

SUMMARY REPORT¹

Domestic Abuse Involving Indigenous Women:

A Community-Based Analysis of U.S. Legal Interventions

¹ This is a summary of the final report to the National Institute of Justice on Community-Based Analysis of the U.S. Legal System's Interventions in Domestic Abuse Cases Involving Indigenous¹ Women. We refer to the full report as the Mother Report. It discusses in detail the research data of each of the sections referred to in this summary report. Missing entirely from this summary report but contained in the Mother Report are articles that provide an historical context for this study: (a) an article on Indian Tribes and the Safety of Native Women by Jacque Agtuca; (b) an article by Lila George on Harmony, Colonization and Violence against Indian Women; (c) a section on Pre-sentence Investigation Analysis; (d) a discussion on sentencing practices and a summary of six case outcomes.

SUMMARY OF THE FINAL REPORT TO
THE NATIONAL INSTITUTE OF JUSTICE

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Executive Summary

Community-Based Analysis of the U.S. Legal System's

Interventions in Domestic Abuse Cases Involving Indigenous¹ Women.

Mending The Sacred Hoop organized a group of four Indigenous researchers from the University of Minnesota, three Elders, thirteen community members who have used and/or worked in local community human service agencies, and a small number of consulting experts to examine how the U.S. legal system's interventions in domestic abuse cases serve to protect Indigenous battered women and their children. 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.

The research methods and practices used in this project incorporate basic principles that underlie Indigenous systems of knowing. These principles are:

1. **The communality of knowledge:** By this we mean as researchers we are the interpreters—not the originators or owners—of knowledge. The value of recognizing and honoring spiritual connections; relational accountability; reciprocity, and holism is central to our work.

2. **Recognizing spiritual connections:** Our work must recognize the spiritual links between people and the power of spiritual connections. We offered tobacco to police chiefs, court administrators, sheriffs, and others when we approached them for help in conducting our study. We valued and discussed our dreams after riding with police, observing court hearings, and reading countless court files. We used talking circles as a format for our focus groups.

¹ We chose to use the term Indigenous as opposed to Native or Native American. We mean the word to refer to the indigenous people of North America.

3. **Relational Accountability:** The researcher is a part of her research and inseparable from 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.

4. **Reciprocity:** The notion of reciprocity and the research relationship suggest the communities of people who are the subjects of the research should be the primary beneficiaries of the research. Honoring reciprocity, the central goal of the 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.

5. **Holism:** Holism recognizes that a person is the sum (and more) 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 questions with which we began our research process: How does the current justice system attend to the spiritual needs of Indigenous women who have been battered? The physical? The cognitive? The emotional? These questions were the starting point from which we developed the guiding questions used in interviews and focus groups.

Indigenous systems of knowing are communal; they are grounded in values that honor spiritual connectedness, relational accountability, and holism. By contrast, what we call institutions in contemporary non-Indigenous society 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.

We used D.E. Smith's work¹ in institutional ethnography because it specializes in investigations of how institutional forms are brought into being in people's everyday doings. In this project, the research has taken the standpoint of Indigenous women, particularly women who have been abused. Institutional ethnography is unique in the conceptual procedures it uses to isolate what should be addressed in observations and interviews. 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, our research identified specific processes relevant to the problems experienced and traced their organization as a process or 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. The key question in this investigation is, "How are the involved people putting it together so that it has these problematic outcomes for Indigenous women and the Indigenous community?" Our focus, however, was not on individual practitioners, but on the institutional forms of coordination that assemble their work to produce outcomes that no specific practitioner intends but they collectively produce.

Data Collection

There were eleven steps to our data collection process.

1. We mapped each sequential action in processing criminal and civil court domestic abuse cases.
2. For each step of the process or each institutional interchange in the process, we gathered any formal rules (e.g. laws, policies, agency procedures) governing that aspect of case processing.
3. We divided our research and community team into criminal and civil subgroups. Each group learned the case processing steps and guiding rules in their part of the legal system.
4. We scheduled and conducted observations and interviews of practitioners for each step of the process ensuring we observed each process several times.
5. We collected and redacted files, or court records for each step of the process. We used cases involving Indigenous women whenever race or ethnicity was identifiable on a file.
6. We held focus groups and transcribed the discussions.
7. We met two to four times a month to review texts from specific steps in the process, debrief observations with research and community members, debrief and discuss interviews with practitioners, or discuss transcripts from focus groups.
8. We coded all the data, into categories that began to emerge for us in our discussions on what institutional processes present problems for Indigenous women seeking safety.
9. We consulted with experts through phone conversations, video conferencing, and in person and at a number of conferences in Indigenous communities.
10. Each member of the research team read all of the data.
11. We then held a researchers' retreat to make sense of all of our data and determined how we would organize our data and findings.

Throughout our 18 months of observing, interviewing, reading case files, making sense of case management procedures and forms, analyzing directives and laws, and talking with groups of Indigenous women and professionals in the criminal justice system, we constantly found ourselves talking about a “they” that we could never find in the local setting of our study. We would find ourselves saying, “they designed this process to...” or, “they don’t allow women to...” We had expected to find “them,” the people at the bottom of this whole thing, the ones who hold the power. We expected to find “them” at the top. Perhaps we expected the power holders to be the judges or the state supreme court or the state legislature.

We also expected that if we could watch what “they” really do and read all of their files we would find overt practices and acts of racism and cultural impositions. Of course, we did find examples of overt racism and glaring examples of cultural insensitivity, ignorance, or imposition, but not in the way or to the extent that we thought we would. What we realized two-thirds into the project, was that the constant disjunctures between Indigenous women’s lives and the U.S. legal system’s way of intervening in those lives was inextricably linked to the ideologically driven practices deeply imbedded in the everyday work routines of the system’s practitioners. We had expected we might uncover individual bias and cultural insensitivity, or 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 what we have, for the purposes of this report, decided to call cultural hegemony. This all-pervasive way of knowing and thinking about and acting on cases involving violence against Indigenous women produces false accounts 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 criminal justice 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.

People working in the criminal justice system are located inside a complex apparatus of social management in which, as professionals, whether Indigenous or non-Indigenous, 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 saw the mechanisms at work that produced what we call a cultural hegemony: a way of thinking and acting that precludes interventions from attending to the most cherished values of Indigenous people—a connection to our relatives; the sacredness of women and the bond between women and children; the interconnectedness of all of our experiences; and 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 people acted on “cases,” they did so with techniques, mechanisms, and procedures that allowed the control of knowledge about indigenous 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 conclude that Indigenous people must not rely on the possibility of modifying or replicating the U.S. legal system if we are to build for ourselves a system that is capable of ridding our communities of one of the most devastating legacies of colonization: the physical, sexual, and spiritual abuse of women.

¹ Smith, Dorothy. (1987). *The everyday world as problematic*. Boston: Northeastern University Press.