*

The story above is a memory retold by a member of the research team. In this instance, an Indigenous woman who had experienced domestic abuse could find safety only by leaving her home. Although her neighbor willingly gave her refuge for the night, she could offer little help beyond that. With no voice and no agency, the woman watched helplessly as the man who had battered her once again convinced the responding police officer that their home was free of violence. This is a sadly familiar story, which is propelled forward, in large part, by the system's lack of respect for women. Almost immediately after the woman had engaged the U.S. legal system's response to domestic violence by calling for help from 911, the system disengaged from her, concerning itself instead with procedure and protocol, lubricated by the male camaraderie into which the responding officer and the woman's abusive partner immediately slipped. In terms of institutional needs, the system did what it was supposed to do; the officer arrived at the scene, inspected the home for any signs of violence and protected his own safety by following the letter of the law. However, the system did not attend to some of the woman's most urgent concerns, leaving her to wonder whether the officers were going to talk to her, whether they had put the fear of God into the man who had abused her, whether her son was safe and if, at last, the violence would stop. The woman's questions are a reminder of just how great the gap is between what the system provides and what women need.

What would it mean if the U.S. legal system were to incorporate the traditional Indigenous value of respect for women into its response to domestic violence involving Indigenous women? Respect for women would ensure that the women who have asked the system to intervene would remain at the center of the system's intervention. Specifically, practitioners should assume the authority of what women tell them about their own experiences

and preserve women's agency over their own lives. Practitioners need to be familiar with cultural practices (with reference, for instance, to methods of communication or family dynamics) in the communities that they serve. In particular, practitioners should recognize the centrality of relationship in Indigenous communities, and the respect they extend to women should include respect for their relationships. Ultimately, interventions made by the system should value and support women, both as individuals, as partners in families and as community members and ensure that they have agency in the decisions and actions that affect their lives.

The first step that many Indigenous women who have been battered take to get help from the U.S. legal system is a call to 911. Data collected during 911 sit-alongs, interviews, and focus groups reveal that, for many women, their call to 911 is also the first place they sense that they are not being treated with respect. A woman offered this story in a focus group:

I called the police and my hands were shaking and I was crying and I was saying I need help. She asked what my situation was and if he was there now, and I said, 'No.' [The dispatcher] said, 'Are you in immediate danger right now?' And I said, 'He left,' And she said, 'Well what are you asking?' And I said, 'For help.' And she said, 'In what way?' I called a cab and left and the cops never showed up. (Focus Group 6, February 2001)

This woman interpreted the dispatcher's response as a lack of interest in her own well-being. Regardless of their callers' needs, 911 operators seek only as much information as is required to make the right dispatching decision. During the calls, 911 staff also review other information relevant to their dispatching decisions, such as the history of calls made from that location, whether the caller is the subject of a warrant or party to an OFP and officers' responses to the address. Indigenous women who have been abused and call 911 may be frustrated by the scripted questions the 911 operators use to gather information. If they are put on hold while the staff checks to see if their OFP is valid, they may feel (possibly with good reason) that they have been endangered by the delay.

Indigenous women who have been the victims of domestic violence may also, when they reach out to 911 for help, detect attitudes, beliefs, and understandings that suggest that their safety and lives are not held in high regard. For example, one observer heard a 911 dispatcher comment that, “[Orders for Protection] are so wishy-washy. Most often, they are BS. Most women put them on their husbands to try and win the divorce settlement” (Community J, Sit-along 1, October 2000). The frequency of calls made to the communications center from a location in some cases influences the level of respect and service a woman receives. One Indigenous woman who had been abused related this exchange with a 911 operator: “They told me, ‘We’ve been to your house thirteen times in such and such a time limit,’ and I said, ‘I’m sorry, but isn’t that your job?’” (Focus Group 2, November 2000). Not only do 911 operators’ assumptions result in disrespectful interactions with Indigenous women, but they can compromise women’s safety. Recall the horrifying story of the 911 operator who assumed the slurring caller to be drunk; police arriving 45 minutes later learned that the abuser had broken her jaw (Focus Group 4, January 2001).

The police are the first physical contact a battered woman has with the U.S. legal system when she reaches out for help. Because reporting officers must complete certain institutional tasks, their practices, at times, marginalize the needs of Indigenous women who have just experienced physical or sexual violence. Disrespect for women is sometimes detected as little more than the quiet subtext of an officer’s comment or activities. Observers saw police officers walk or turn away from Indigenous women who had been abused while the women were speaking to them. One officer at the scene of a domestic violence incident was reported to have asked the woman involved, “What’s your problem? Why don’t you just leave?” The research



team also repeatedly heard from Indigenous women who had been abused that they had felt that officers attending their 911 calls were reluctant or unwilling to give them the help they needed:

I think the cops get sick of calls, too. 'Well, she's not going to press charges anyway,' or I called relatives up to come and get me when I quit calling the police. (Focus Group 1, October 2000)

The police know me. They're like, 'Oh, it's [her] again.' ...I think it goes back to how many times I've called the police. There was times that I'd go back to the abuser. 'It's just a waste of time, cause she'll go back to him anyway.' That goes to your self-esteem when you're being abused. You know, you just feel so low. (Ibid.)

If they see you it is like, 'Oh, it's you two again. Haven't we been here before?' They have that cold attitude about it, no type of compassion or anything. 'Okay, we are just here to do our job. (Focus Group 6, February 2001)

When I've called the cops, they've come and say, 'Oh, it's just these guys again. Either split up or quit your drinking.' (Focus Group 1, October 2000)

Sometimes they [believed me], it depended on who responded. A lot of times, me being Native American and also being an alcoholic, they didn't treat me like they would another person. (Ibid.)

I know we couldn't have solved anything there. Not with this man standing right there in my living room and talking down to me, making me feel like there is something definitely wrong with me. [When he said I was too far gone], the implication is...that there's no use for me, that there's nothing they can do about me. (Ibid.)

As these comments reveal, intervening officers often clearly communicate a lack of respect for Indigenous women involved in domestic abuse. Standard practices that intervening officers use to secure a woman as a witness often involve challenges to her integrity or imply that she is not an authority on her own experience. The following excerpt from a police report reveals some of the extent to which these practices undermine trust and respect between intervening officers and Indigenous women who are the victims of domestic abuse:

I read her statement. After reading her statement, I asked her why she did not write down what she had told me earlier and she said it was because she wanted us to come over and take him to detox, that she did not want us to take him to jail. I advised her she could face possible charges for withholding information from the police department, at which time she continued and said she was not going to write that down because she did not want him to get into trouble. (Community E, Police report 10)

In this excerpt, the “advice” the officer gave the woman was, in fact, a thinly veiled threat to charge her with a criminal act. Although the woman clearly had stated that she wanted the man taken to a treatment facility, the officer was determined to gather evidence for criminal charges against the man. The use of threats to extract information from Indigenous women who are the victims of domestic abuse appears to be common practice. Threats levied against women who fail to cooperate with officers include criminal charges, jail time, and (perhaps the most potent threat) that their children will be taken from them. When practitioners fail to honor the relationships of Indigenous women with their children, refuse to acknowledge that women’s relationships with their partners have any value or entail any responsibility for them, or make women’s needs secondary to their own institutional practices, they reveal that, at a fundamental level, they have little respect for the women who have sought their protection.

### *Respect in Judicial Processes*

As cases that involve Indigenous women who have been battered move through the justice system, the women’s voices are increasingly muffled, their experiences are increasingly fragmented and their agency is steadily diminished by institutional protocols and legal processes. Some women seek safety through Orders for Protection (OFPs), a process that begins at the local courthouse. Only the person who is seeking protection can initiate OFPs. As one advocate acknowledged, the process of initiating an OFP can be discouraging:

There are some obstacles I would imagine for women to get [an OFP]. There are rude clerks at the courthouse, and seemingly, all women are subject to a particular person who works there being rude to them. And not being helpful, not giving them – not telling them they can go to us by not giving them our number. One woman came to our office with a number written on her hand because they didn’t give her a piece of paper. But once they get the Order for Protection, how well it’s enforced, we don’t necessarily know the answer to that. She may call and say there is a violation and maybe nothing happens and we may not know about that. (Focus Group 4, January 2001)

Although OFPs offer Indigenous women who have been the victims of domestic abuse an unusual opportunity to direct the legal processes in which they are involved, women seeking OFPs at the courthouse described by this advocate must first withstand the disrespect of the clerk who is, in effect, the gatekeeper of the process. Even if a woman manages to file the paperwork for an OFP, the order will not be effective until an evidentiary hearing is held. Many women who file OFPs find this delay unbearable:

I did fill out all the paperwork and I went through all that, the pretrial and all that he had to be there and I had to be there. When I came here I had this, I had to wait a week and then—well, it didn't happen in a week and I got a whole lot of time to change my mind and so I didn't pursue it. (Focus Group 4, February 2001)

You put your order in and it's a week before you go to trial or longer. And in that week you can change your mind. And you are so vulnerable. It's like why should I go through this anyway, you know—it's as though you are doing something wrong. (Focus Group 6, February 2001)

At the time these women initiated OFPs, they needed the protection the orders promised; however, by the time the legal system was ready to take up their cases, the women were frustrated and the needs they had addressed by filing OFPs were exhausted. One practitioner described her own exasperation with the system's failure to recognize, acknowledge or meet women's self-identified needs in a timely manner: "That process just doesn't work—it's not fast enough. It doesn't work within the culture. The initial forty-eight to ninety-six hours are crucial. That is where it all has to happen. And if it doesn't happen then, it's over" (Reported by Judge, Focus Group 5, February 2001).

Both research team members and practitioners recognize a similar failure in the U.S. legal system. Practitioners are often faced with what one described as, "a disconnect between what the dominant culture...expects as a good result in a case and what the Indigenous culture or Indigenous clients see as a good result in the case" (Reported by Court Practitioner, Focus Group

5, February 2001). The “disconnect” referred to here is generated in part by the system’s frequent failure to pursue outcomes that are sought by Indigenous women involved in the cases:

When you’re there, you’re not really representing the woman. You’re representing the city, the state. It can be difficult sometimes. ... If her interest is to have the case thrown out because she is afraid to go forward—if I were her private attorney that’s what I would be doing, getting rid of the case. It’s this tension for prosecutors to look at both the safety needs for that woman, as well as the safety needs of the community, and try to balance that. ... It’s kind of looking at her short-term safety and the safety of the whole community. (Interview Prosecutor, November 2000)

Sometimes I think we have to accept that if the case doesn’t [proceed], the charges get dismissed, if the order is dropped, sometimes the process has served their needs. It’s not that the system has done anything wrong—it’s just that they don’t have any use for the system at a certain point. (Reported by Judge, Focus Group 5, February 2001)

Because criminal court proceedings have the safety of the public as a primary concern, women who have been the victims of domestic violence are removed from the center of criminal proceedings that relate to the violence. Although the attorney speaking above describes the women she represents with tremendous respect, the legal processes she refers to do not necessarily offer women the same level of respect. Lawyers may also withhold respect from Indigenous women who have been abused. A research team member was told of a prosecutor’s conversation with another lawyer about a woman involved in a domestic abuse case: “This guy [said] to me, ‘If it was so bad, she would leave the relationship. She likes it, these people like having this happen’” (Interview Prosecutor, November 2000).

Indigenous women who are involved in criminal court cases often feel that they are being denied respect in court and respond with distrust:

When it comes down to the legal stuff, have some type of mediator. I know I didn’t feel comfortable talking to the police or the judges you know asking me questions. For all I know it could be a trick question, I didn’t feel comfortable. (Focus Group 6, February 2001)

The frequent failure of respect and trust and the consequent impasses in court disappoint and frustrate both the women and court practitioners:

Most people...are afraid to speak up in court, because it's a foreign environment and they have a lot to say outside the courtroom, or to me or to [name] and they have a lot to tell us. When it's time to tell the judge they have nothing to say. (Interview Prosecutor, November 2000)

They had in the police report no address or no phone number for the victim. She was in the back row on the left hand side of the courtroom. Why didn't anyone stand up and talk to her, once they realized she was there? (Ibid.)

When she is asked what she wants or needs it never happens because the system is not designed in a way to develop with her what she wants and needs. (Research Team Meeting, May 2001)

As members of the Indigenous community, legal practitioners and other service providers recognize, each instance in which Indigenous women feel that they are denied respect by participants and procedures in the U.S. legal system's response to domestic violence reduces the likelihood that they will turn to that system for help in the future. The risks are real, but the solution, we hope, is apparent. One research partner proclaimed that, "You can't train somebody who has no way of knowing how we live, what our values are, where we're coming from. A lot of times there are no words for that. There is no way to explain it...they have to be a part of it in order to know." A team member was a little more succinct: "We need to have the police, the court system, become involved with us—not us involved with them." Involvement and experience will provide a foundation for respect, and create opportunities to hear the voices, validate the experiences, believe in the needs and preserve the integrity of Indigenous women who have been the victims of domestic violence.

### A Vision of Integrity

#### *Introduction*

The concept of the "sacred circle" is a part of most Indigenous North American cultures. Representations of the sacred circle vary from community to community; for example, some communities represent the circle visually and refer to it as a medicine wheel (Storm, 1972).

However it may be represented, the fundamental understanding expressed by the sacred circle is common across the communities, that is, that healthy and whole individuals, communities, and Nations are constituted by physical, emotional, cognitive and spiritual elements. A corollary to this understanding is that individuals, communities and Nations are at peace only when these elements are in balance and harmony. The philosophy expressed by the sacred circle has been put into action by Indigenous people since the beginning of our time and effected by a commitment to integrity in our everyday language, action and ceremony. Indigenous people, as individuals and communities, who value and strive for harmony and balance, understand that they are responsible to one another and to their communities and that their communities are accountable to community members.

Systems such as the U.S. legal and justice system, which are structured as hierarchies, stand in sharp contrast to societies structured around a sacred circle. While structural features of the U.S. legal and justice system do not in and of themselves necessarily preclude an individual's choice to act with (or without) integrity, the structure of the system *in its entirety* prevents the state from intervening effectively in domestic abuse cases against Indigenous women. During the course of this research, we have attempted to view the U.S. legal system from the standpoint of Indigenous women who have been and are being abused and who have been and are seeking protection from the system. This position led us to envision a system that embraces the Indigenous values of respect for women, holism and honoring relations – that is, an Indigenous system that operates with integrity. In this section we propose some of the foundational pieces of a system that protects women who are abused and holds offenders accountable to the women (and children) they have abused and to their community of relations.

*Towards an Indigenous Criminal and Civil System*

Currently, Indigenous women who seek the protection of the U.S. legal and judicial system must, in the midst of their own personal crises, also manage and negotiate problematic features of the system (these features are discussed in detail in the third chapter of this report). Each practitioner with whom a woman interacts is responsible only for certain highly specialized institutional tasks and consequently attends only to a fraction of the woman's simultaneous and interrelated needs. In this system, the woman's experiences and needs are understood, organized and enacted upon in terms of institutional categories and formulations, recorded and circulated by practitioners in standardized forms and formats. These institutional texts ensure that only what is institutionally permitted and required is communicated across the processing interchanges that manage and constitute the woman's 'case.' As her case is constructed, the opportunities available to articulate her own needs are infrequent and limited. The woman's experience of abuse is stripped of its context, and reconstructed as a series of institutionally actionable events, directed by legal and judicial procedures, protocols and priorities.

Regardless of how a woman's experiences and needs are reconstructed by the U.S. legal and justice system, shortly after police intervene and the systemic response to an instance of domestic assault begins, a dangerous disjuncture develops between the real time in which women experience violence and the relatively sluggish institutional time in which the system's practitioners may sign an emergency order, grant a long-term order for protection, process criminal charges in court or take other institutional action. Given that domestic violence typically is part of a pattern of ongoing abuse rather than a single incident of violence, the lag time is particularly dangerous for women who are seeking the system's protection. By isolating and decontextualizing abuse, the system's response frequently sidetracks and minimizes aspects of

the violence experienced by a woman. As stated earlier in this report, because institutional practitioners working in an institutional manner engage with the abuse rather than with the woman who is being abused, it is difficult for them to fully understand what is entailed in a woman's need for protection. The absence of an avenue for women to speak and be heard derails any possibility of full protection. Because many practices of the U.S. legal and judicial system fail to protect or promote the relationships between Indigenous women who are battered and their children, a fundamental element of a successful response is missing.

The outcomes of problematic features of the current U.S. legal and judicial systems are frequently devastating for Indigenous women. Indigenous people and tribal Nations need legal and judicial systems that value integrity. For Indigenous people, this means that the process must be rooted in our values of holism, honoring relations, and respecting women. An effective intervention in domestic violence against Indigenous women will occur only in a system that enables those who intervene in domestic violence to engage with all aspects of a woman's experience. For a system such as this to operate with integrity, it must incorporate the following understandings:

- The processes and case management strategies currently employed in the U.S. legal and judicial systems typically are more attentive to institutional needs than to the simultaneous and interrelated needs of Indigenous women who are the victims of domestic abuse. A system that operates with integrity will prioritize and be built around victims' needs for safety, rather than the management needs of the institutional structure.
- The U.S. legal and judicial system currently deal with domestic abuse involving Indigenous women by focusing on and isolating specific incidents of abuse. A



community intervention that approaches domestic abuse with integrity will deal with the entirety of a woman's experience. This means that the intervention will not focus exclusively on an act of violence a woman has experienced, but rather will consider and engage with the full range of her needs, be they emotional, physical, economic, cognitive or spiritual. Just as this incident of violence is only a piece of all of the violence she is experiencing so is the violence only a piece of her loss of autonomy and a part of her complex life. Those who intervene in domestic violence need to pay attention to all the aspects of violence in a woman's life and all the aspects of her life itself.

- Practitioners in the current U.S. legal and judicial system currently are held accountable primarily for the specific institutional tasks assigned to them as part of the system's intervention in domestic violence involving Indigenous women, rather than for the overall safety of the women who are the victims of violence. In a system that operates with integrity, individuals intervening in domestic abuse are accountable to each other, collectively accountable to their group and their community and ultimately accountable for the safety of the woman who is the victim of the violence. People who intervene in domestic abuse need to see themselves in relation to the woman they seek to protect and be connected to her in a way that is rooted in her vitality and importance to the community.
- The gap between the real-time in which Indigenous women experience domestic violence and the institutional time in which the U.S. legal system intervenes in that violence endangers women. In a system that operates with integrity, this gap will, wherever possible, be drawn close or bridged. The schedules within which

- community interventions operate will prioritize the immediate needs of victims. If a woman's need for physical protection is acute, then the community's interventions will proceed with corresponding urgency.
- In the U.S. legal system's current response to domestic violence involving Indigenous women, a woman's knowledge and understanding of her experiences are displaced by institutionally fabricated abstract representations of her experience. A system that operates with integrity will ensure that a woman who has been the victim of violence is in dialogue with those who are intervening in the abuse. The story she offers, one that is told from the context of her whole life, must be validated and returned to her. She must not be rendered as the representation of an abstract idea, in portrayals of women as victimized, battered, battering, alcoholic, homeless, depressed, dysfunctional, colonized and/or "native" or not to some legally measurable degree. The system must create opportunities for each woman to voice her knowledge, then listen carefully and incorporate what she knows and what she wants to happen into the community's intervention.
  - In the U.S. legal and judicial system's current response to domestic violence against Indigenous women, responsibility for the protection of women who are abused is taken from the community and discharged to isolated agencies (including tribal agencies) and arms of the government. In a system that operates with integrity, agencies that are given responsibility for the protection of women will share that responsibility with the community at large.
  - In the U.S. legal and judicial system's current response to domestic violence against Indigenous women, practitioners take part only in limited segments of the

intervention and are rarely able to see many of the outcomes of their actions. In a system that operates with integrity, people who intervene in domestic violence will be able to maintain their involvement throughout and beyond the formal processes of the intervention.

- The U.S. legal and judicial system's current response to domestic violence against Indigenous women is prescribed by rigid protocols, procedures and priorities. A system that operates with integrity must be dynamic, vital, self-reflective and consequently able to respond to the particular and personal needs of the women it seeks to protect.
- In the U.S. legal and judicial system's current response to domestic violence against Indigenous women, concern, regard and respect for a victim of violence are frequently displaced by more immediate concern for the completion of institutional tasks. A system that operates with integrity will consistently treat women with respect and, in that way, provide a model to others, including (most notably) the men who have abused them.
- In the current response to domestic violence against Indigenous women, crippling limitations are placed on the resources and jurisdiction of tribal legal and judicial systems. In a system that operates with integrity, adequate tribal resources and energy will be devoted to all aspects of the intervention in domestic violence, from prevention to healing. It recognizes that we cannot replace one aspect of the intervention with another. On an individual level, this means that a man cannot start on the healing process before he has stopped committing acts of violence. On the tribal level, this means that we cannot alter one aspect of the intervention system

without altering all aspects of our ways of helping our families. The features of the U.S. legal system that became so starkly present for us are replicated in all of our agencies and institutions of social management. We cannot change one and expect results if all the other related interventions are rooted in this same problematic ways of knowing and acting.

The quest for integrity is not easily realized, but the path to it is clear. As Indigenous people work toward restoring or rebuilding our unique ways of creating justice and protecting women and children, we must inquire of each process, each rule, each assumption: Does it honor all our relationships? Is it holistic? Does it promote respect for women?

## HISTORICAL CONTEXT FOR THIS STUDY

## Indian Tribes and the Safety of Native Women

***The Indian tribe is “a distinct political society separated from others, capable of managing its own affairs and government itself...”<sup>20</sup>***

In 1994, Congress passed into law the Violence Against Women Act, marking a shift in federal recognition of the extent and seriousness of violence against women. This shift in federal policy serves as a watershed not only for the United States, but also for federally recognized Indian tribes.<sup>21</sup> The inclusion of tribal governments within the language of the Act creates the opportunity for an examination of the level of violence experienced by Indian women and the federal policies that provided the social context for the perpetuation of such violence. Significantly, the Act recognizes the unique legal relationship that Indian tribes have to the United States. This legal status separates the handling of matters concerning Indian tribes and the violent victimization of women within their jurisdictions from that of other women in the United States.

The physical and sexual abuse of Indian women, once a rare social phenomenon, transformed over time into a pattern of behavior common within tribal communities. Contained in the living memory of Indian people is the knowledge of the abuse of a beloved woman whether a grandmother, mother, or daughter. This reality is graphically verified in recent studies by United States Department of Justice:

- One out of three American Indian and Alaska Native women will be raped in her lifetime (USDOJ, 2000);

---

<sup>20</sup> Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 16 (1831).

<sup>21</sup> State recognized tribes were not eligible applicants and this article is limited to federally recognized tribes.

- Indian women suffer 7 sexual assaults per 1,000 compared to 3 per 1,000 among Black Americans, 2 per 1,000 among Caucasians, and 1 per 1,000 among Asian Americans (Greenfeld & Smith, 1999); and,
- 75 % of Indian female homicide victims during the period of 1979-1992 knew their assailant, with almost one-third being killed by a family member (Centers for Disease Control, 1993).

The current epidemic levels of violence toward Indian women are linked to the enormous disruptions of customary life caused by the United States that resulted in the collapse and destruction of Indigenous systems of governance. These tribal systems served as the primary protectors of women's safety within their respective communities. Reconciling the current federal policies of tribal self-government and enhancing the safety of Indian women with the gravity of the impact of prior federal policies upon the lives of Indian women is a necessary element of developing effective programs for Indian women. Through this history we can clarify the perplexing "social condition of violence" experienced by Indian women today. Previous federal campaigns directed toward Indian tribes ranged from termination to forced assimilation and were legitimized under the political cloak of governmental policy. The genocidal impact of these campaigns is without doubt linked to the normalization of violent crimes perpetrated by individuals against Indigenous women. The Violence Against Women Act creates immense opportunities and challenges to all those concerned with the safety and honor of Indian women.

Tribal governments are rising to these challenges and coping with the difficulties of their unique circumstances in diverse ways reflective of their tribal history, customs, and practices. With the opportunity created by the passage of the Violence Against Women Act, tribal governments are addressing questions such as: How can the safety of women be enhanced within

the authority of the governing entity? How can the increased resources available to the tribal justice system be used to reverse the social trend of tolerance of violence against women? What legislative and political roadblocks must be addressed to implement such changes? While the answers to these questions have varied, all those engaged in this process have experienced the same frustration. It is a frustration reflective of the complex legal relationship between Indian tribes and the United States that epitomizes the different worldviews of the U.S. justice system on the one hand, and those of the aboriginal inhabitants of North America on the other.

The United States government by its historical treatment of Indian tribes is also challenged by the Act to examine and address the safety of Indian women. The trust responsibility of the United States to Indian tribes is one asserted by the federal government through Supreme Court cases, treaties, and acts of Congress. The disentanglement of knotty jurisdictional and policy issues surrounding the safety of Indian women are matters that Congress, in consultation with Indian tribes, must resolve. Critical questions elucidated by passage and implementation of the Violence Against Women Act include: How to unravel the federal jurisdictional maze that Indian women must maneuver to access justice services? How to provide federal assistance to the efforts of tribal governments in the handling of crimes against Indian women? How to support Indigenous justice approaches that strengthen the response of tribal communities to violent crimes against Indigenous women?

The goal of this document is to present an overview of violence against Indigenous women and the efforts of tribal governments and communities to address this issue. Due to the inextricable link between the violence perpetrated against Indian women, tribal efforts to address such violence, and federal Indian law, the article utilizes a historical-legal framework. Through such a lens the violence perpetrated against Indigenous women can be clearly viewed as an

extension of the development of the United States and not the optical illusion that bad people, created bad policies toward the Indians.

We will discuss four components: an overview of the historical erosion of the safety of Indian women; a review of tribal authority to respond to violent crimes against women; the context of responding to such crimes; and an overview of current approaches used by tribal governments to respond to such crimes and provide assistance to women. The scope of this document is limited to the context of violent crimes of battering and sexual assault against Indigenous women within tribal jurisdiction; it does not address civil matters or remedies available to women.

*I. The Development of Federal-Tribal Relations and the Erosion of the Status of Indian Women*

***“Let your women’s sons be ours; our sons be yours. Let your women hear our words.”*** (Ward, 1781)

In 1781, Nancy Ward, War Woman of Chota, addressed the United States Treaty Commission at Holston. She believed that peace could be sustained only if the Cherokees and their enemies became one people bound by the ties of kinship. She called for the women to respond because in her world context only the women could accomplish this goal. The responsibilities she shouldered at that moment in history reflected her status as a political leader within her Nation. She did not that know that women as citizens of the United States did not share the position occupied by women as citizens of the Cherokee nation (for further discussion see Perdue, 1999).

Why must Indian women deal with tribal police, the Bureau of Indian Affairs and also the Federal Bureau of Investigation? Why are non-Indian rapists and abusers not prosecuted



within tribal court when the crime is committed within the jurisdiction of the court? Why is the sentencing authority of a tribal court limited in serious cases such as rape? The answers to these questions lie in the history of tribal and federal relations.

Historically, Indian tribes stood outside of the United States. Indian tribes existed before the Declaration of Independence, the adoption of the Constitution and Bill of Rights by the United States. Indian tribes were foreign governments with which the United States entered treaties. “The relation of the Indians to the United States is marked by peculiar and cardinal distinctions which exist no where else.”<sup>22</sup> Reflective of this history is the fact that Indians did not become citizens of the United States until 1923.<sup>23</sup>

Thus the treatment of Indigenous women as citizens of their respective Nations was in every way distinct from that of non-Indian women (Wagner, 2001). In fact, while the role of women varied enormously from tribe to tribe, the worldview of tribal cultures traditionally placed women in respected and honored positions inconsistent with the concept of physical abuse. The social and political structures of many tribes have traditionally highlighted the valued position of women; specifically many tribes were matrifocal<sup>24</sup> (where the mother role is culturally elaborated, valued, and structurally central), matrilineal<sup>25</sup> (where the line of descent is determined through one’s mother), or matrilocal (where the daughter takes her husband to live at

---

<sup>22</sup> Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 17 (1831).

<sup>23</sup> Elk v. Wilkins, 112 U.S. 94 (1884). Citizenship Act of 1924, 43 Stat. 253, 8 U.S.C. sec 1401(a)(2)

<sup>24</sup> “Claims of relatively high status for Iroquois women are usually based on such economic and / or political roles as female ownership of land, control over horticultural production, and nomination of Confederacy chiefs” (Bilharz, 1995, Wallace, 1969).

<sup>25</sup> “The Cherokees traced kinship solely through women. This circumstance gave women considerable prestige, and the all-encompassing nature of the kinship system secured for them a position of power” (Perdue, 1999). “In the matrilineal societies of the Hopi in the Southwest, where the status of women was high, a woman wished to give birth to many girl babies, for it was through her daughters that a Hopi woman’s home and clan were perpetuated” (Niethammer, 1977).

her mother's home). In addition, the rights of an Indian woman to retain her property and custody of her children, or to separate from or divorce<sup>26</sup> an unwanted husband were generally undisputed in tribal cultures.

As colonization by the United States proceeded, Indian tribes found their respective nations confronted with genocidal policies of war and later the imposition of Western governmental systems. The federal policy of termination targeted Indian women and children for wholesale killing in order to destroy Indian nations (Stannard, 1992). Colonizers such as Andrew Jackson recommended that troops systematically kill Indian women and children after massacres in order to complete extermination (Smith, A., 1996). The boarding-school era of forced removal of Indian children from families continued the physical and sexual battering of Indian girls and cultural genocide.<sup>27</sup> The current epidemic of violence against Indian women cannot be viewed outside this historical context. Federal Indian law and policy moved systematically through time to erode the status of tribal governments as foreign sovereign nations and the status of women as citizens within those nations.

The United States in its efforts to "civilize" Indian tribes imposed a Western approach to justice that was opposite that deriving from a tribal worldview. The Western approach has "its roots in the world view of Europeans and is based on a retributive philosophy that is hierarchical, adversarial, punitive, and guided by codified laws and written rules, procedures and guidelines.

---

<sup>26</sup> "Divorce was common and easy for most Native American women. If a woman was living with her husband's family, she simply took her belongings and perhaps the children and went to her parents' home. If a couple was living with the wife's parents or if the dwelling was considered hers, she told the man to leave..." (Niethammer, 1977). "It was convenient for the marital system to be based virtually on free sexual choice, the mutual satisfaction of spouse, and easy separation..." (Wallace, 1969).

<sup>27</sup> U.S. Congress, Senate, Committee on Indian Affairs, Survey of the Conditions of the Indians in the United States, Hearings before a Subcommittee of the Committee on Indian Affairs, Senate, on SR 79, 70th Cong., 2nd session, 1929, 428-29, 1021-23, and 2833-35.

The vertical power structure is upward, with decision making limited to a few” (Melton, 1995). In domestic violence cases, the abuser is made accountable to the state, not to the woman and community harmed. The components of the criminal system are designed to accomplish this task and are thus reflective of that purpose.

The imposition of the Western justice system upon Indian tribes while destructive to Indian tribes in general, also resulted in the erosion of the ability of tribal governments to protect women citizens in particular. This pattern is highlighted by a review of the impact on Indigenous women by the following three federal acts. First, the assumption of jurisdiction by the United States government over serious crimes<sup>28</sup> committed by an Indian in Indian country (specifically in relation to acts of violence commonly committed against women: the crimes of murder, kidnapping, maiming, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, and, later, sexual abuse) eroded the traditional response of tribal governments to such crimes and sent a clear message to Indian tribes that they could not properly handle such cases.<sup>29</sup> Second, the limitation placed upon the jurisdiction of tribal courts to “in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year and a fine of \$5,000, or both” restricted the ability of tribal governments to appropriately respond to crimes.<sup>30</sup> Third, the imposition of a Western governmental framework through the Indian Reorganization Act<sup>31</sup> assured a distinctly non-Indian approach to tribal government in general and to the issue of violence against Indian women in particular. This approach replicated the separation of powers between the executive,

---

<sup>28</sup> Seven crimes were originally covered, but the list has been expanded to the present fourteen by a series of amendments.

<sup>29</sup> Major Crimes Act of 1885, 18 U.S.C.A. § 1153.

<sup>30</sup> Indian Civil Rights Act of 1968, 25 U.S.C. § 1302(7).

<sup>31</sup> Indian Reorganization Act of 1934, also known as the Wheeler-Howard Act, 25 U.S. C.A. § 461 et seq.

legislative, and judicial authority. In many tribes this reorganization of tribal government resulted in diminishing the role of family, clan, spiritual leaders, and community as protectors of women. Indian women under the new constitutions, which required approval of the Secretary of the Interior, received the same protection that non-Indian women in non-Indian communities received: none.

While the enactment of these federal statutes affected all federally recognized tribes, Congress later enacted legislation further increasing the jurisdictional complexity confronting certain tribal governments. In 1953, Congress legislated Public Law 83-280 (Public Law 280).<sup>32</sup> As an extension of the federal policy to “terminate” Indian tribes, Congress withdrew federal criminal jurisdiction on reservations in six states<sup>33</sup> and authorized those states to assume criminal jurisdiction<sup>34</sup> as well as permitting all other states<sup>35</sup> to acquire it at their option. Thus in Public Law 280 states, federal responsibility for the prosecution of serious crimes, such as sexual assault, under the Major Crimes Act<sup>36</sup> was transferred to state law enforcement agencies. While Public Law 280 did not alter the civil or criminal jurisdictional authority of tribal governments, tribes located in Public Law 280 jurisdictions were denied federal funds to support the development of tribal justice systems.<sup>37</sup> In addition, while Public Law 280 did not alter the trust

---

<sup>32</sup> Public Law 83-280, 67 Stat. 588 (1953).

<sup>33</sup> The six named states, known as the “mandatory states”, are: California, Minnesota (except Red Lake Reservation), Nebraska, Oregon (except the Warm Springs Reservation), Wisconsin, and, as added in 1958, Alaska (except the Annette Islands with regard to the Metlakatla Indians).

<sup>34</sup> PL 280 also conferred civil jurisdiction on the mandatory states, 28 U.S.C.A. § 1360 (a), that is confined to adjudicatory jurisdiction only. *Bryan v. Itasca County*, 426 U.S. 373 (1976).

<sup>35</sup> The following states have assumed total or partial jurisdiction: Arizona, Florida, Idaho, Iowa, Montana, Nevada, North Dakota, Utah and Washington.

<sup>36</sup> PL 280 provided that the General Crimes Act (18 U.S.C.A. § 1152) and the Major Crimes Act (18 U.S.C.A. § 1153) no longer applied to areas covered by PL 280 in the mandatory states. 18 U.S.C.A. § 1162.

<sup>37</sup> The Bureau of Indian Affairs developed a policy that PL 280 tribes were not eligible for funding for law enforcement services.

relationship between the tribes and the federal government, the transfer of federal responsibility to provide law enforcement services to the tribes was not accompanied with the allocation of any funds to support such services. The current reality that many tribes located in Public Law 280 states have no emergency or other law enforcement services is the result of the failure by states to adequately provide services and by the federal government to provide resources to the tribes to develop such services. Indian women living within Public Law 280 states frequently report that crimes of physical or sexual battery are not addressed. The consequences of Public Law 280 are far-reaching (Ambrose-Goldberg, 1975) and tragic in limiting the ability of tribal governments to address violent crimes committed against Indian women. The passage of the Violent Crime Control and Law Enforcement Act of 1994 made federal support available to all federally recognized Indian tribes, including those within Public Law 280 states. Many tribes have gained support to develop for the first time Western-style justice systems: funds have supported the hiring of law enforcement officers, prosecutors, judges, court personnel, and probation officers. While tribes located in Public Law 280 states retain the same jurisdictional authority as other federally recognized tribes, a substantial review of their unique circumstances is needed (see for example Ambrose-Goldberg & Seward, 1997).

Violence against women in tribal communities was rare because such behavior was inconsistent with the role of women within the indigenous worldview of Indian tribes. Thus when such behavior did occur the community addressed the offender's action appropriately.<sup>38</sup> Offenders were dealt with in a manner appropriate to the holistic worldview of indigenous justice. This view connects everyone involved with a conflict in addressing the issue that needs

---

<sup>38</sup> As T. Young, a Sitka Tribal member, described, perpetrators of domestic violence crimes were tied to stakes during low tide and justice was left to greater powers; if the perpetrator survived then he survived, if not then he did not. The punishment was well known for such crimes (personal communication, August 1999).

to be resolved to restore harmony between individuals and thus within the community (Melton, 1995). In the context of an Indigenous approach to justice the wishes and role of the aggrieved woman were central to the response of the community to the offense. Domestic violence was inappropriate behavior, and the well-being of the woman was central to restoring the balance of the community. Thus, family, clan, as well as spiritual and tribal leaders held essential roles in holding offenders accountable for their actions. Offenders were removed from the tribe through banishment or execution,<sup>39</sup> whipped or publicly humiliated, and/or required in the specific practice of the tribe to correct their wrongdoing. Thus, the social conditions for the safety of women were a function of both the rights held by women to home and children and the response of the community to any violations of their safety.

The limitations placed upon tribes by Congress, coupled with a history of federal reluctance to prosecute perpetrators of violence against Indian women created a clear message for abusers that such behavior would go unpunished. Unfortunately, these two political realities continue to exist today. The damage caused by the failure to address crimes against Indian women measured over decades eroded the status of Indian women and allowed community tolerance for the abuse of women to grow. The inaction by the federal government and the limitations placed on tribal governments left Indian women unsafe in ways that threatened not only their well-being but the well-being of Indian tribes, challenging the very concept of tribal cultures.

---

<sup>39</sup> The Payne Papers contain the following report of the death of a Cherokee Chief: "Doublehead had beaten his wife cruelly when she was with child, and the poor woman died in consequence. The revenge against the murder now became in the Indian's conscience, imperative. The wife of Doublehead was the sister of the wife of (James) Vann. Vann's wife desired with her own hand to obtain atonement for her sister's death. Vann acquiesced; and he and a large party of friends set away with his wife upon the mission of blood" (Perdue, 1998).

The task confronting Indian tribes of restoring an Indigenous worldview and governmental systems to safeguard the honored status of women is similar to that faced by any nation in the aftermath of war. Moreover, in their status as domestic dependent nations<sup>40</sup>, tribal governments face an additional burden similar to that of occupied nations: certain rights of self-government have been removed while the void created by the removal remains unaddressed.

## *II. Authority of Indian Tribes to Address the Safety of Women.*

At first contact with European nations, tribal governments were treated as foreign nations. As such, tribes maintained political and governmental structures capable of managing tribal affairs without external interference. Today the concept of tribal sovereignty is shaped by what is known as “federal Indian law” and defined by Supreme Court cases, Congressional Acts, and Executive Orders. In response to the imposition of Federal law and policy, many Indian tribes, depending upon their circumstances, were forced to dismantle or modify their Indigenous systems of governance, while others maintained their tribal systems.

The justice system a tribe maintains does not affect the authority it has over its members and territory. It is a long-standing principle of federal Indian law that tribes retain the inherent right of self-government unless explicitly removed by Congress. Specifically, the Court has stated that tribal government authority includes “the power to punish tribal offenders,...to regulate domestic relations among members.”<sup>41</sup> In addition, the Court added that tribes retained inherent sovereign power, even on fee lands, to regulate conduct of non-Indians that threatens or directly affects “the health or welfare of the tribe.”<sup>42</sup> Thus tribal governments and advocates for

---

<sup>40</sup> Cherokee Nation v Georgia, 30 U.S. (5 Pet.) 1 (1831)

<sup>41</sup> Montana v. United States, 450 U.S. at 564 (1981).

<sup>42</sup> 450 U.S. at 565-66.

enhancing the safety of Indian women face a constant challenge of understanding the impact of federal Indian law upon tribal efforts to enhance the safety of women.

Congress has declared that the federal trust responsibility “includes the protection of the sovereignty of each tribal government.”<sup>43</sup> The federal trust responsibility of the United States assures tribes that the United States will defend the right of Indian tribes to self-government. The United States set aside Indian reservations as permanent homes for Indian tribes, and the United States has a trust responsibility to promote the welfare of Indigenous peoples, which includes a duty to assist tribes in making their reservations livable homes.<sup>44</sup> Unfortunately, this responsibility is unfulfilled in many ways, creating additional limitations on tribes and placing the safety of Indian women at risk.

Three types of sovereign entities exist in the United States today: the Federal government, the States, and the Indian tribes (O’Connor, 1995). The following two charts indicate the criminal jurisdiction over crimes against women and the sovereign entity with jurisdiction to adjudicate the crime. The charts illustrate the authority of Indian tribes to respond to certain crimes and lack of authority to respond to other crimes. When an Indian woman is raped by a non-Indian, the tribe has no authority to prosecute the offender. If the United States, or a county in Public Law 280 jurisdiction, declines to prosecute, the offender goes free.

In addition to limitations of authority and resources, the tribes must deal with the sentencing limitation placed by Congress upon tribal courts, which may “in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year and a fine of \$5,000, or both.” Thus, while a tribe may have the authority to prosecute

---

<sup>43</sup> 25 U.S.C. sec 3601.

<sup>44</sup> See *Montana v. United States*, 450 U.S. 544, 56 & n. 15 (1980).



the crime committed against the woman, the sentence it may impose might be inappropriate for the severity of the crime, or the tribe may lack the resources to effectuate the sentence. This means that a perpetrator convicted of a domestic violence offense by a tribe will spend less than a year in jail and/or pay not more than a \$5000 fine.

### 1. Criminal Jurisdiction in Non-Public Law 280 States.

Crimes by Indian Offender against Indian Woman:

- |                  |  |
|------------------|--|
| 1. "Major" Crime | 1. Federal or Tribal <sup>45[38]</sup> |
| 2. Other Crime   | 2. Tribal                              |

Crimes by Indian Offender against Non-Indian Woman:

- |                  |  |
|------------------|--|
| 1. "Major" Crime | 1. Federal <sup>46[39]</sup> or Tribal |
| 2. Other Crime   | 2. Federal <sup>47[40]</sup> or Tribal |

Crimes by non-Indian Offender against Indian Woman      Federal<sup>48[41]</sup>

### 2. Criminal Jurisdiction in Public Law 280 States.<sup>49</sup>

Crime by Indian Offender against Indian Woman	State or Tribal
Crime by Indian Offender against non-Indian Woman:	State or Tribal
Crime by Non-Indian Offender against Indian Woman	State

### *III. Responding to Violent Crimes Against Women: The Context.*

***"Federal policy has failed to promote the ability of Indian nations to design and exert meaningful control over their own policing institutions"*** (Wakeling, Jorgenson, et al., 2001).

The dramatic shift created by the Violence Against Women Act in the recognition of the unique status of Indian tribes and allocation of federal resources to assist tribal governments in

---

<sup>45</sup> 18 U.S.C.A. § 1153

<sup>46</sup> Ibid.

<sup>47</sup> 18 U.S.C.A. § 1152

<sup>48</sup> Ibid.

<sup>49</sup> 18 U.S.C.A. § 1162

responding to violence against Indian women is historic. It is the first time in the history of federal-tribal relations that the U.S. government has supported the efforts of Indian tribes to protect its women citizenry. In addition, the legislation supports the efforts of tribal communities to assist women. These efforts in the absence of a governmental response are essential to the immediate safety of women as well as providing advocacy within tribal and state justice systems.

Today, tribal justice systems vary widely but generally can be classified as traditional, Western, or dual justice systems. The historical evolution of tribal self-government and the respective form of governance elected by a tribe was not shaped to respond to the horrors of the crimes committed against its women citizenry but more the survival of the tribe as a people, and as a nation. The contemporary context of addressing violence against Indian women is not only to implement reforms to create social, spiritual, and material support for the right of Indian women to live free of violence but also the creation of systems to effectively manage the offenders committing such crimes.

Today, the wide spectrum of tribal justice systems reflects the unique historical circumstances of Indian tribes and federal policy toward the tribes. The criminal justice systems in some tribes look very similar to non-Indian justice systems. Such a system often may include a court, prosecutor, and police department, and less frequently probation officers, defense bar, and jail/correctional facility.

A snapshot of the limited number of justice components serving 568 Indian tribes is instructional on the inadequate funding provided by the federal government to Indian tribes. Currently, just over 200 tribal law enforcement departments, 246 tribal courts, and only 69 tribal jail or detention facilities exist.

Additional justice components that intersect with tribal justice systems are the federal and/or state systems in Public Law 280 jurisdiction. The roles of the Bureau of Indian Affairs, Federal Bureau of Investigation, and United States Attorneys, are dependent on the particular historical circumstances of the tribe and federal law. Each federal component charged with the responsibility of providing services to Indian tribes is also inadequately funded to perform their assignment. Similarly, within Public Law 280 jurisdiction the relationships between tribal justice systems and county systems vary widely. The ability of tribal, federal, or state justice systems to assist Indian women seeking safety depends upon the level of cooperation and coordination. Unfortunately, this cooperation is lacking in many jurisdictions.

Parallel to Western justice systems many tribes maintain traditional systems to resolve disputes occurring within the community. These systems are reflective of the respective tribe's historical development and practices. Many Pueblos in the Southwest maintain traditional systems based on customary Pueblo law and practiced by the traditional officials of the particular Pueblo. The process utilized is non-adversarial and facilitates discussion between parties in a safe environment that promotes resolution of underlying problems and keeps the relationship between parties intact. Many Alaska Native villages also handle community disputes including family matters through traditional methods, either by choosing to maintain traditional dispute resolution systems or effectively by default, due to the reality that only one-half of the 238 villages have any law enforcement presence.

When used to address cases involving the abuse of women, these forms of traditional justice approaches face particular challenges. The most urgent challenge is protecting the physical well-being of the woman. The use of a traditional approach to address a non-traditional behavior of woman-abuse may in specific cases be appropriate. Perpetrators who are serious in

their commitment to returning to a traditional belief that women are to be respected and honored may find the traditional forum of community accountability helpful in their process of change. Cases involving acts resulting in serious injury, rape, or involving a weapon indicate the need for intervention beyond the ability of the community. Perpetrators of such crimes often pose a danger not only to the individual woman but her family, those that support her and the community-at-large.

Although tribal justice systems are as diverse as the number of Indian tribes, the success of the model appears to be tied to strong community intolerance for violence toward women.

#### *IV. Contemporary Tribal Approaches to Enhance the Safety of Women*

From 1995 - 2001, federally recognized tribes received \$35 million in funding under the Violence Against Women Act. The congressional intent of this funding was to support the efforts of tribal governments to enhance the safety of Indian women. While the funding was not restricted to tribes using Western-based justice systems, Indian tribes receiving funding under the Act are for the most part replicating city- and county-based programs. This is because, while the Act encourages the development of Indigenous-based programming, the federal guidelines are designed for state and county governments.<sup>50</sup> The guidelines assume that the criminal justice systems of state governments are applicable to Indian tribes.

The immediate benefits of federal grant monies available under the Act should not be allowed to obscure the ongoing problems faced by tribal governments in seeking to enhance the

---

<sup>50</sup> The VAWA of 2000 reauthorized the Attorney General to administer grant programs created by the VAWA of 1994 and subsequent legislation established new programs. These grant programs support a wide range of services for victims of domestic violence, sexual assault, and stalking. Information regarding these grant programs can be found on the agency web page; [www.ojp.usdoj.gov/vawo](http://www.ojp.usdoj.gov/vawo).

safety of women. Two particularly important concerns are, first, conflicts of emphasis between Western and Indigenous justice systems and, second, the financial ability of tribes to replicate the Western system. First, Indian tribes traditionally corrected an altercation in such a way that the community could live in harmony. Attempts to incorporate elements of a Western pattern of justice posed such problems as how to ensure the restoration of honor, dignity, and respect while meeting the “burden of proof.” Second, due to a lack of adequate resources, most tribes do not have the justice components needed to replicate the Western model. While funding under the Act may assist in establishing those components, sustaining them requires continuing federal support or tribal economic development. The federal government has historically failed to provide the support to adequately fund tribal justice systems. While some tribes have developed economies sufficient to maintain justice systems, most have not.

Contemporary tribal approaches to addressing the safety of Indian women reflect the unique historical circumstance of each tribe. However, the preconditions required for any improvement in women’s safety are broadly applicable and are apparent from the work advocates for Indian women do every day and night. Without the establishment of these preconditions no memorandum of understanding or protocol is ever likely to achieve any real reforms. These preconditions are age-old and present in the creation stories of Indian tribes. Women are to be respected as the mothers of our nations. Women are the keepers of their children. Women have the right to their personal property. And women have the right to leave an unwanted relationship. These fundamental principles ensure the status of women and place them in a position of honor. In that historic position the safety of women is optimized without needing an order from any court. It is within tribal communities that these principles must be maintained, or in many cases reestablished.

Have funds available under the Violence Against Women Act made a difference? The evaluation (Luna, 2001) of the first 14 tribal grantees funded in 1995 under the S.T.O.P. Violence Against Indian Women Grant Program, USDOJ, found that the grants made a significant impact in the communities that received them. Tribal grantees reported prosecuting and sentencing domestic violence crimes more aggressively (National Institute of Justice, 2001). Specifically, the evaluation found: (1) Improved training for those providing services to women; (2) Improved coordination amongst tribal justice and service providers in the design and review of policies regarding the handling of sexual assault and domestic violence cases; (3) Improved focus on development of community-based Indigenous culture within the programs supported with funds; (4) Increased efforts by tribal agencies to improve enforcement of tribal court orders and coordination with other jurisdictions.

Through the increased resources under the Act, tribal governments have strengthened their response to violence against Indian women by drawing upon their inherent right to self-government. Specific approaches used by the tribes are detailed below.

**1. Tribal Exercise of Concurrent Jurisdiction in the Enforcement of the Major Crimes Act:** In instances that the United States Attorney has declined to prosecute an offender for crimes such as assault with a dangerous weapon or sexual assault, which is subject to federal jurisdiction by the Major Crimes Act, tribal governments have exercised concurrent jurisdiction over the crime (Clinton, 1976). For example, the Lummi Tribe has charged and successfully prosecuted sexual assault offenders in cases declined by the United States Attorney. While concurrent jurisdiction is important in assuring a legal remedy for the victims of such crimes and creating intolerance for such crimes within the tribal community, the limitation on the tribal courts sentencing authority is unfortunate given the serious nature of these crimes.

2. **Power of Exclusion:** Tribes generally retain the power to exclude unwanted persons from their reservations (a power often guaranteed by treaty). The power of exclusion might be viewed as quasi-criminal, and could be exercised against non-Indians at least to the extent that they do not have a federally-conferred right to be on the reservation.<sup>51</sup> The Zuni Pueblo Tribal Court has issued exclusion orders against non-Indian domestic violence offenders that prohibit the offender from entering Pueblo land.

3. **Exercise of Concurrent Jurisdiction by Tribes in Public Law 280 States: Efforts of California Tribes and Alaska Villages:** Tribal governments in Public Law 280 jurisdiction with funds from the United States Department of Justice have developed tribal police departments. While many of these new departments are small, consisting of one or two officers, their presence provides some assistance.<sup>52</sup> Many of the calls for assistance these officers respond to are domestic violence calls. Tribes in California and the villages of Alaska have obtained funds through the COPS Office and Violence Against Women Office to create tribal police departments for the first time. These efforts initially met with resistance from the federal government as well as state governments. The efforts of these tribal governments have both improved the safety of women and increased law enforcement services for the entire community.

4. **Tribal Cross-Deputization Efforts:** Tribal governments have entered into cross deputization and mutual aid agreements with local county sheriff departments allowing for mutual aid to tribal or county residents in need of assistance.

5. **Tribal Efforts to obtain BIA Special Law Enforcement Commissions for Tribal Officers:** In Public Law 280 jurisdictions where the county is resistant to cooperating with tribal

---

<sup>51</sup> See *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 144-45 (1982); *Hardin v. White Mountain Apache Tribe*, 779 F.2d 476, 478-79 (9<sup>th</sup> Cir. 1985).

<sup>52</sup> # of new departments in Alaska and California funded by the COPS Program since 1995.

law enforcement, tribes have asked the BIA to issue Special Law Enforcement Commissions to tribal police officers.<sup>53</sup> This is particularly important for tribes such as the Cabazon band of Mission Indians with non-contiguous land bases that must transport prisoners through a non-reservation area from one section of the reservation to another.

**6. Tribal Efforts to Develop Tribal Specific Batterer Reeducation Programs:** Tribal governments have integrated into their tribal justice systems batterer re-education programs based on tribal cultural values and beliefs that women are sacred. These programs, while stressing accountability for violence, offer tools for the offenders to grow beyond the use of violence. Exposure to cultural and spiritual teachings provides perpetrators an alternative worldview in which violence against women is not acceptable.<sup>54</sup>

In addition to tribal governmental efforts, immense efforts by advocates for Indian women have resulted in the creation of shelter, legal, and advocacy services for Indigenous women within tribal communities. In 1995, when the Violence Against Women Act became law, extremely limited services were available to Indigenous women. The White Buffalo Calf Woman's Society was one of few Indigenous women's shelters providing services within an Indian tribe. In the absence of any funding such services did not formally exist and in most instances individual family or community members opened their homes to women needing shelter.

While still too few in numbers, organization such as Cangleska, Inc., are providing Indigenous-based services to women within reservations, pueblos, rancherias and villages. These services are provided by staff with expertise in the justice system of the Indian tribe, as well as

---

<sup>53</sup> Indian Law Enforcement Reform Act, 25 U.S.C. §2804 (a). United States Department of the Interior, Bureau of Indian Affairs, Office of Law Enforcement Services, Law Enforcement Handbook, Volume 1, Chapter 2, Section 4, Special Law Enforcement Commissions.

<sup>54</sup> Cangleska, Inc. of the Pine Ridge Reservation and the Oneida Nation Batterer's Re-Education Program serve as excellent examples of such programs.



tribal customs, practices, and law. These types of services are essential to Indigenous women, because of the unique legal and jurisdictional issues that may arise in such cases. Additional changes must be made to protect the safety of Indian women, including a change in the historic relationship between the United States government and Indian Nations, particularly as it has entailed the assumption that Indian tribes lack the ability to manage crime within their respective nations. The foundation of this false assumption is the hierarchical worldview of “we must be better.” In the realm of criminal justice research and the most recent trend toward restorative justice approaches this view appears to be unsubstantiated. Certainly it is clear that strong community intolerance for and an immediate response to battering serve to offer all women greater protection. Thus, tribal governments should be allowed to fully respond to crimes committed against women just as county governments are allowed to. Requiring that such crimes be investigated by an FBI or BIA agent hours and sometimes days away after the crime, prosecuted by a federal prosecutor located in a different jurisdiction, and heard in federal court hundreds of miles away from any witnesses is not consistent with providing a strong and immediate response to such crimes.

*Conclusion: How Changing Woman Stays Young*

***“When Changing Woman gets to be a certain old age, she goes walking toward the east. After a while she sees herself in the distance looking like a young girl walking toward her. They both walk until they come together and after that there is only one. She is like a young girl again”*** (Basso, 1966).

Like Changing Woman, the history and future of Indian women are linked. The safety of Indian women today cannot be disconnected from the respected position Indian women occupied within their sovereign nations in the past. The historical status of women within tribal societies provides a strategic direction for restoring Indian women to a position of honor. Hopefully the

elucidation of the origins of violence against Indian women will create a path towards its elimination. While the vision between the birth and death of this social injustice is blurred, certain connectors are clear. First, support for essential services to assist Indian women in danger of violence must be maintained. Second, support for the enhancement of the abilities of tribal governments to address the safety of women must be expanded. Third, the principle that customs, practices, and beliefs of Indian women who are served direct the services and reform efforts must be supported.

While the damage rendered by the United States upon Indian women through the process of colonization can never be fully remedied, certain measures can be taken to stem the current epidemic level of violence confronting Indian women. Such efforts must link the restoration of the right of Indian women to live free of violence within their homes and society to the restoration of the rights of their respective nations to protect Indian women legally, socially, and spiritually. Thus, specific reforms by Congress are essential to enhancing the ability of tribal governments to address the safety of Indian women:

- **Increase Tribal Control Over Tribal Institutions.** By the forced incorporation of Indian tribes into the United States, the U.S. government assumed a trust responsibility to support the inherent right of Indian tribes to self-government. This right includes the development of tribal institutions and systems of managing crime occurring within tribal jurisdictional boundaries. The maintenance of traditional tribal justice systems or social controls should be supported. “Only those tribes that have acquired meaningful control over their governing institutions have experienced improvements in local economic and social conditions”

(Wakeling, Jorgenson, et al., 2001). The right of Indian women to live free of violence is bound to the authority and capacity of their governments to address their physical safety.<sup>55</sup>

- **Increase Tribal Jurisdiction Over Serious Crimes.** Indian women are reliant upon their tribal governments to respond to crimes committed against them within the tribe's jurisdictional boundaries. The federal government should grant jurisdiction to tribal governments to prosecute physical and sexual battery of Indian women by removing the sentencing limitation of one year per offense for Indian perpetrators, and granting tribal governments the authority to prosecute non-Indian perpetrators who commit physical and sexual battery, if the tribe so desires. This would show a recognition of the impact these crimes have on Indian women and on the ability of tribal governments to manage their internal affairs and security of their members.

- **Broaden Federal Funding Guidelines to Support the Efforts of Tribal Governments to Address the Safety of Indian Women.** The effectiveness and sustainability of programs created through the support of federal funding under the Violence Against Women Act is linked to the proximity of those programs to the culture, beliefs, and practices of the Indian tribe.<sup>56</sup> Tribal governments and the citizenry they represent are uniquely positioned to develop justice programs and services for women within their respective nations. The appropriate role of the Federal government is to support and provide relevant technical assistance to those efforts. Guidelines that restrict tribal governmental efforts to that of a

---

<sup>55</sup> American Indian victims of rape/sexual assault most often reported that the victimization involved an offender of a different race. About 9 in 10 American Indian victims of rape or sexual assault were estimated to have had assailants who were white or black (Greenfeld & Smith, 1999).

<sup>56</sup> A consonance between present and pre-reservation institutional forms confers legitimacy on the methods and outcomes of government decision-making and channels political energies in productive directions (Wakeling, Jorgenson, et al., 2001).

Western approach impede the effectiveness of the programs and services intended by Congress to support the efforts of tribal governments.

In 1781, after Nancy Ward addressed the United States Treaty Commission, a Cherokee leader who was part of the Nation's delegation asked of the Commission, "Where are your women?" Today, over two hundred years later, we who are concerned with the safety of Indian women and the future of Indian tribes must ask the same question. The answer to this question has much to say about the problems outlined in this document.

### Social Harmony, Colonization, and Violence Against Indigenous Women

#### *Indigenous Forms of Social Harmony: Relationship of Women and Children*

Exploring Indigenous forms of social harmony requires exploring the social fabric of relations within an intact Indigenous culture. This can be difficult because few cultures function in a holistic fashion today. While culture is elastic, the Indigenous cultures of the United States have been stretched to the point of breaking to accommodate change required for survival. However, Indigenous cultures do continue to exist and attempts must be made to describe cultural worldviews so as to appreciate the full significance of Indigenous social harmony as well as its subsequent erosion.

When a culture is functioning holistically, the people and their significant systems (e.g. families) are guided by a coherent, meaning-providing worldview. A web of social relationships is woven in accordance with its worldview. It is the unraveling of this social fabric and its replacement with a Western worldview that accounts for domestic abuse in Indian country today.

One needs to understand a culture's worldview in order to understand its social relationships and how they contribute to social harmony. Cross (1997) coined the term "relational worldview" to describe the balance and harmony in Indigenous relationship with all

that exists. He states, “The relational worldview sees life as harmonious relationships where health is achieved by maintaining balance between the many interrelating factors of one’s circle of life.” It is the interaction of interdependent factors that promotes or erodes social relationships. Relationship among Indigenous people includes relationships among both human beings and other-than-human beings. The basic purposes of worldview are to make the world predictable and to provide guidance in how to live a culturally meaningful life. In sum, worldview “directs attention, shapes perception, provides guidance in making sense of experience” (Martin & O’Connor, 1989) and informs evaluation of what constitutes a meaningful life. In an intact culture, the people “echo” the voice of cultural worldview. In cultures that have suffered erosion of worldview, the people “echo” the injury in how they live their lives.

A characteristic of Indigenous cultures is the communal or interdependent nature of relationship. Interdependence with all that exists refers to the “chain of being” established in cultural creation stories. In Indigenous cultures, interdependence between all that exists predates human beings and is inclusive of spiritual and phenomenological forces. It is no accident that in Indigenous creation stories, human beings are placed in the most vulnerable position in relationship to all other existence. Indigenous cultures understand that human existence is not possible without interdependence with all other creation (Farrer, 1991; Johnston, 1995). This understanding of interdependence and connectedness is at the core of cultural socialization of Indigenous people. A necessary condition in the unraveling of cultural social fabric is the loss and/or distortion of socialization into the Indigenous cultural worldview.

Every culture creates social structures based on a worldview. Social structures are formed to serve the elementary functions of society: leadership, defense, sustenance, learning, medicine, and so forth. These are the systems the Indigenous Community depends upon for well-being.

Treatment of any problem-in-living is reliant upon these systems. According to Cross (1997), any problem-in-living (physical, emotional, intellectual, social, or spiritual) is “circumstantial” and resides in the relationship between factors. In other words, the person with problems in living is not the problem. The problem in living is that the person is out of balance and out of harmony in an interdependent world. Remediation is to treat the imbalance. Treatment is system-reliant, where balance and harmony are achieved via systems of care that are interdependent. Systems of care are exemplified by the clan system, medicine people, spiritual teachers, leaders, storytellers, social relationships, and the extended family. All are examples of Indigenous social structure. Each represents and fulfills a form of public duty. The following examples are not exhaustive but are provided to convey how each system of care contributes to the treatment of a person living out of balance and promotes social harmony.

A *Clan* is that largest social structure from which a person draws purpose, meaning, and being as a cultural member. As such, clans provide identity and a sense of belonging to the whole. Clans also foster mastery of clan obligations, and provide a mechanism of reciprocity or “giving back” to community. Leaders (civil and war) contribute by promoting a safe environment, non-coercive decision-making, role modeling, and mentoring. *Story tellers* teach self talk, lessons learned by others, and how to use resources, communicating cultural expectations, values, and life skills. *Social relationships* contribute to a positive self-regard, a sense of belonging, rules and roles in relating to others, and meeting basic needs. The *extended family* meets basic needs, socializes members, provides intimacy and a sense of belonging, provides psychological respite from the stresses of daily life, protects, teaches, and forms the “root” from whence all other systems of care originate. *Medicine people* may mediate with herbs, diet, or sweat lodges. *Spiritual leaders* may treat by healing rituals, ceremonies, dream work, or by teaching. In these examples, it becomes

clear how Indigenous worldview is inclusive of the other-than-human in guiding and promoting social harmony. The influence of these phenomenological forces is seen in healing rituals, ceremonies, and belief in spiritual guides. According to Hallowell (1975), “The central goal of life for the Ojibwa is expressed by the term *pimadaziwin*, life in the fullest sense...This goal cannot be achieved without the effective help and cooperation of both human and other-than-human persons, as well as by one’s own personal efforts.”

In an intact relational-based culture, each of these social units unintrusively monitors relationships for prevention of and for earliest intervention to correct any violating behaviors. While wide latitude is allowed for the uniqueness of the individual, harmful or potentially harmful behavior is recognized and systems of care respond appropriately and interdependently.

Before looking at how Indigenous methodologies inculcate the value of social harmony in children, we need to look at the valuing of women in Indigenous society. “It is the mothers, not her warriors, who create a people and guide her destiny” (Green, 1992). Buffalohead’s (1983) analysis of primary and secondary historical data from the 17<sup>th</sup> century to the early 20<sup>th</sup> century reveals that Ojibway women were dynamic and resourceful as they contributed to nearly every facet of life. In addition to the traditional gender roles of relation/kin, wife and mother, Ojibway women held political positions of significance, traded with non-Indians, went to war if necessary, and fulfilled any work left by the absence of significant others. These citations convey the valuing of the uniqueness of the individual. Uniqueness was nurtured and autonomy to develop abilities/talents/gifts was encouraged. For example, among the Ojibwe, “*Inaendaugwut*” means “it is permitted” in reference to the exercise of personal talents and prerogatives (Johnston, 1976). In this way the autonomy or personal freedom required to grow in soul-spirit and in accordance with

the world was culturally understood. Women in Indigenous cultures were valued for their significant contribution to the promotion of social harmony and the well-being of all.

The Dakota/Lakota culture, like the Ojibwa culture, is rooted in the cardinal significance of social relationship. According to Ella Deloria (1988) “the ultimate aim of Dakota life, stripped of accessories, was quite simple: one must obey kinship rules; one must be a good relative ... In the last analysis every other consideration was secondary - property, personal ambition, glory, good times, life itself. Without that aim and the constant struggle to attain it, the people would no longer be Dakotas.” Without mothers, a culture would not continue. In other words, “A nation is not conquered until the hearts of its women are on the ground” (Green, 1992). Mothers provide a culture with its most valuable resource, its children.

Children were born not only to parents, but also into a system of related households or kinship systems. Children were observed by the collective from the time of their mothers’ pregnancies to and through adulthood. The child’s character, temperament, proclivities, talents, and personal conduct patterns were known by the collective long before the child knew him/herself. This is significant in prevention of and early intervention in problematic behavior. In Indigenous culture, all adults are responsible for the safety and socialization of their collective children. Teaching and monitoring of children’s behavior was a particular responsibility taken on by grandparents, aunts, uncles, as well as parents. Collective parenting also provided a means to monitor violation of cultural norms regarding relationship and social harmony. In many Indigenous cultures, the consequence for violating relationship norms was greater than death - that of being cast out from one’s relatives.



In sum, Indigenous cultures hold a relational worldview. In taking care of relationships, cultures promote social harmony and well-being. Being a good relative is at the core of cultural teachings, and at the center of all relationships are mothers.

*Perspective on how Colonization Leads to Violence Against Indigenous Women*

This section of the final report will tell a story of undermining, erosion, and eventual devastation. This story has to be told so that we can understand how this devastation occurred, so that we can appreciate its impact on Indigenous families, particularly women and children, and so that we can prevent history from repeating itself. In order to deconstruct this history. We will present the perspective of subjugation theory and its basic assumptions. Following this foundation, we will discuss historical colonization and its social indicators of erosion/undermining/devastation. This historical context will close by looking at recurring contemporary indicators of colonization.

From the vantage point of Indigenous people, subjugation theory is a valid and appropriate approach to understanding how colonization lead to violence against Indigenous people, especially Indigenous women. Subjugation theory explains the historical relations between Indigenous and majority societies as resulting from the unique political status of Indigenous people, and the natures of social class and gender in the majority society. The instruments of domination, according to subjugation theory, are social and economic policy wielded by majority society for ideological control. An argument put forth to discredit this perspective is that it holds a general assumption of a united majority society with a common interest in conspiring to subjugate Indigenous people. In other words, some would protest being lumped in with the elites who clearly benefit from domination and social control - they would want to be “let off the hook”. While this is understandable, it is important to remember that in the

collective memory of Indigenous people there is no difference, whether the devastation was intentional or not. All people of Anglo-European heritage have benefited from this history. It is a history that offends and continues to undermine our humanity. Our Indigenous communities continue to live within political and economic conditions of extreme poverty, chronic health problems, loss of our children, high unemployment and school dropout epidemics, and, perhaps most destructive of all, an internalized oppression that threatens our very existence.

Subjugation theory offers tools with which deconstruction of colonization can occur. Deconstruction is the act of taking apart a story (of history) revealing an underlying worldview and methodologies of imposing that worldview. A valid criticism of deconstruction is that it does not often improve current conditions of Indigenous life. In other words, our people are still dying from the effects of colonization - therefore, deconstruction has to provide more than an academic exercise. Without action, acquiescence is the only option and the demise of Indigenous cultures will come sooner rather than later. The deconstruction of historical colonization offers hope because it makes the statement that “we intend to resist by retrieving what we can and to remake ourselves” (Smith, L.T., 1999). We recognize that culture is learned and therefore can be relearned. Further, culture is elastic and can accommodate tremendous demands for change. The continued existence of Indigenous peoples speaks for this elasticity. Finally, if we are to survive culturally, as well as psychologically and physically, we must free ourselves from the systematic distortion of our history and of our cultural ways of knowing.

In selecting subjugation theory as our lens and deconstruction of historical relations as our methodology, we are holding several assumptions. One assumption is that the historical relations between Indigenous people and Anglo-European colonizers were neither innocent, heroic, nor for the greater good of all. In framing the actions of colonizers in these terms, the

majority society is socializing, and social control institutions teach with a particular political and social agenda. At the core of all of the colonizer's socialization is the constant denial of the subjugation of Indigenous people. The benefit of institutional denial is the implicit power to author history, and the authority to teach it and to "rule over" any other understanding (Smith, L.T., 1999 and Smith, D.E., 1999). Few American citizens understand how particular political and social conditions support distortion and denial while perpetuating devastation in the lives of Indigenous people.

Our second assumption is that Indigenous scholars should and will engage in decolonizing work. We must make colonization and its consequences visible, and it is important that our work be judged on Indigenous cultural criteria. Indigenous cultures see self-determination as central. Thus, it is essential that we rewrite our position in history. As L.T. Smith (1999) reminds us, "[We] Indigenous people want to tell our own stories, write our own versions, in our ways, for our own purposes... to bring back into existence a world fragmented and dying."

A second cultural criterion is that our works promote the well-being and social harmony of our people. Well-being and social harmony can only be brought about by complete decolonization. This must begin with demystification, which can be seen as a bicultural research process. It is an attempt at partnership research where sharing knowledge is valued by both the Indigenous community and the majority society. A cultural expectation of Indigenous scholarship is that we will make explicit the theoretical base and analysis through which we construct and represent what we come to know. The colonization process destroyed, distorted, and disrupted our ways of knowing, and we, as Indigenous researchers, are as "suspect" as majority society researchers until our scholarship speaks from an Indigenous worldview. This includes recognition of how our minds

have been colonized by our academic pursuits in majority society institutions. In reclaiming history and giving testimony to the injustice of colonization, we are contributing to the work of other Indigenous efforts to bring forth a critical understanding of colonization. The expected outcome is that we will contribute to a decolonizing framework which is grounded in Indigenous knowledge, is sensitive to the diversity among Indigenous people, and contributes to the reclamation of cultural ways of knowing. This means contributing to the design of framework and methodology that promote Indigenous well-being and social harmony.

It is not enough to say that culture was undermined and eroded with devastating results to Indigenous people. Deconstruction requires the taking apart of history to lay bare the ideological reasoning and to understand the behaviors that follow. We must understand *how* such devastation was legitimized. The recognition of and challenge to colonization require an understanding of the worldview of both colonizers and colonized.

Deep structure/core constructs of culture often determine how a people respond to their world. People turn to their cultures to answer the following five questions: What is basic human nature? What is the relationship of humankind to nature? How should we perceive our relationship to time? What is the value placed on activity? What should be the relationship of people to each other? (Kluckhohn & Stolbeck, 1960). Cultural positions on these five aspects of relationship are presented here to show the differences between the worldviews of the colonizers and the colonized.

Indigenous cultures view basic human nature as good - children are “gifts” from the spiritual realm. Indigenous cultures also recognize that there are phenomenological forces outside of the individual, which can create imbalance that disrupts social harmony. Further, Indigenous peoples see our relationship with nature as one of reciprocity and harmony. In

orientation to time, we see that Indigenous people live within and respect the cyclical pattern of nature, from whence all resources for survival come. On a longer time scale, there is a deep reverence for tradition. The notion of being-in-becoming is deeply embedded in Indigenous cultures, where high priority is given to prayers of thanksgiving, solicitation of spiritual guidance, and spiritual intervention with problems in living. Most important to Indigenous peoples is the well-being and social harmony of the collective.

In contrast, Western concepts of human nature have historically seen it as inherently evil or a mix of good and evil. In either case, it is the responsibility of institutional mothers and fathers to curb, to guide, and to punish, if need be, to control this base human nature. Humankind's relationship with nature, in Western worldviews, requires that nature be conquered and controlled to the advantage of humankind. Western worldviews hold a future orientation to time, where the future is expected to be grander than anything to date. This necessitates a proactive motive in human endeavor, to bring about this future. An "I" consciousness prevails in Western worldviews of relationship with other human beings. Personal goals take precedence over the collective, as can be seen in the value placed on individualism, competition, independence, individual rights, and privacy. Loyalty to the collective can be characterized as weak. This puts the claimed value of equality in a paradoxical position. Equality appears to be for those "like us," and even among those like us, there is a hierarchical distribution of what is valued.

In order to understand the importance of historical context to the lived experiences of Indigenous women who enter contemporary civil and criminal justice systems, one needs to be aware of several core constructs of the Anglo-European worldview. These constructs play a significant role in the reasoning of colonization. They are: divine providence, doctrine of discovery, eminent domain, social Darwinism, ethnocentrism, and capitalism. Behaviors that

flow from these constructs are subsumed under the rubric of colonization. Among the acts of colonization are extermination, enslavement, proselytizing, paternalism, and the exercise of plenary power.

Divine providence is a core construct that informs Western worldviews. With support from Biblical canon, majority society institutions operate from a belief in divine guidance - God is guiding human destiny. This legitimizes action defined as being in accordance with God's will. Where human kind is viewed as basically evil or a mixture of good and evil, then institutions are designed to curb, guide, and punish those who live outside of God's will. The Biblical directive to "subdue the earth" (Genesis, 1:28) is an injunction to make the earth the private domain of humankind. This in turn legitimizes imperialism - a nation's domination over other nations. The idea that a particular people know God's will fosters ethnocentrism - a belief that one's own people are superior to all others. From this springs social Darwinism, which holds that the (supposed) superiority of a group, spiritually and biologically, entitles this group to survive, while other (supposedly inferior) groups are destined to fail. The concept of divine entitlement provides a basis for the doctrine of discovery and eminent domain. In order to justify the doctrine of discovery - the right to own by those who have first sight or knowledge of for the first time - the notion of superiority has to be firmly in place. In other words, a nation that defines itself as divinely superior to all others can lay claim to foreign lands and all therein. Only then is there justification to define these lands' inhabitants, such as Indigenous peoples of the Americas, as savages, beasts, evil, and not fully human. If Indigenous people can be defined as less than human, then the right of the colonizers to take property (eminent domain) is justified. The exercise of plenary (absolute) power over foreign lands and peoples is generally justified by colonizers as benevolent provision of "civilized" governmental jurisdiction.

We will later see how this plenary power has been tempered by the 1975 Man Self Determination Act, but for now it is a core belief that needs to be put in relationship to the others in deconstructing colonization. Capitalism is an economic system characterized by private or corporate ownership of anything commodified. Capitalism is a johnny-come-lately in the history of humankind. It is, however, the economic system that powered the colonization of the Americas. The commodification of land and less-than-human people (slavery) was a powerful motivation for colonization. Another motivating force was the opportunity to proselytize. The idea of “saving the savages” of the Americas came with lay people (traders, explorers, etc) as well as the priesthood. Where a people believe they alone have God’s truth, they may anticipate (spiritual) rewards for themselves for “saving the souls” of the “misguided”. Thus Indigenous people’s spirituality becomes commodified, and commodification, whether economic or spiritual, is offensive and devastating to Indigenous culture and Indigenous people. One of the deepest wounds to any culture’s worldview is to have its spiritual core challenged, undermined, and eroded by colonization.

This depiction of the Western worldview provides a foundation for discussion of the process of colonization and its social indicators. We were taught that exploration of the Americas began with an expansion of European thought about the world and that governmental support was provided to explore the “truth” of these new ways of thinking. A greater motivation, however, was the birth of capitalism. Domination of “new” lands and resources supported notions of superiority among Western governments, and nurtured the capitalistic economic system. While individual explorers and traders preceded a systematic process of colonization, their intrusion began the introduction of foreign technology (iron kettles, guns, cloth, etc.) and an alternative way of thinking (i.e. the notion of human superiority). Foreign technology and

thought eventually undermined traditional ways of doing and seeing things. Specifically, early records foreshadow the impact of colonization on Indigenous ways of being in relationship. For example, Indigenous women were either omitted entirely from the record, thus rendering them invisible, or described only in relationship to men as slaves, drudges, or “squaws” and/or as filthy, violent, and sexually promiscuous. Such descriptions are not only injurious to Indigenous women, but they were devoid of any acknowledgment of Indigenous women’s place in a relations worldview. These random tumors of insult would metastasize into internalized oppression - when we began to believe these colonizing definitions of ourselves.

It is the systemic invasion of Indigenous life that is of larger importance to this story, one invasive concept being Western notions of time. Calendar and clock time were not traditional ways of marking time within Indigenous cultures, but came with colonization. Additionally, descriptions of historical eras given here will differ from those found in majority society’s documentation of history. For example, one of the many tragic eras in the life of Indigenous people is the removal period. This same era is recorded by majority society historians as the triumphant frontier period (Green, 1992). Six historical and political eras will be described here to make explicit the colonization strategies as applied to Indigenous people of the United States.

The first era is often referred to as pre-colonial. This means that Indigenous cultures were initially intact and functioning holistically to meet the needs and meaning of life for the people. Systematic colonization began with individual traders/explorers and proceeded through the wars waged between European nations for the “right” to own what became known as the United States. The initial purpose of contact with Indigenous people was fur trading, discovery of “new” lands and resources, missionary work, and engagement of Indigenous people in war with rival European nations. Contact resulted in escalation of introduction of foreign technology, disease,



alcohol, cohabitation between Anglo men and Indigenous women, and rape. All of these examples were a mix of the unintentional and intentional. For example, the introduction of disease-laden blankets were deliberate acts for some, and the introduction of alcohol in trading transactions was by design to defraud. Sexual unions/cohabitation/rape fulfilled access to Indigenous women's resources, such as land, Indigenous knowledge and a direct privileged link to trade with her people. The effects of contact with Europeans were disastrous. Disease killed multitudes of Indigenous people, some tribes becoming extinct. Alcohol contributed to social disorganization, the introduction of family violence, and a downward spiral of cultural shame that is still with us. The introduction of foreign technology began the destruction of Indigenous ways of survival. Rape and/or cohabitation initiated the cultural marginalization of Indigenous women and their children. These families had no social structure to which they could belong. It is in belonging that one enters the social fabric of Indigenous life and develops an identity as an Indigenous person. This marginalization was exacerbated by Western partners that held a view of women and children as property, to be used and abused as men saw fit.

The second era, the Colonial Era, generally refers to the time period of 1776 to the Civil War or the 1860s. During this era, Indigenous people were viewed as uncivilized and without any claim to a place in the scheme of colonies' social organization. Treaty-making continued, as did the hostile attitude toward Indigenous people. The calamitous population losses continued due to disease, forced relocation of tribes and their concomitant situation, war, and erosion of cultural social structure (Spicer, 1983). It is in this era that the Indigenous tribes began a journey toward becoming "domestic dependent nations" (Deloria, 1985), nations living under an external ruling power. In many Indigenous villages, a caste system replaced clans under these relations of ruling. The seeds of dependence on majority social institutions for social control of relationships were

planted in the treaties made at this time. Treaties required that land be given up by Indigenous tribes in exchange for goods and services that they would need when the land was vacated, and in exchange for protection against infringement by non-Indian individuals and other governmental entities (Cohen, 1942). The goods, often promised in treaties, were basic staples: flour, salt, meat, plows, crop seed, and clothing. Promised services were often those of doctors, school teachers, blacksmiths, police power, and so forth (Pevar, 1992). Giving up land was significant because of the spiritual loss (ancestral and spiritual places), loss of social structure (for example, clans and their concomitant functions), and loss of subsistence resources. In addition to their content, treaties were significant because (1) they were made between autonomous nations; and (2) the abandonment of treaty -making left little recourse for redress of wrongs.

It was in this era that the greatest efforts were made by the Indigenous people to resist social disruption. War with colonists and their militias was common. The retaliatory destruction of tribal communities was also common. While Indigenous protest against social disruption continued into subsequent historical eras, those protests would differ ideologically and in power differential. Power differential is an important consideration in understanding the emergence of social need and any social response to those needs. Also important to consider about this era is that the Indigenous peoples would have perceived their dislocation and impoverishment as wrong and would have felt they were entitled to redress. In subsequent eras, the Indigenous peoples would be taught by the colonizers that their dislocation and hardships were the will of God or their own fault. Once this ideology of inherent inferiority is internalized, colonization is easily accomplished.

Also in this era, constitutional law was established as the way to deal with Indigenous nations. Early constitutional laws dealt with (1) treaty making, (2) a trustee relationship between

the federal government and tribes, (3) the establishment of the Bureau of Indian Affairs in 1834 as the government's agent in dealing with tribes, and (4) the establishment of reservations. The best-known piece of legislation of this era was the 1830 Indian Removal Act. Indigenous people were moved, often by military force, to reservations. Once removal was accomplished, white Indian agents with "vast discretionary power" were appointed to oversee everyday life on the reservation (Deloria, 1985). At this time, then, the federal government was dealing with Indigenous people in three ways: genocide, confinement to reservations, or assimilation into white society as farmers and Christians.

Survival was threatened and social disorganization emerged from the isolation, the reduction of basic needs to a life-threatening state, and a lack of recourse. Physical dependency was nearly complete. The Indigenous people were economically dependent on government rations and completely subject to an external ruling force. It is in this era that intimate and social relationship between Indigenous men and women drastically altered. The traditional roles of men as providers, protectors, and leaders were no longer permissible, under penalty of law. Indigenous men were disempowered, their relationships with their wives, families, and community distorted. Women in Indigenous communities, in effect, became the wives of the federal government. The majority society government became the provider, the protector, and the leader in the lives of Indigenous peoples. A crevice was created in intimate relationships between Indigenous men and women that has gone beyond the crisis point in today's society. Indicators of this divide are reflected in the high rates of domestic abuse in Indian country, in the high out-of-culture marriage rates for Indigenous people, and the threat of demise for tribes that base membership on blood quantum. Family violence in Indian country is not higher than in other populations, but the presence of family violence is an indicator of cultural destruction. Out-

of-culture marriage rates are higher for Indigenous people than for any other population, and such marriages lessen subsequent children's/generations' claim to tribal membership. The loss of a culture's children is perhaps greatest threat to cultural survival.

The third historical era refers to the time between the 1860s (Civil War) and 1920s (Progressive Era). This period is commonly known as the assimilation and allotment era, and is noted especially for the infamy of the boarding schools. During this era the child-saving and child-rescue movements fueled removal of children from poor families. Majority society domination of Indigenous life was nearly complete - except for spiritual and psychological control. Assimilationist policy sought to make Indigenous people like Anglo-Americans in worldview; federal boarding schools, missionary schools, and private industrial schools were to promote assimilation (George, 1997). Assimilation policy in this era began a practice of child removal from Indigenous families and cultures that would not to be challenged until the mid-1970s. Because of societal prejudice, there was little real assimilation until the 1940s and 1950s. This meant children came home from boarding schools with knowledge that was useless and came back culturally disconnected from mothers, families, communities, and tribes. They had become strangers, neither White nor Indian. The children returned with an awareness of a (materially) easier way of life and an inculcated shame for their own people and way of life.

The allotment policy was designed to enable non-Indians to acquire land within reservation boundaries. It did this by dividing the reservation land base into allotments of 160 acres per family head, 80 acres to each single person over 18 years of age. The purpose was to break tribal/communal title to the land and award allotments to individual Indian people. In this manner, surplus land (acreage not allotted) was opened to non-Indians. Euro-patriarchy guided much of the individual allotments. Many Indigenous women and men had been socialized to the

notions of patriarchy in boarding and mission schools. Now a feature of the process of land allocation was that Indigenous women and children were seen as the property of Indigenous men. What, then, could a woman own?

In this era, loss of land further weakened the remnants of traditional ways of surviving: hunting, trapping, berry-picking, and so on. Moreover, the loss of land threatened the spiritual continuity of Indigenous people, which was soon faced with yet another threat.

The 1892 Indian Religious Crime Act made it a crime to engage in any form of Indigenous spiritual ceremony or ritual. This act, together with the assimilation of children into Christian faiths, made a direct attack on the American Indian spiritual anchor to culture. As non-citizens and isolated from mainstream American life, Indigenous people suffered these problems invisibly, and were ignored by Bureau of Indian Affairs officials who were charged by Congress with their welfare. Indigenous spirituality went underground and has not fully emerged in contemporary times.

During the Progressive Era (1900-1920s), life for Indigenous peoples continued to be dire and stagnant. What was significantly different in this era was a growing recognition by the majority society of the devastation caused to Indigenous people. Three legislative initiatives reflect this awareness. First, the Indian Religious Crimes rule was repealed in 1921, ending thirty years of aggressive suppression of religious freedom. However, its repeal was largely symbolic, for Indigenous people could still go to prison for certain Indigenous ceremonies, conversion to Christianity was rampant, and the traditional spiritual knowledge had gone underground. Second, the Snyder Act was passed in 1921. This law authorized the expenditure of federal funds for relief of distress and conservation of health for Indians. This Act, too, was symbolic, because implementation responsibility was placed with the Bureau of Indian Affairs. Allocation of funds by

the BIA to tribes for health-care purposes was based on tribal compliance with majority society conceptions of health care. As a result, health care, as intended, would not be provided until 1955 when this responsibility would be transferred to the newly created Indian Health Service.

Citizenship, granted in 1924, was a third significant legislative remedy. Indigenous people now became known as “American Indians”. The civil right of citizenship is the first building block to protection and provision of services. The quality of such services, however, is largely dependent on political and social standing. Citizenship put Indigenous people in a peculiar place. On the one hand, it meant three layers of government to regulate daily life, even though states held no jurisdiction over tribal land or people until the 1950s. On the other hand, it represented entitlement to services provided to other citizens. In practice, citizenship remained largely symbolic. Hostility toward Indigenous people continues to this day. It is based, in part, on majority society perceptions that Indians living on reservations are exempted from paying for the services that non-Indians finance with their tax dollars. In fact, although they have been official U.S. citizens since 1924, Natives have faced individuals within service agencies using informal tactics to circumvent the law with impunity. Even when Natives could get in the doors of service agencies, their requests for help would be denied or delayed and certainly always lower-priority than those of non-Indians. These informal tactics to circumvent the law are in direct relationship to the perception that Indigenous people make no contribution and thus are unworthy of assistance. What was unique about this era, however, was the occasional empathic gaze, resulting in symbolic policy and in largely symbolic citizenship.

The fourth historical era is the Depression and The New Deal (1930-1940). The Depression was about social need created by societal disorder and economics gone amok. The New Deal was about a shift in public attitudes about poverty. Most people recognized that a

person could be poor through no fault of his/her own. However, racial discrimination remained rampant. While legislative initiatives to address need among Indigenous people were few in this era, two of note were Indian preference and self-rule. In 1933, the Supreme Court ruled that Indian preference in hiring was legal within the Bureau of Indian Affairs, Indian Health Service, and tribal organizations. Indian preference recognized that access to work was problematic for Indigenous people, even within organizations designed to serve them. Recognition of Indian preference in hiring was based on political status, not race. For example, the operation of Indian preference can be seen within the bureaucracy of Indian Health Services and the Bureau of Indian Affairs. Within the bureaucracy, Indian women hold positions of the lowest rank - secretaries, janitors, nurses aides - because the positions require the least specialized knowledge and pay the least. While this is changing, it remains largely true within the BIA and the IHS to this day.

The Indian Reorganization Act of 1934 was, for tribes, the most significant policy to emerge from this era. This Act allowed tribes to have a government, although it had to be modeled on the United States' structure. For the first time since pre-colonial days, there was recognition of the nation status of tribes and their right to self-rule, even if that rule was subject to control by the Bureau of Indian Affairs. Unfortunately, appropriations to tribal governments were insufficient for them to fully respond to the needs of their people.

The 1940s - 1970s is known to Indigenous people as the Termination Era. The 1940s offered the first real opportunities for Indigenous people to leave the reservation. Military service and work in the defense industry took young people away from reservations and made them aware of the depth of deprivation in reservation life. Few wanted to return to it, and many were prepared to voluntarily participate in the 1950s Relocation Program. There was little

understanding among Indigenous people that relocation was one aspect of a three-pronged approach to termination. The intent of Termination policy was (1) to end the special trust relationship between the federal government and tribes; (2) to transfer federal responsibility and jurisdiction to states; and (3) to physically relocate American Indian people to urban areas (Indian Tribes, 1983).

Termination of the special trust relationship met with limited success. Between 1954 and 1966, Congress terminated over one hundred tribes. The federal government was less successful in transferring jurisdiction to states. Under Public Law 280 (PL 280), six states (in one of which this study took place) were given criminal and civil jurisdiction over tribes within state boundaries. This further eroded the reservation land base, contributing to checkerboard reservations and a coerced relationship with states that had a historical hostility toward American Indian people. The impact of relocation on uneducated and unskilled relocatees was social dislocation, the trading of reservation poverty for city poverty, and staggering health problems. The impact of relocation on reservations was family disruption, “brain drain,” and significant population loss. The impact of relocation on cities was the development of American Indian ghettos, greater demand on social welfare resources, and the birth of the American Indian Movement. The Indigenous people who fared best, economically, made careers in the military or federal service with the Bureau of Indian Affairs or Indian Health Service. The vast majority of Indigenous people, however, remained at the bottom of every socio-economic indicator. Thus, when poverty was re-discovered in the 1960s, poverty was also “discovered” on the American Indian reservations. Reservations enjoyed many of the programs provided to majority society poor people and their communities. The social unrest created by the Civil Rights Movement in general, and the American Indian Movement specifically, put the state and country welfare



service providers on notice. The Welfare Rights Movement had reached Indigenous people in the cities and on the reservations. Access to social welfare services opened like no other time in history. While discrimination continued, youth who had served in the military and relocated became sophisticated in dealing with white service providers. Indigenous people were no longer overlooked and finally gained access to services provided to other citizens.

Politically, this country took a sharp turn to the right between the 1970s and 2000s. As in previous eras, not only were the poor to blame for their poverty, so were government institutions. Nevertheless, three powerful policies for Indigenous people were enacted during this conservative era. In 1975, the Indian Self-determination Act was passed, officially ending Termination policy. In 1978 the Indian Religious Freedom Act and the Indian Child Welfare Act were passed; both are cultural and family preservation measures. These policies reflect the political sophistication and organization skills of tribal leadership. Even so, the Indigenous population suffered the same indignities (prejudice) and economic hardships (trickle-down economics), as did other minority populations of the era. Still at the bottom of every socioeconomic indicator of well-being, Indigenous people had clearly joined the majority social structure - a process that began in the 1940s. Indigenous women, living in poverty, could now be seen in long lines of women of color seeking help from the county/state. While Indigenous people continue to hold a unique relationship with the federal government, this status provides no protection from the scape-goating that is directed at all people of color.

So, what does this historical context have to do with the subjects of this study? The women in our study are the mothers who keep the culture alive. They are the women living with the poverty, living with the colonizing abuse by and of their partners, living with the removal of their children, and living with the intrusion of a majority society system.

Contemporary life remains difficult for American Indians. Despite the philosophy of the Indian Child Welfare Act, American Indian children in this state are removed from their homes at a rate 10 times greater than the rate at which white children are removed from their homes. In 1990 the (State) Department of Human Services, ostensibly committed to a family preservation philosophy, spent \$78 million on out-of-home placements compared to \$14 million on family preservation services (State DHS Final Report, 1993). In this state, 54.8% of American Indian children live below the federal poverty line and only 37% of American Indian students graduate on time. American Indians hold a tragic but unique experience with violence in this nation. It is the only minority population that experiences greater violence from outside (from whites) than violence from within the community. Generally, horizontal hostility/violence is greater within minority communities.

History can teach us not to hold much hope for a “better” future based on Welfare Reform in the 1990s. While the lives of poor people are likely to be altered (in some form), the structure of American society has not been altered in any way. The social welfare structure will continue to support 80% of the American people. Welfare reform will only continue to feed a false consciousness.

History will repeat itself because it is familiar to the political and economic structure. In other words, concessions will be made in bad times and withdrawn as quickly as possible thereafter.

### *Conclusion*

There is little doubt that Indigenous people, individually and collectively, enjoyed their greatest well-being prior to contact with Europeans. No social policy or institutional program since then could approximate the integrity of an intact culture’s social organization. The

practices of military force, isolation, forced subsistence below survival needs, and ideological warfare have been identified here as leading to the emergence of social needs and a concomitant need for institutional response. Unmitigating cultural and human destruction is representative of the treatment of Indigenous people since pre-colonial times to perhaps the 1960s. Only since the 1960s has any notion of “better” become visible, such as longer life spans and population growth. This “better” can be attributed to the 1930s social security programs and to the 1960s expansion of those programs. “Better” responsiveness can be seen in health care services, food stamps, housing/shelter programs and job readiness programs. The very survival, however, of Indigenous people owes much to an informal social caring within the culture - by our cultural mothers.

The phrase “Family Violence is not Traditional” echoes a worldview in which violence within kinship networks was prohibited. As previously described, social structures monitored relationships for prevention and earliest correction of violations in thought and action. Today, violence in Indigenous communities is common and has unique characteristics. Family violence is an example of violent behavior that is common in Indigenous communities and common to the larger society. A National Crime Victimization Survey, released in February 1999 by the Justice Department, found that family violence is not a bigger problem among Indians (term used by report) than it is for the rest of the population. Family violence in Indigenous communities exists in alarming numbers, as it does in the majority society. What is a bigger problem for Indigenous people than for others is our vulnerability to crime. The study found that Indians were victims of crime at a rate two and a half times greater than the national average. The high rates of victimization held true for Indians of different income levels, ages, genders, and backgrounds.

Another study looked at the victimization of minority youth. The St. Paul Urban Coalition released a study in July 2001, which found that minority children were at higher risk of abuse than majority society children. For example, racial minority students were sexually abused two to three times more often than white students, and girls were sexually abused twice as often as boys in each racial group. Nearly 31% of American Indian girls in the 12th grade had experienced unwanted or forced sexual touching - the highest level of any ethnic group. The highest rate of truancy occurred among American Indian high school senior males. Jane Liu, program officer for the Urban Coalition, said the study shows that many minority children come from stable families. It is other issues that increase the incidence of abuse and violence - factors beyond their control (Duluth News Tribune, 2001). Clearly, contact between Indigenous peoples and people of European descent has historically been, and continues to be, devastating to Indigenous people.

There are other indicators that reveal the devastation brought about by the erosion of Indigenous worldviews. One contributing factor is the historically overwhelming demand on Indigenous people to accommodate change - change required for survival and change that seriously altered Indigenous worldview. A fracturing of worldview occurs when the core cultural constructs are altered beyond the elasticity inherent to the worldview. As of 1990, two hundred (200) tribes were known to be extinct. Another example of this fracturing is Indigenous community tolerance of family violence. Such a tolerance indicates a serious violation of cultural understanding of how to be in relationship with other human beings and all that exists. A third example of fracturing that occurs in accommodating overwhelming demands for change is most evident in the wide diversity among Indigenous people in this country. Diversity between tribes was common throughout time. What is different about the diversity today is the diversity within

tribes - diversity within diversity. An indicator often used to assess this diversity within a culture is the ability to speak one's Indigenous language. In order to speak one's language, one has to be able to encode and decode communication based on Indigenous worldview. It is estimated that less than 10% of the people who identify as American Indian speak their Indigenous language (Russell, 1995). The implications of this estimate can be made clearer by census data. In 1990, less than 1% of the U.S. population was American Indian. Of those 1.9 million who identified as American Indian, 1.2 million (63%) were enrolled members of a federally recognized tribe. Finally, 77% of those who identified as American Indian live in urban areas. The point being made here is that the ability to speak or echo the Indigenous worldview lessens with distance from the culture. While reservation living does not assure closeness to culture, it is where elders who hold cultural knowledge are apt to be found. It is not just the words that are lost; it is the Indigenous thought processes (recognition, interpretation, evaluation) that also are lost.

Cultural fractures can heal if there is enough time, enough resources, and a stabilizing worldview. Culture is learned and can be relearned. The growing American Indian population, as indicated by census data, may mean greater diversity, yet it also means Indigenous people will exist into the future and Indigenous cultures need not die.

In sum, it is not likely that the majority society civil and criminal judicial system will alter in any significant manner to assure history will not repeat itself with Indigenous people. Today, however, we are living in an era when tribes are building the infrastructure for tribal response to problems-in-living. It is essential that tribes build codes based on Indigenous culture and put forward a stable Indigenous worldview in judicial and social service responses to violence experienced by Indigenous people, especially Indigenous women and children in our communities.



## REFERENCES

- Ambrose-Goldberg, C. (1975). Public Law 280: The limits of state jurisdiction over reservation Indians. *22 UCLA Law Review*. Los Angeles: University of California Los Angeles.
- Ambrose-Goldberg, C. & Seward, T. C. (1997). *Planting Tail Feathers: Tribal Survival and Public Law 280*. Los Angeles: American Indian Studies Center, University of California Los Angeles.
- Basso, K. H. (1966). *The gift of changing woman* [microform]. Anthropological papers, No. 76, Smithsonian Institution. Bureau of American Ethnology.
- Battiste, M. & Henderson, J. Y. (2000). *Protecting indigenous knowledge and heritage: A global challenge*. Saskatoon: Purich.
- Bayda, E.D. (1996) The Theory and Practice of Sentencing: Are They on the Same Wavelength? *Saskatchewan Law Review*, 60, 317-336.
- Berger, P. L. & Luckmann, T. (1966). *The Social Construction of Reality*. New York, NY: Anchor Books/Doubleday.
- Bergman, A. Frossman, D. & Erdrich, A. (1999). A Political History of the Indian Health Service. *The Milbank Quarterly*, 77(4), 571-604.
- Bilharz, J. (1995). In L. F. Klein & L. Ackerman (Eds.), *Women and Power in Native North America*. University of Oklahoma Press.
- Brown, J.E. (1970). *The Spiritual Legacy of the American Indian*. Lebanon, PA: Sowers Printing Co.
- Buffalohead, P. K. (1983). Farmers, Warriors, Traders: A Fresh Look at Ojibway Women. *Minnesota History, Summer*, 236-245.

- Campbell, M. (1998). Institutional ethnography and experience as data. *Qualitative Sociology*, 21(1), 55-73.
- Campbell, M. and Manicom, A. (Eds.) (1995). *Knowledge, experience, and ruling relations: Studies in the social organization of knowledge*. Toronto: University of Toronto Press.
- Center for Disease Control. (1993). *Homicide and Suicide Among Native Americans: 1979-1992*. U.S. Department of Health and Human Services.
- Clinton, R. N. (1976). Criminal jurisdiction over Indian lands: A journey through a jurisdictional maze. *18 Arizona Law Review* 504. Tucson, AZ: The University of Arizona.
- Creswell, J. W. (1998). *Qualitative inquiry and research design: choosing among five traditions*. Thousand Oaks, CA: Sage Publications.
- Cohen, F. (1942). *Handbook of Federal Indian Law*. Washington, D.C.: U.S. Government Printing Office.
- Cross, T. (1997). Understanding the relational worldview in Indian Families. *Pathways, Part II: July-October, 12(4):6-7*. Published by National Indian Child Welfare Association, Portland, OR.
- Cross, T. (1997). Understanding the relational worldview in Indian Families. *Pathways, Part II: July-October, 12(5 & 6):10-12*. Published by National Indian Child Welfare Association, Portland, OR.
- Currie, D. and Wickramasinghe, A. (1998). Engendering development theory from the standpoint of women. In D.H. Currie, N. Gayle, & P. Gurstein. (Eds.), *Learning to write: Women's studies in development* (175-192). Vancouver: Collective Press.
- Deloria, E. C. (1988). Waterlily. Lincoln, Nebraska: University of Nebraska Press.



- Deloria, V., Jr. (ed.). (1985). *American Indian Policy in the Twentieth Century*. Norman, OK: University of Oklahoma Press.
- de Montigny, G. (1995). *Social working*. Toronto: University of Toronto Press.
- Devault, M.L. and McCoy, L. (2001). Institutional ethnography: Using interviews to investigate ruling relations. In J.F. Gubrium & J.A. Holstein (Eds.), *Handbook of interview research*. Thousand Oaks, CA: Sage Publications, Inc.
- Dobash, R.E. & Dobash, R.B. (1979). *Violence Against Wives*. New York, NY: Free Press.
- Duluth News Tribune (July 10, 2001). *Minority kids at higher risk for abuse, study says*. St. Paul Urban Coalition. Duluth News Tribune, 131(68): 1A & 3A.
- Emerson, R., Fretz, R. and Shaw, L. (1995). *Writing ethnographic fieldnotes*. Chicago: University of Chicago Press.
- Engstrom, Y. (1993). Work as a testbed of activity theory. In S. Chaiklin and J. Lave (eds) *Understanding practice: Perspectives on activity and context* (pp. 65-103). Cambridge: CUP.
- Engstrom, Y. (1990). *Learning, working and imagining: Twelve studies in activity theory*. Helsinki: Orienta-Konsultit Oy.
- Farrer, C. R. (1991). *Living Life's Circle: Mescalero apache Cosmovision*. Albuquerque, NM: University of New Mexico Press.
- Finkelhor, D., Gelles, R.J., Hotaling, G.T. and Staus, M.A. (Eds.). (1983). *The Dark Side of Families*. Beverly Hills, CA: Sage Publishers.
- Frederick, L. (1998). The evolution of domestic violence theory and law reform efforts in the United States. In E. Pence & K. Lizdas, *The Duluth safety and accountability audit* (147-151). Duluth, MN: Minnesota Program Development, Inc.

- Gelles, R. & Straus, M. (1988). *Intimate Violence*. New York, NY: Simon & Schuster Publishers.
- George, L. (1997). Why the Need for the Indian Child Welfare Act? *Journal of Multicultural Social Work*, 5(3/4), 165-175.
- Glaser, B. and Strauss, A. (1967). *The discovery of grounded theory*. Chicago: Aldine.
- Goldberger, N. R. (1996). Women's constructions of truth, self, authority, and power. In H. Rose & S. L. Garfield (Eds), *Constructing Realities* (167-193). San Francisco: Jossey Bass.
- Grahame, P. (1998). Ethnography, institutions, and the problematic of the everyday world. *Human Studies*, 21(4).
- Graveline, F. J. (1998). *Circle works: transforming eurocentric consciousness*. Halifax, N.S. : Fernwood.
- Green, R. (1992). *Women in American Indian Society*. New York: Chelsea House Publishers.
- Greenfeld, L. A. & Smith, S. K. (1999). *American Indians and Crime*. U.S. Department of Justice Bureau of Justice Statistics.
- Hallowell, I. A. (1975). Ojibwa ontology, behavior, and world view. In Tedlock, D. & Tedlock, B. (Eds.), *Teachings from the American earth: Indian religion and philosophy* (141-178). New York: Liveright Publishing Corporation.
- Hammersley, M. & Atkinson, P. (1995). *Ethnography: Principles and practice*. London, Routledge.
- Hanohano, P. (2001). Restoring the Circle: Education for culturally responsible Native families. Unpublished doctoral thesis. University of Alberta, Edmonton.
- Hermes, M. (1998). Research methods as a situated response: towards a First Nations' methodology. Qualitative studies in education, 11(1), p. 155-168.

- Holstein, J., and Gubrium, J. (1998). Active interviewing. In D. Silverman (Ed.), *Qualitative research: Theory, method, and practice* (113-129). London: Sage Publications, Inc.
- Indian Child Welfare Act of 1978*. PL 95-608. United States Code Title 25, Section 1901 – 1963.
- Indian Tribes: A Continuing Quest for Survival*. (1983). Washington, D.C.: U. S. Government Printing Office.
- Jaffe, P. G., Wolfe, D. A., & Wilson, S. K. (1990). *Children of Battered Women*. Newbury Park, CA: Sage Publications, Inc.
- Johnston, B. H. (1976). *Ojibway Heritage*. Lincoln, Nebraska: University of Nebraska Press.
- Johnston, B. H. (1988). *Indian School Days*. Toronto, Ontario: Key Porter Books Limited.
- Johnston, B. H. (1995). *The Manitous: The Spiritual World of the Ojibway*. New York: HarperCollins Publishers.
- Kemp, A. (1998). *Abuse in the Family*. Pacific Grove, CA: Brooks/Cole Publishing Co.
- Kluckhohn, C., Kluckhohn, F., & Strodtbeck, F. (1960). *Variations in the Value Orientations*. New York: Row and Peterson, Publishers.
- Ladson-Billings, G. (2001). *Crossing over to Canaan: The journey of new teachers in diverse classrooms*. San Francisco: Jossey-Bass.
- Latour, Bruno. (1988). The politics of explanation: An alternative. In S. Woolgar (Ed.) *Knowledge and reflexivity* (155-176). London: Sage Publications, Inc.
- Levinson, D. (1989). *Family violence in cross-cultural perspective*. Newbury Park, CA: Sage Publications, Inc.
- Lubitz, R. L. & Ross, T. W. (2001). *Sentencing guidelines: Reflections on the future*. Washington, D.C.: Office of Justice Programs, National Institute of Justice.
- [Online]: <http://purl.access.gpo.gov/GPO/LPS17547>

- Luna, E. (2001). Impact evaluation of S.T.O.P. grant programs for reducing violence against women among Indian tribes: Final report for grant # 96-WT-NX-0006 (NIJ 186235). National Institute of Justice Journal (January 2001).
- Martin, P. Y. and O'Connor, G. G. (1989). *The Social Environment*. New York: Longman Press.
- Melton, A. P. (1995). Indigenous justice systems and tribal society. *Judicature*, 79(3).
- Meyer, M. (1998). Native Hawaiian epistemology: Contemporary narratives. Unpublished doctoral dissertation, Harvard Graduate School of Education.
- Mikaere, A. (1995). Maori Women: Caught in the Contradictions of a Colonised Reality. *Waikato Law Review*, 2.
- Minnesota Indians* (1950). Legislative Research Committee Report. Publication No. 27. March, 1950.
- Minneapolis Star Tribune (Feb. 15, 1999). *Study: Indians are crime victims far more often than others*. Minnesota: Minneapolis Star Tribune.
- Final Report: Minnesota Supreme Court Task Force on Racial Bias in the Judicial System*. (May 1993). St. Paul, Minnesota.
- Montour-Agnus, P. (1995). *Thunder in my soul: A Mohawk woman speaks*. Halifax: Fernwood Press.
- Niethammer, C. (1977). *Daughters of the earth: The lives and legends of American Indian women*. New York: Simon & Schuster Inc.
- O'Connor, Hon. S. D. (1995). Lessons from the third sovereign: Indian tribal courts. *The tribal court record*, Spring/Summer 1995.
- Pagelow, M.D. (1984). *Family Violence*. New York: Praeger Publishers.

- Pence, E. (1996). *Safety for battered women in a textually mediated legal system*. Unpublished doctoral dissertation, University of Toronto, Canada.
- Pence, E. (in press). Safety for battered women in a textually mediated legal system. *Studies in Cultures, Organizations and Societies*, 7(1).
- Pence, E. & Lizdas, K. (2001). *The Duluth safety and accountability audit: A guide to assessing institutional responses to domestic violence*. Duluth, MN: Minnesota Program Development, Inc.
- Pence, E. & Paymar, M. (1993). *Education groups for men who batter: The Duluth model*. New York: Springer.
- Perdue, T. (1999). *Cherokee women, gender and cultural change: 1700-1835*. Lincoln & London: University of Nebraska Press.
- Pevar, S. L. (1992). *The Rights of Indians and Tribes*. Carbondale, IL: Southern Illinois University Press.
- Russell, G. (1995). *American Indian Digest*. Phoenix, AZ: Thunderbird Enterprises.
- Ryan, W. (1976). *Blaming the Victim*. New York: Vintage Publishers.
- Schwartzman, H. B. (1993). *Ethnography in organizations*. Newbury Park, CA: Sage Publications, Inc.
- Shepard, M., & Pence, E. (1999). *Coordinating community responses to domestic violence: Lessons from Duluth and beyond*. Thousand Oaks, CA: Sage Publications, Inc.
- Smith, A. (1996). *Christian conquest and the sexual colonization of Native women, violence against women and children*. In C. Adams & M. Fortune (Eds.), *Violence against women and children: A Christian theological sourcebook*. New York: Continuum.

- Smith, Dorothy. (1987). *The everyday world as problematic*. Boston: Northeastern University Press.
- Smith, D. E. (1990a). *The conceptual practices of power*. Boston: Northeastern University Press.
- Smith, D. E. (1990b). *Texts, facts, and femininity: Exploring the relations of ruling*. New York: Routledge.
- Smith, D. E. (1999). *Writing the Social*. Toronto, Canada: University of Toronto Press.
- Smith, D.E. (in press). Texts and the ontology of organizations and institutions. In S. Dobson & D. E. Smith (Eds.), *Studies in cultures, organizations and societies: Special issue on 'Institutional ethnographies'* 7(2). New York: Routledge.
- Smith, D. E. & Whalen, J. (1996). *Texts in action*. Toronto.
- Smith, G. W. (1995). Accessing treatments: Managing the AIDS epidemic in Ontario. In M. Campbell & A. Manicom (Eds.), *Experience, knowledge, and ruling relations: Explorations in the social organization of knowledge* (18-34). Toronto: University of Toronto Press.
- Smith, L. T. (1999). *Decolonizing methodologies: Research and Indigenous peoples*. New York: Zed Books, Ltd.
- Spicer, E. H. (1983). *A short history of the Indians of the United States*. Malabar, Florida: Krieger Publications.
- Spradley, James. (1979). *The ethnographic interview*. New York: Holt, Rinehart and Winston.
- Stannard, D. (1992). *American Holocaust*. Oxford: Oxford University Press.
- Stark, E. (1996). *Women at risk: Domestic violence and women's health*. Thousand Oaks, CA: Sage Publications, Inc.

- Steinhauer, D. (1997). Native education: A learning journey. Unpublished master's thesis, University of Alberta.
- The Sacred Tree*. (1984). Lethbridge, Alberta, Canada: Four Worlds Development Press.
- The Mishomis Book* (1988). Edward Benton-Banai (Ed.). Hayward, WI: Indian Country Communications, Inc.
- U.S. Department of Justice [USDOJ]. (2000). *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women: Findings from the National Violence Against Women Survey*. NCJ 183781 [On-line]. Available: <http://www.ncjrs.org/pdffiles1/nij/183781.pdf>.
- Vygotskii, L.S., (1962). *Thought and Language*. Cambridge, MA: M.I.T. Press.
- Wagner, S. R. (Ed.). (2001). *Sisters in spirit: Haudenosaunee (Iroquois) influences on early feminists*. Summertown, TN: Native Voices.
- Wakeling, S., Jorgenson, M., & Michaelson, S. (2001). Policing on American Indian reservations, NIJ # 95-IJ-CX-0086, *National Institute of Justice Journal (January 2001)*.
- Walker, L. (1979). *Battered Women*. New York: Harper & Row Publisher.
- Wallace, A. (1969). *The Death and Rebirth of the Seneca*. New York: Vintage.
- Ward, N. (1781). *Address to United States Treaty Commissions at the Long Island of Holston*. Nathaniel Green Papers, Library of Congress.
- Weber, M. (1968). *Economy and Society*. New York, Bedminster Press.
- Weber-Pillwax, C., Wilson, Shawn & Cardinal, Lewis, (in press). "Searching for an Indigenous Research Methodology: Articulating the Indigenous Paradigm" in Canadian Journal of Native Education. 25(2). A Graduate Student Colloquium. University of Alberta.

- Wilson, A. (1997, Fall). Research dreams and nightmares. Unpublished paper. Cambridge, MA: Harvard Graduate School of Education.
- Wilson, A. (2000). Indigenous Research Methodologies. *Canadian Journal of Native Education*, 24.
- Wilson, A. (2001). Dashing berdache—the two-spirit race. Qualifying paper. Cambridge, MA: Harvard Graduate School of Education.
- Wilson, S., & Wilson, P. (1998). Relational accountability to all our relations. Canadian Journal of Native Education. 22:2, 155-158.
- Wilson, Stan & Wilson Peggy (1999). "Taking Responsibility: What Follows Relational Accountability?" in Canadian Journal of Native Education 23(2), 137 - 139.
- Wood, R. (2001). Aboriginal women's identity processes: Threads of experience from the midst of unfolding lives. Unpublished doctoral thesis. University of Alberta, Edmonton.



## APPENDICES