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## I. INTRODUCTION

### A. Purpose of Resource

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*In our way of life, in our government, with every decision we make, we always keep in mind the Seventh Generation to come. It's our job to see that the people coming ahead, the generations still unborn, have a world no worse than ours—and hopefully, better. When we walk upon Mother Earth, we always plant our feet carefully because we know the faces of our future generations are looking up at us from beneath the ground. We never forget them.<sup>1</sup>*

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Tribal courts and state courts occasionally need to deal with the issue of child sexual abuse when it is raised in a custody dispute between the parents. It is not a common occurrence for one parent to accuse the other of sexual abuse of a child. When it does happen, the courts and professionals working on custody matters may not know how to appropriately handle the issue.

Although there are no statistics on how frequently sexual abuse is raised in cases involving Native parents or children, a study of twelve states found that incest allegations are raised in only 6 percent of custody cases.<sup>2</sup> An even larger study involving nine thousand divorce cases found the rate of incest allegations to be less than 2 percent of divorce cases, or less than 10 percent of contested custody disputes.<sup>3</sup>

*In my experience in Native communities, the co-occurrence of domestic violence and child sexual abuse is higher than statistics indicate.*

Tammy Swanson  
(Anishinabe), Attorney

Brief snapshots of the quote authors appear in the appendix.

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<sup>1</sup> Harvey Arden and Steve Wall, *Wisdomkeepers: Meetings with Native American Spiritual Elders* (Beyond Words Publishing, Oregon, 1990) 68 (quoting Oren Lyons, Faithkeeper of the Turtle Clan of the Onondaga Nation and spokesman for the Six Nations Iroquois Confederacy).

<sup>2</sup> Lundy Bancroft and Jay G. Silverman, *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics* (Sage Publication Inc., Thousand Oaks, CA 2002) 95.

<sup>3</sup> Joan Zorza, "Child Custody Cases, Incest Allegations, and Domestic Violence," Quarterly E-Newsletter, Justice and Safety for Victims of Domestic Violence, ABA Commission on Domestic Violence (2006) citing Nancy Thoennes and Patricia G. Tjaden, "The Extent, Nature, and Validity of Sexual Abuse Allegations in Custody/Visitation Disputes," 14 *Child Abuse and Neglect*, (1990)151–63.

There is a direct link between domestic violence and child sexual assault. Studies show that 44.5 percent to 73 percent of incest perpetrators are known to be battering the children’s mother.<sup>4</sup> Other studies show that the daughters of batterers have unusually high rates of incest victimization.<sup>5</sup> One study reported that daughters of batterers were 6.5 times more likely than other girls to be victims of father-daughter incest.<sup>6</sup> Multiple studies, taken together, indicate that a batterer is about four to six times more likely than a non-batterer to sexually abuse his children.<sup>7</sup> None of the studies are Native specific, and we do not know if they reflect what is happening in Indian country.

*Ninety-nine percent of the mothers of domestic violence that we worked with were victims of sexual assault or incest and their children were victims as well.*

Sherri Larson  
(Anishinabe/ Lower  
Sioux), Domestic  
Violence Advocate

Native American women are three times more likely to be victims of domestic violence than women of other ethnicities. Because of the high incidence of domestic violence against Native women and the higher incidence of child sexual abuse in domestic violence relationships, it is likely that Native children are more frequently victims of incest than the general population.

To understand the problems that this resource addresses, it is important to understand what is frequently occurring in tribal and state courts in custody cases when a mother accuses a father of sexual abuse. The following illustrative example examines what has happened to some Native children and the protective parent (mother) when sexual abuse is raised by a mother in a custody case, in tribal court. Tribal courts are not all the same; some have codes and some do not have codes; some have judges who are law trained while some do not; some courts are new and just starting while other tribal courts

have been established for awhile; some tribal courts have non-Indians as judges, or part-time judges while some tribal courts have judges that are from the tribe. Regardless of the court’s structure, one should closely examine the court to ensure that when there are allegations of sexual abuse in a custody case, children are treated appropriately.

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<sup>4</sup> Bancroft and Silverman at 83.

<sup>5</sup> Bancroft and Silverman at 84.

<sup>6</sup> Bancroft and Silverman at 85 describes the 1988 study conducted.

<sup>7</sup> Bancroft and Silverman at 289.

### **Illustrative Example: Tribal Court Custody Case**

**This is an actual case. The names have been removed to protect the children.**

The parties were divorced in tribal court and shared custody of the two children. All parties are members of the tribe. Father had been abusive throughout the marriage toward Mother. Mother abused drugs and alcohol. Mother decided to move away from the reservation and seek help for her alcohol and drug use. She agreed to a revision of the custody order giving Father full custody, as she knew Father would fight any modification of his custody and would not permit her to leave the reservation with her children.

During a visitation after Mother's move, the thirteen-year-old daughter made a comment about sleeping in the same bed with Father. Mother felt concerned. During the next visitation, Daughter disclosed that Father had sexually abused her. Mother's Domestic Violence Advocate arranged a forensic interview for Daughter with the help of Tribal Child Protection Services (TCPS). Mother also filed a motion in tribal court asking for a change of custody.

Father maintained that Mother had just made up the story of the sexual abuse to get a change of custody and coached Daughter to tell lies.

TCPS was involved due to the allegation of sexual abuse that occurred on the reservation. TCPS brought a child protection action in tribal court against both Mother and Father to secure legal and physical custody of both children (there is also a younger boy). So then there were two cases in tribal court: Mother's petition for modification of the previous court order requesting change of custody and the child protection action. The same judge was responsible for both cases. TCPS made no allegation of abuse against Mother, although she was named in the petition, but the tribal court granted an emergency order awarding TCPS custody. TCPS placed the children with Mother, but moved them within the first week of placement to Father's sister's home. Mother was prohibited from contacting the children. No explanation was given to Mother or to the court for the removal. Mother assumed that Father had pressured his friend, the director of tribal social services, to remove the children from Mother.

The federal government investigated the criminal child sexual abuse charge and eventually charged and prosecuted Father in federal court. Not until charges were brought against Father, did TCPS return the children to Mother. The children were out of Mother's custody for four months and during that time she was prohibited from contacting them by court order. Although Father was also prohibited from

contacting the children, because they were with his sister, the sister allowed him visitation. The court exercised no control over TCPS and granted all of their requests, even though they provided no evidence of child abuse perpetrated by Mother.

The agency made no attempt to arrange visitation with Mother or return the children to Mother. The court did not use its power to return the children to Mother or force the TCPS to perform in a responsible manner. The children received no counseling or support while out of their mother's custody.

The daughter who disclosed was punished for her disclosure and denied the comfort of her mother at a time when her need for comfort was significant. The son who had nothing to do with the claim of sexual abuse was punished as well by denying him contact with his mother. Both children were deprived of their things, pets, home, friends and everything else in their community. The children were in three different schools systems in four months. The son continued to have trouble sleeping at nights for months after his return to Mother's custody. Mother was denied her right to custody of both of her children because she attempted to protect her child from sexual abuse. The damage the system did to the children and the children's relationship with their mother is significant and long lasting.

Father was convicted of sexual abuse of a minor in federal court.

*As a Family-School Coordinator I was a mandated reporter, but sometimes I hesitated to report in case no action was taken and the child got in trouble for talking.*

Ann Baker, Child Protection Services



It is not solely in some tribal courts that the social service and court systems are harming children and the children's relationship with their protective parent, but also in the state court system. In the state system, racism and prejudice may intervene with devastating results. The following illustrative example explains what has happened in some state courts.

**Illustrative Example: State Court Custody Case**

**This is an actual case. The names have been removed to protect the children.**

Mother was repeatedly subjected to severe physical and emotional abuse during her marriage. Father is a chronic alcoholic and frequently was drunk during altercations. When Father injured their adopted daughter in a violent exchange, Mother decided to leave the marriage. She took their daughter with her. She filed for divorce in the state court, as they did not live on the reservation. Father told Mother many times that if she left him, he would kill her and he continued to threaten her after she left. He contested custody of the adopted daughter in the state court divorce action. Father is Caucasian. Mother is Native and Daughter is Native.

After Daughter, who was nine-years-old at the time, visited Father, Daughter told Mother that Father "put his fingers in me." There was a small amount of blood on the crotch area of the Daughter's white tights. Mother decided to leave the state and move to a bordering state to get away from Father. She informed Father of her decision to move and he voiced no objection. Mother filed for a restraining order in the new state, and brought Daughter in for a forensic exam.

The court in Father's state continued with the divorce and contested custody action. The judge in the case was quite displeased that Mother moved from the state and refused to review the forensic exam results from the bordering state, as he did not order it. He openly expressed his dislike for Mother, and made negative remarks about her ethnicity and her actions. He interpreted Mother's actions as an effort to alienate Daughter from Father. After Mother's move, the judge immediately removed Daughter from Mother's care and placed Daughter in foster care in Father's state. Mother continued to reside in the bordering state so she had very little supervised visitation.

*I have cases similar to these examples happening right now. They are not unusual.*

Focus Group Participants

Although Daughter is an Indian child placed in foster care by the family law judge, the judge did not follow the Indian Child Welfare Act (ICWA) in the placement criteria or tribal notification requirements. Neither the law enforcement agency or child protection services investigated the sexual abuse. A Guardian ad Litem (GAL) with no training on child sexual abuse determined that Mother was simply attempting to alienate Father from Daughter. The GAL recommended awarding custody of Daughter to Father. A psychologist was appointed to do a custody evaluation, and although she determined that the child would be better off in Mother's custody due to Father's alcoholism and domestic abuse, she indicated that Mother was coaching Daughter on the sexual abuse allegations.

The judge awarded custody of the child to Father. Father made it impossible for Mother to see the child. Daughter was pregnant by age twelve and the

baby was placed for adoption. Father is the baby's biological father. Daughter was kicked out of Father's home at age fifteen. She had two additional children by age twenty by another man and has had severe problems with drugs and alcohol.

The system failed Daughter and failed Mother, the protective parent. The allegation of sexual abuse was never seriously investigated. The psychologist involved in the custody evaluation and the GAL had no expertise in child sexual abuse. The judge was highly prejudiced against Native Americans and his prejudice showed in his rapid distrust of Mother and disbelief of her motives and explanations.

*A bad decision is based on bad facts. If the judges don't have the information then their hands are tied.*

Tammy Swanson (Anishinabe),  
Attorney

Although this case is very alarming, it is not unusual for sexually abused children to be awarded to their abusers and for the acts of the protective parent interpreted to be a strategy to gain custody of the child/children by alienating the father from the children. This resource will examine this tragedy and provide helpful information to encourage professionals to thoroughly investigate child sexual abuse cases.

The purpose of this resource is to provide professionals working in the state and tribal civil justice system a better understanding of sexual abuse, particularly incest, including the impact on children and parents and a clear understanding as to their professional responsibility. If professionals develop expertise in this subject and meet their responsibilities, Native children can be protected, reports of sexual abuse can be thoroughly investigated, and the protective parent can be respected and supported. The resource can be used in training professionals, either through self-study or group presentations.

The appendix of the resource includes a community contact sheet to aid you in gathering information on the professionals in communities that work on child sexual abuse. An annotated

resource list is provided with important Native specific publications that will help in further researching this issue. Additionally, included is a summary of the notes from a focus group of Native professionals on this topic. The focus group was held on January 20, 2012. Many of the ideas in this resource and many (extra space) of the quotations that appear in this resource came from the focus group discussion. More information on the individuals quoted is available in *Snapshots* in the appendix.

The overwhelming number of sexual victimizers is male. For this reason, in this resource, the abuser is referred to as “he” or as “father,” realizing that there are female sexual victimizers as well.

## B. Who Can Be Helped By This Resource?

This resource is designed for professionals who occasionally investigate, consider, or deal with child sexual abuse allegations within a family context and need a basic understanding of child sexual abuse, particularly incest, the systems/agencies involved, and key issues and concerns in a child sexual abuse case. It may also be helpful to professionals who work with child sexual abuse more frequently, but are not familiar with custody cases in tribal and family courts or the connection between child sexual abuse and domestic violence. Domestic violence advocates, sexual assault advocates, children's advocates, civil attorneys working with American Indians, tribal judges, state family court judges, tribal and state child protection workers, GALs, custody evaluators, and others working in civil court actions may benefit from using this resource.

This resource may be used for training on the topic of child sexual abuse, particularly intra-family abuse. It is important to be sensitive to training on sexual abuse as it may trigger survivors to relive their experiences. Providing support services during trainings is a good practice.

## C. What Information Is Not Contained in This Resource?

This resource does not examine the procedures and actions of law enforcement, criminal courts, or juvenile courts. It does not provide detailed information on the ICWA or the Adam Walsh Act. It does not provide information on the management of sex offenders. It does not describe best practices for social services investigating incest. It does not provide information on sexual abuse committed by strangers or non-family members, nor does it provide information on sibling against sibling abuse or other abuse by juveniles. Missing also is a discussion of incest perpetrated by mothers, which occurs, but substantially less frequently than incest by fathers. The topics excluded are important topics, and could be the subject of separate resources. Since they are incidental to the topic of incest and custody, they are not discussed in this resource. This resource provides information, not legal advice. An attorney should be contacted for legal advice.

*Let us put our  
minds together and  
see what kind of life  
we can make for  
our children.*

Sitting Bull  
(Hunkpapa)

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*Wakanyeja* is our Lakota word for child. It is made up of two parts, *wakanyan* (sacred) and *najin* (to stand); so for us a child stands sacred in this world, a special gift from the Creator.

*Children of Dragonfly* at 19, edited by Steven Bensen

## II. THE IMPACT OF CHILD SEXUAL ABUSE ON NATIVE AMERICANS

### A. What Is Child Sexual Abuse?

Child sexual abuse can constitute a wide range of activities. Each state, each tribe, and the federal government have unique definitions in their criminal statutes, and it is often in the criminal statutes that definitions are sought. Child sexual abuse can take many forms of activity in which adults (or older children) use a child for sexual gratification. Various forms of sexual penetration may be the most obvious activity, but sexual offenses that include sexual touching and some that do not require touching are considered sexual abuse.

Child sexual abuse offenses include:

- Touching offenses
  - Fondling
  - Making a child touch an adult's sexual organs
  - Penetrating a child's vagina or anus no matter how slight with a penis or any object that doesn't have a valid medical purpose
- Non-touching offenses
  - Indecent exposure or exhibitionism
  - Exposing children to pornographic material
  - Deliberately exposing a child to the act of sexual intercourse
  - Masturbating in front of a child
- Sexual exploitation
  - Engaging a child or soliciting a child for the purposes of prostitution
  - Using a child to film, photograph, or model pornography

*It will cost more to ignore this issue—criminal justice [jails, prisons], treatment centers, and hospitalizations.*

Lillian Jones (Fort Berthold), Tribal Court Advocate

The American Academy of Pediatrics defines child sexual abuse as “the engaging of a child in sexual activities that the child cannot comprehend, for which the child is developmentally unprepared and cannot give informed consent, and which violates the social taboos of society.”<sup>8</sup>

A meta-analysis of twenty-two American-based studies, those done with national samples as well as local or regional representative samples, suggest that 30 to 40 percent of girls and 13 percent of boys experience sexual abuse during childhood.<sup>9</sup> A 2000 study<sup>10</sup> using data collected by the National Incident-Based Reporting System found that 67% of all victims of sexual assault reported to law enforcement were under 18 years old at the time of the crime and 34% were under the age of 12. The vast majority of all sexual assault reported to law enforcement was female (86%). It is important to note, however, that the victimization of females increase with age with 69% of the victims under age 6 being female. There are many more males being victimized as children, than as adults. (18% of juvenile victims were male, compared to only 4% of adult males.) For victims under age 12, the proportions of males were even greater: sexual assault with an object (19%), forcible fondling (26%) and forcible sodomy (64%). A male is more likely to be sexually victimized when he is 4-years-old. A female is more likely to be sexually victimized when she is 14-years-old.<sup>11</sup> These studies are not Native specific, and it is important to keep in mind as in all general population studies that a Native specific study may yield different results and a study in your community may demonstrate different outcomes.

Incest is sexual contact between persons so closely related that their marriage would be considered illegal. Much of the sexual abuse referred to in this resource is incest committed by a father against his child. Unfortunately, this is not an uncommon form of sexual abuse. Biological parents and parental figures perpetrate 32 to 39.7 percent of all sexual assaults against child

<sup>8</sup> Robert M. Reece, M.D., *Treatment of Child Abuse*, (The John Hopkins University Press, Baltimore, Maryland, 2000).

<sup>9</sup> Emily M. Douglas and David Finkelhor, *Childhood Sexual Abuse Fact Sheet*. Available at <http://www.unh.edu/ccrc/factsheet/pdf/CSA-FS20.pdf> (accessed July 21, 2011), citing R. M. Bolen, and M. Scannapieco, “Prevalence of Child Sexual Abuse: A Corrective Metanalysis,” 73(3) *Social Service Review* (1999): 281–313.

<sup>10</sup> Howard N. Snyder, Ph.D., *Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics*, National Center for Juvenile Justice (July 2000).

<sup>11</sup> *Id.* at 4.

victims.<sup>12</sup> Almost half (49%) of the people who sexually victimize children under six (reported cases) are family members.<sup>13</sup>

## B. Historical Perspective on Child Sexual Abuse among Native Americans

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*The concept of respect is deeply imbedded in Native American culture: live in harmony and balance with one another and the environment. Everything has a spirit and one must acknowledge and show respect to each and every spirit. Disrespect of anyone or anything brings dishonor not only to you but to your ancestors and future generations. This traditional belief is the biggest deterrent to violence against women and children.*<sup>14</sup>

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Tribes were mindful of the danger of incest and other sexually inappropriate behavior. All Native cultures had strong sanctions against incest, defined by inappropriate relations with immediate and extended family members. Many families today tell their children not to date “so and so” because they are related in an “Indian way.” Historically, violators of the incest taboo were punished by banishment, death, or stripped of all rights and honor.<sup>15</sup>

From 1540, when Coronado led the Spanish into the Southwest and De Soto in the Southeast, the colonization of Native Americans began. The Spanish came in search of gold and riches and they had an objective to spread the Catholic religion. The Spanish colonial legal system historically protected and rewarded the exploiters of Native women and girls and therefore encouraged the institutionalization of sexual subjugation of women and girls.<sup>16</sup> The slavery of Native people was common, although the government of Spain may not have condoned it. The Indians were treated as “little more than chattel” by the *encomenderos*<sup>17</sup> who benefited financially from the continued

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<sup>12</sup> Child Abuse Solutions, *Fact Sheet Child Sexual Abuse in Custody Disputes*, [http://www.childabusesolutions.com/page\\_07.html](http://www.childabusesolutions.com/page_07.html) (accessed July 21, 2011), citing L. Greenfield, *Child Victimization: Violent Offenders and their Victims*, jointly published by the U. S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics and Office of Juvenile Justice and Delinquency Prevention (1996), 10;

B. Gomes-Schwartz et al., *Child Sexual Abuse: The Initial Effects* (Thousand Oaks, CA: Sage Publications, 1990), 64. (Due to variations among studies and how they measure the categories, data do not add up to 100% when averaging among studies.); J. Conte, and J. Schuerman, “Factors Associated with an Increased Impact of Sexual Abuse,” 11 *Child Abuse and Neglect* (1987): 201. (Stepfathers present an increased risk of sexually abusing their stepchildren. D. Finkelhor et al., *A Sourcebook on Child Sexual Abuse* [Thousand Oaks, CA: Sage Publications, 1986], 78.)

<sup>13</sup> Snyder *supra* at 10.

<sup>14</sup> Sarah Deer, et. al., *Sharing Our Stories of Survival*. Chapter 4, *Special Issues Facing Alaska Native Women Survivors of Violence*, Eleanor Ned-Sunnyboy (Altamira Press, Lanham, MD 2008) 72.

<sup>15</sup> Dolores Subia BigFoot, PhD, *History of Victimization in Indian Communities*, (March 2000). Available at <http://icctc.org/History%20of%20Victimization%20Issues-%20Final.pdf>, accessed March 13, 2012.

<sup>16</sup> Sarah Deer, *Relocation Revisited: Sex Trafficking of Native Women in the United States*, 36 *William Mitchell Law Review* (2010) 821.

<sup>17</sup> In the *encomienda*, the crown granted a person a specified number of Natives for whom they were to take responsibility. In theory, the receiver of the grant was to protect the Natives from warring tribes and to instruct them in the Spanish language

subjugation. Spain officially outlawed the enslavement of Indians in its empire during the sixteenth century, “though local governments and Spanish colonists found ways to skirt the laws and keep Indians in various states of unfree labor”.<sup>18</sup> In many instances, Indian men were killed in battle, but the women and children were taken captive by the Europeans and used for sex, labor, or profit.<sup>19</sup>

One woman, T’teetsa (also known as Lucy Young), born in 1846, was a member of the Lassik tribe of Northern California. She “fell prey to men engaged in the widespread practice of kidnapping Indian children and selling them as servants to white settlers.” After numerous escapes and recaptures, T’teetsa was sold to a white trader, Arthur Rutledge, who “kept her chained at his place because she always ran away.” Rutledge’s sexual abuse of T’teetsa resulted in numerous pregnancies and miscarriages.<sup>20</sup> T’teetsa lived to write a book of her life.

The women and children of tribes in the Northeast and Central areas were also subjected to rape as a part of the conquest of the West during the early and mid 1800s. Once the wars against the Natives ended, the government turned to other means to subdue the Natives. Tribal culture and tribal families were severely impacted by U.S. government policies that frequently targeted Indian children. Early in the relationship between the U.S. government and the Indian nations, the government realized that in order to destroy Indian culture, it needed to focus on the children. The

*Abinouji*  
*Imbedded in the ancient language of the Ojibways, is what the elders who still know the true meaning of the word that we use to describe “baby”. The roots of the word when strung together form the meaning, SACRED SPIRIT, COMING IN, WHO HAS A VOICE. It describes the new life, coming in directly from the side of the Creator, from the spirit world, a pure spirit - on loan to us from the creator of all things. Not ours to abuse and do with what we will, but a very sacred being, one who must be celebrated, honored, valued and taught to celebrate themselves.*

Ted Waukey,  
Leech Lake Cultural Director

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and in the Catholic faith: in return they could extract tribute from the Natives in the form of labor, gold, or other products. In practice, the difference between *encomienda* and slavery could be minimal. Natives were forced to do hard labor and subjected to extreme punishment and death if they resisted. See Junius Rodriguez, *Encyclopedia of Slave Resistance and Rebellion* 184 (2007). Available at [http://books.google.com/books?id=g\\_kuS42BxIYC&pg=PA184#v=onepage&q&f=false](http://books.google.com/books?id=g_kuS42BxIYC&pg=PA184#v=onepage&q&f=false) (accessed February 10, 2012).

<sup>18</sup> See Alan Gallay, *The Indian Slave Trade*, Yale University Press, New Haven and London (2002) 56.

<sup>19</sup> *Ibid.*

<sup>20</sup> Lucy (T’teetsa) Young, *Out of the Past: Lucy’s Story*, in *No Rooms of Their Own*, ed. Ida Rae Egli (1992) 47, 49.



policy that has had the greatest impact on children and family relationships was the education policy that promoted boarding schools.

The boarding school movement began in 1879 and continued through the 1960s. Several generations of Indian children were forced to attend boarding schools, often far from their family and relatives. Boarding schools were the breeding ground for physical, sexual, and emotional abuse by teachers, nuns, priests, dorm workers and other caretakers. Common experiences for children in boarding schools included:<sup>21</sup>

- Harsh and cruel punishment for behaviors defined as infractions or rule breaking;
- Whippings and beatings for typical behavior appropriate for children who were scared or frightened;
- Denial of contact with family for months and sometimes years;
- Denial of medical care;
- Used as indentured servants;
- Punishment for using their Native language;
- Limitations placed on amount of food, clothing, and shelter they received; and
- Non-notification of parents upon child's death and burial on school grounds without markers or ceremony.

*They must be withdrawn in tender years, entirely from the camp and taught to eat, to sleep, to dress, to play, to work, to think after the manner of the white man. It is admitted by most people that the adult savage is not susceptible to the influence of civilization and we must therefore turn to his children, that they might be taught to abandon the pathway of barbarism and walk with a sure step along the pleasant highway of Christian civilization.*

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<sup>21</sup> Dolores Subia BigFoot, PhD, *History of Victimization in Native Communities, Center on Child Abuse and Neglect* (March 2000). Available at [http://books.google.com/books?id=wjK8YcoBC34C&pg=PA51&lpg=PA51&dq=Out+of+the+Past:+Lucy%E2%80%99s+Story&source=bl&ots=9\\_5jgVUNY9&sig=Um23l9JusQjK-s8yPvwR2Q9FLjU&hl=en&sa=X&ei=YJY1T5OaHYXlsQKvIrGFAG&ved=0CDQQ6AEwAw#v=onepage&q=Out%20of%20the%20Past%3A%20Lucy%E2%80%99s%20Story&f=false](http://books.google.com/books?id=wjK8YcoBC34C&pg=PA51&lpg=PA51&dq=Out+of+the+Past:+Lucy%E2%80%99s+Story&source=bl&ots=9_5jgVUNY9&sig=Um23l9JusQjK-s8yPvwR2Q9FLjU&hl=en&sa=X&ei=YJY1T5OaHYXlsQKvIrGFAG&ved=0CDQQ6AEwAw#v=onepage&q=Out%20of%20the%20Past%3A%20Lucy%E2%80%99s%20Story&f=false) (accessed February 10, 2012).

*Families need a supportive structure that will increase their sense of empowerment and provide an avenue to explore ways to combat the pattern of victimization both presently and historically. Families need an effective method to hold perpetrators and offenders accountable as well as the judicial and law enforcement systems that function as protectors. Traditional sanctions and methods of restitution should be considered in victim services. Children cannot exist without parents; parents cannot exist without families; families cannot exist without communities; communities cannot exist without tribes; tribes cannot exist without children. The hope is that children, families, communities, and tribes are rebuilding together. The prophecy is being fulfilled for Native people that honor and traditions will heal their spirits and build their heritage as Native people.*

*Dolores Subia BigFoot, PhD  
History of Victimization in Native  
Communities (footnote 11. p. 16)*

Boarding schools were very authoritarian in nature. Teachers and administrators were relatively unrestricted in their treatment of Native children and there were little or no consequences when children were harmed. Children had few options for resisting the oppressive system, as they were generally far from family. Sexual, physical, and emotional abuse was rampant.<sup>22</sup> As stated in the Meriam Report of 1928, “nearly every boarding school visited furnished disquieting illustrations of failure to understand the underlying principles of human behavior. Punishments of the most harmful sort are bestowed in sheer ignorance, often in a sincere attempt to be of help.”<sup>23</sup> Another major congressional report on Indian affairs in the 1960s, the Kennedy Report, again commented on the failed education policy and concluded that the destructive assimilation policy had disastrous impact on Indian education. “School environment was sterile, impersonal and rigid, with a major emphasis on punishment and discipline, which is deeply resented by the students.”<sup>24</sup>

Children were often removed from their families when they were six or seven years old and placed in a boarding school far away from their families. They infrequently visited their families and became strangers to their families and their culture. The experience of growing up under normal conditions and experiencing

<sup>22</sup> United Nations Permanent Forum on Indigenous Issues, Eighth session 2009, *Indigenous Peoples and Boarding Schools*, New York, NY (2009). Available at <http://www.boardingschoolhealingproject.org/files/bshpreport.pdf> (accessed February 10, 2012).

<sup>23</sup> Lewis Meriam, *The Problem of Indian Administration* (Baltimore, MD: The Johns Hopkins Press, 1928) 381.

<sup>24</sup> *Indian Education: A National Tragedy—A National Challenge* (Kennedy Report), The Failure of Federal Schools, 1969 Report of the Committee on Labor and Public Welfare, U.S. Senate made by its Special Subcommittee on Indian Education at 66.

family life provides preparation for the later experience of parenthood. The children raised in boarding schools were at an extreme disability when dealing with their own children as they had no experience of their own to rely on. The structure and abuse they learned in boarding schools affected them in different ways, but it in no way prepared them to be parents. In the 1970s when pre-ICWA studies were done, several studies reported the lack of objection voiced by parents of children being placed in foster care or the ease with which Indian parents placed their children in boarding schools at that time. Considering the parents' background in boarding schools and what they been taught, it was far from surprising that they passively allowed their children to be removed from their homes.

Surveys of states with large Indian populations by the Association of American Indian Affairs in 1969 and again in 1974 found that 25 to 35 percent of all Indian children were separated from their families and placed in foster homes, adoptive homes, or institutions. In 1971–1972 one in every four Indian child under one year of age was placed in an adoptive home.<sup>25</sup> In South Dakota 40 percent of the adoptions between 1968 and 1974 were Indian children, even though only 7 percent of the juvenile population was Indian children.<sup>26</sup>

In more recent history, Bureau of Indian Affairs (BIA) schools seemed to be selected by sexual predators as there have been a number of high-profile sexual abuse cases in BIA schools. In 1987, the Federal Bureau of Investigation found that one teacher at the BIA-run Hopi day school in Arizona, John Boone, had sexually abused more than 142 boys, but the school's principal had never investigated any allegations of abuse. J. D. Todd taught at a BIA school on the Navajo Reservation before twelve children came forward with allegations of molestation. Paul Price taught at a North Carolina BIA school from 1971 until 1985 before he was arrested for assaulting boys.<sup>27</sup>

Unfortunately, the effects of child maltreatment in the schools generation after generation and the resulting destruction of both the nuclear and extended families took a significant toll on Native communities. Alcohol abuse, drug abuse, risk taking, aggressiveness, hostility, limited coping skills, increased pain tolerance, low self-esteem, decreased expectations, limited parenting skills, and marginal relationship skills emerged as a result of the boarding school and foster care experiences. The dysfunction can be so prevalent that it is considered the norm. There is a warped concept of what is normal behavior within the family.

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<sup>25</sup> Steve Unger, *The Destruction of the American Indian Family* (New York, Association of American Indian Affairs, Inc., 1977) 4.

<sup>26</sup> *Ibid.*

<sup>27</sup> The Boarding School Healing Project, *Reparations and American Indian Boarding Schools: A Critical Appraisal* (2008) 5. Available at [http://www.boardingschoolhealingproject.org/files/A\\_Critical\\_Appraisal\\_of\\_Reparations\\_final.pdf](http://www.boardingschoolhealingproject.org/files/A_Critical_Appraisal_of_Reparations_final.pdf), last visited 3/13/2012.

## C. Myths and Facts about Sexual Abuse and Incest<sup>28</sup>

MYTH: Most children who are sexually abused, are abused by strangers.

FACT: In as many as 93 percent of the cases of child sexual abuse, children are abused by someone they know.<sup>29</sup>

MYTH: Incest is rare.

FACT: As many as 47 percent of the child sexual abuse perpetrators are members of the immediate or extended family.<sup>30</sup> Biological parents and parental figures perpetrate 32 to 39.7 percent of all sexual assaults against child victims.<sup>31</sup>

MYTH: He looks normal and acts normal, so he can't be a child molester.

FACT: The “average” offender is likely to be a “normal” married man with a family and a job. He is often well respected in the community and otherwise unidentifiable as an offender. The only common factor, which researchers have found, is that the overwhelming majority of perpetrators are male. Only a small percentage of offenders have been found to be mentally ill.

MYTH: Children lie about incest.

FACT: Research and experience have shown that children very rarely lie about incest. Most children do not tell anyone, ever. The idea that children lie or fantasize about sexual abuse has been protecting abusers for decades. Children do not have the information or motivation to make up stories of sexual abuse. The notion that children lie about sexual abuse does not acknowledge the shame and secrecy associated with the topic, or acknowledge that disclosing sexual abuse is rarely a rewarding experience for a child.<sup>32</sup>

MYTH: Some children are openly seductive and encourage sexual activity.

*Kids will disclose when they feel safe. Only in extremely rare cases do kids lie about abuse. You have to be an incompetent forensic interviewer not to know when a child is coached.*

Barbara Bettelyoun, PhD (Lakota),  
Child Clinical Psychologist and  
Forensic Interviewer

<sup>28</sup> Statistics and other information in this section were the results of general population studies, unless specified.

<sup>29</sup> Douglas and Finkelhor, *Childhood Sexual Abuse Fact Sheet*, citing R. M. Bolen, and M. Scannapieco, “Prevalence of Child Sexual Abuse”, available at <http://www.unh.edu/ccrc/factsheet/pdf/CSA-FS20.pdf>, accessed March 13, 2012.

<sup>30</sup> Eliot J. Briere, DM, “Prevalence and Psychological Sequence of Self Reported Physical and Sexual Abuse in General Population,” *Child Abuse and Neglect* (2003)

<sup>31</sup> Child Abuse Solutions, Inc., *Fact Sheet on Child Sexual Abuse*, Available at [http://www.childabusesolutions.com/page\\_07.html](http://www.childabusesolutions.com/page_07.html), accessed March 13, 2012.

<sup>32</sup> The Sexual Assault Support Center, *Myths about Incest*, Available at <http://www.casac.ca/content/myths-about-incest>, accessed March 8, 2012.

*Oftentimes a multidisciplinary team feels the caregiver does not believe the child and therefore is non-protective. Who wants to believe sexual abuse has happened to their child? It is easy for parents not to know what is going on. Also, when the parent has been abused as a child and has not received healing, the child's abuse can trigger unresolved feelings about their own trauma so they are emotionally responding not only to the child's abuse, but to their own.*

Barbara Bettelyoun, PhD (Lakota), Child Clinical Psychologist and Forensic Interviewer

FACT: Acting out sexual behaviors is an indicator that a child may have been sexually abused: it is a consequence of sexual abuse, not a cause. Adults are bigger, stronger, and have more information, power, and authority than children, and children cannot force adults to do something they do not want to do.

MYTH: A good mother would know if her child was being sexually abused and would do anything to stop it.

FACT: Most mothers do not know. The abuser works hard at protecting his secret. He may sabotage the mother-child relationship so that the child is less likely to be close to or trust the mother. Mothers who do try to protect their children may face legal and social obstacles.<sup>33</sup>

MYTH: Children are forced or manipulated into lying about sexual abuse by mothers who want revenge.

FACT: When children tell about sexual abuse they don't just speak with words, their emotions, play, drawings, and posture all tell a part of the story. Children cannot fake that kind of reaction. Mothers are often accused of forcing children to falsely disclose sexual abuse if the disclosure comes out as part of a custody battle. The reality is more likely that she is trying to protect the child.<sup>34</sup>

MYTH: Mothers are responsible for making most of the reports of child sexual abuse that have determined to be maliciously fabricated.

FACT: While mothers accuse fathers of child sexual abuse in 48 percent of cases of child sexual abuse, their allegations are found to be malicious allegations only 1.3

*Yes, children lie, but children lie to get out of trouble, not into trouble.*

Lisa Thompson-Heth  
(Lakota), Domestic  
Violence/Child

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

percent of the time.<sup>35</sup> Interestingly, 21 percent of allegations made by fathers against mothers were considered maliciously made.<sup>36</sup>

**MYTH:** Children who raise the issue of incest in family courts are protected.

**FACT:** Children who disclose sexual abuse by a parent in the context of custody dispute are frequently not protected from further abuse. Research shows that:

- Only 10 percent of children alleging incest are adequately protected from their identified perpetrators by family courts through long-term supervised visitation orders or no-contact orders.
- The remaining 90 percent of children disclosing abuse receive no protection with 70 percent continuing in shared custody and visitation arrangements without any supervision, and 20 percent being placed in the custody of the parent they accused of the sexual abuse—and lose unsupervised visits or all contact with the parent who sought to protect them.<sup>37</sup>

*The mom has no money to fight. It may not be to her advantage to report it. Community backlash in small communities is great. His relatives may be on the council or tribal court.*

Sherri Larson  
(Anishinabe/Lower Sioux),  
Domestic Violence Advocate

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<sup>35</sup> Child Abuse Solutions, Inc., *Fact Sheet: Child Sexual Abuse in Custody Disputes*, (Berkley, CA) 6. Available at [http://www.childabusesolutions.com/page\\_07.html](http://www.childabusesolutions.com/page_07.html), accessed March 13, 2012.

<sup>36</sup> M. Trocme, D. McPhee, K. K. Tam, and T. Hay, *Ontario Incidence Study of Reported Child Abuse and Neglect* (Toronto: Institute for the Prevention of Child Abuse, 1994).

<sup>37</sup> A. Neustein, and A. Goetting, "Judicial Responses to the Protective Parent's Complaint of Child Sexual Abuse," 8(4) *Journal of Child Sexual Abuse* (1999): 103–22. (300 cases of which 20% [n=60] had a negative outcome for the child, 70% [n=210] had a moderate outcome, and only 1% [n=30] had a positive outcome in which the child was protected.); T. Brown, M. Frederico, L. Hewitt, and R. Shehan, "Problems and Solutions in the Management of Child Abuse Allegations in Custody and Access Disputes in the Family Courts," 36(4) *Family and Conciliation Courts Review* (1998): 431–43; K. C. Faller, and E. DeVoe, "Allegations of Sexual Abuse in Divorce," 4(4) *Journal of Child Sexual Abuse* (1995): 1–25.

## D. How Children Are Affected By Sexual Abuse

Girls are sexually abused three times more than boys. Parental inadequacy, unavailability, parent conflict, and a poor parent-child relationship are among the characteristics that distinguish children at risk of being sexual abused. Both boys and girls are most vulnerable to abuse between the ages of seven and thirteen.<sup>38</sup>

The impact of sexual abuse on a child is substantial and long lasting. When a child is abused by someone she trusts, she may not immediately know that it is wrong and often blames herself. (The abuser may manipulate her by blaming her as well.) If the victim seeks help from adults and is met with disbelief, this makes matters worse, as it increases her powerlessness. Victims may feel inadequate, shameful, embarrassed, guilty, fearful, and powerless. For these reasons and other reasons, it is common for victims to keep the abuse a secret.

Adults who were sexually victimized by adults in their childhood often suffer from low self-esteem, difficulties in interpersonal relationships, and sexual dysfunction, and are at an extremely high risk of many mental disorders including depression, anxiety, phobic avoidance reactions, substance abuse, borderline personality disorder, and complex posttraumatic stress disorder.

The book, *Sharing Our Stories of Survival: Native Women Surviving Violence*,<sup>39</sup> provides a number of stories of Native women, who have survived child sexual abuse.

*People don't want to believe child sexual abuse is as prevalent as it is, don't understand the severity of the lifelong effects, and don't know what the signs are in their children. They don't recognize it especially if they have experienced it as children themselves and have not healed.*

Barbara Bettelyoun, PhD  
(Lakota), Child Clinical  
Psychologist and Forensic  
Interviewer

<sup>38</sup> David Finkelhor, "Current Information on the Scope and Nature of Child Sexual Abuse." 4(2) *The Future of Children* (1994): 31, 46-8.

<sup>39</sup> Sarah Deer, Bonnie Clairmont, Carrie Martell, and Maureen White Eagle, *Sharing Our Stories of Survival* (Altamira Press, Lanham, MD 2008).



## E. Nonphysical Indicators of Child Sexual Abuse

Stop It Now,<sup>40</sup> an organization working on educating adults on child sexual abuse, lists the following as nonphysical indicators of child sexual abuse.<sup>41</sup>

Any one sign doesn't mean that a child was sexually abused, but the presence of several suggests that questions should be asked and help sought. Some of these signs can emerge at other times of stress such as during:

1. A divorce,
2. The death of a family member or pet,
3. Problems at school or with friends, or
4. Other anxiety-inducing or traumatic events.

Behavior that maybe seen in a child or adolescent:

- Has nightmares or other sleep problems without an explanation;
- Seems distracted or distant at odd times;
- Has a sudden change in eating habits;
- Has sudden mood swings: rage, fear, insecurity, or withdrawal;
- Leaves “clues” that seem likely to provoke a discussion about sexual issues;
- Writes, draws, plays, or dreams of sexual or frightening images;
- Develops new or unusual fear of certain people or places;
- Refuses to talk about a secret shared with an adult or older child;
- Talks about a new older friend;
- Suddenly has money, toys, or other gifts without reason;
- Thinks of self or body as repulsive, dirty, or bad;
- Exhibits adult-like sexual behaviors, language, and knowledge;
- Exhibits signs more typical of younger children;
- An older child behaves like a younger child (such as bed wetting or thumb sucking);
- Has new words for private body parts;
- Resists removing clothes when appropriate times (e.g., bath, bed, toileting, or diapering);
- Asks other children to behave sexually or play sexual games;
- Mimics adult-like sexual behaviors with toys or stuffed animal; and

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<sup>40</sup> Available at <http://www.stopitnow.org/> (accessed February 10, 2012).

<sup>41</sup> *Stop It Now, Warning Signs in Children and Adolescents of Possible Child Sexual Abuse*. Available at [http://www.stopitnow.org/warning\\_signs\\_child\\_behavior](http://www.stopitnow.org/warning_signs_child_behavior) (accessed February 10, 2012).



- Has wetting and soiling accidents unrelated to toilet training.

Signs more typical in adolescents:

- Self-injury (e.g., cutting or burning),
- Inadequate personal hygiene,
- Drug and alcohol abuse,
- Sexual promiscuity,
- Running away from home,
- Depression or anxiety,
- Suicide attempts,
- Fear of intimacy or closeness, and
- Compulsive eating or dieting.

*When you protect the mother, you protect the child.*

Lisa Thompson-Heth (Lakota),

Domestic Violence/Child Advocate

### III. UNDERSTANDING ADULTS WHO SEXUALLY ABUSE CHILDREN IN THEIR FAMILY

#### A. Statistics on Intra-Familial Sexual Abuse

It is shocking to realize that biological parents and parental figures perpetrate 32 to 39.7 percent of all sexual assaults against child victims. The vast majority of these sex offenders are fathers or father figures.<sup>42</sup> Other family members are responsible for 11.3 to 22.4 percent of the child sexual abuse.<sup>43</sup> Official crime reporting data indicate that 27% of all reported sex offenders are family members and 49% of offenders of victims under age 6 and 42% of offenders of victims between age 6 and 11 are family members.<sup>44</sup> The greatest risk for child sexual abuse comes within a family structure at the hands of a male family member, possibly another child (30% - 50% of offenders of children are children). Males perpetrate 90 to 96 percent of all child sexual abuse.<sup>45</sup> Female offenders more commonly perpetrate against victims under age 6 (12 percent of the offenders) than against older victims.<sup>46</sup>

Statistics on the number of Native Americans who perpetrate sexual harm nationwide is lacking. Websites provide information on the sex offenders who have been convicted of sex crimes,

*Biological parents and parental figures perpetrate 32 to 39.7 percent of all sexual assaults against child victims. The vast majority of these sex offenders are fathers or father figures.*

including crimes in Indian country, but the inclusion of tribal convictions has been a recent addition. The Adam Walsh Child Protection and Safety Act of 2006<sup>47</sup> for the first time allowed tribes to opt-in to a national system of sex offender registration and management. If the tribes chose not to opt-in to the system by meeting the law's requirements, states were permitted to manage sex offender registration on Indian lands. The Dru Sjodin National Sex Offender website<sup>48</sup> provides information on convicted sex offenders, connecting state and tribal websites nationwide.

The underreporting of sexual crimes in Indian country has long been acknowledged, so statistics or information on convictions only tell a very small part of the story. However, reviewing sex conviction

<sup>42</sup> *Child Abuse Solutions, Inc., supra*

<sup>43</sup> L. Greenfield, *Child Victimizers: Violent Offenders and Their Victims*, (published by the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, and Office of Juvenile Justice and Delinquency Prevention, 1996) 10.

<sup>44</sup> Snyder, *supra* at 10.

<sup>45</sup> *Supra* Douglas and Finkelhor, *Childhood Sexual Abuse Fact Sheet*.

<sup>46</sup> *Supra* Snyder at 8.

<sup>47</sup> P.L. 109-248.

<sup>48</sup> <http://www.nsopw.gov/Core/Portal.aspx?AspxAutoDetectCookieSupport=1> (Accessed March 13, 2012)

information in some of Indian country does cause great concern. For instance, the ratio of sex offenders to residents in Browning, MT on the Blackfoot reservation is 1 to 63, compared to 1 to 526 in nearby Cut Bank, MT.<sup>49</sup> The ratio of sex offenders in Mission, S.D. on the Rosebud Reservation to the total residents is 1 to 62.<sup>50</sup> With small populations in Indian country and proportionately large numbers of children, convicted sex offenders may be a significant part of the community. These numbers reflect only the convicted sex offenders, not the vast number of sexual victimizers who are never reported or if reported, not convicted.

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<sup>49</sup> <http://www.city-data.com/so/so-Browning-Montana.html> (Accessed March 13, 2012)

<sup>50</sup> <http://www.city-data.com/so/so-Mission-South-Dakota.html> (Accessed March 13, 2012)

## B. Why Do Adults Sexually Abuse Children?

The general public has the mistaken belief that all child molesters are pedophiles probably because the word pedophile is commonly used to describe all child molesters. Pedophilia is a psychiatric diagnosis for people who are sexually attracted to prepubescent children (usually less than thirteen years of age). Pedophiles are considered mentally ill, but most child molesters have normal sexual urges and are attracted to adults, and are not considered mentally ill. They may target older children. They appear normal and may continue to have sexual relationships with their wives or girl friends while molesting a child.

If the average child molester has normal sexual urges, why do they sexual abuse children? David Finkelhor, PhD, Director of the Crimes Against Children Research Center and one of the leading researchers on child sexual abuse, provides the following theory on why children are sexually abused. Finkelhor's Pre-condition Model of Child Sexual Abuse maintains that all four of the following preconditions must exist before an offender sexual abuses a child.

1. *Motivation*: There must be motivation to sexually abuse the child, and that means that there must be sexual arousal. Some individuals may be primarily aroused by children. Other individuals may be primarily aroused by adults, but turn to children when adults are unavailable.
2. *Overcome internal inhibitions*: The perpetrator must overcome his personal inhibitions about having sex with children, whether it is his conscience or fear of punishment.
  - a. Internal inhibitors vary from person to person—some may not recognize the harm done to children by sexual abuse.
  - b. Some may use alcohol or drugs to reduce their inhibitors.
  - c. High levels of stress may reduce inhibitors.
  - d. Most people's conscience or fear of being caught will stop them.
  - e. The person's society or community can strengthen or weaken personal inhibitors.
  - f. Mental disorder, youthfulness, and disorders that affect impulse: fetal alcohol

*A victim doesn't have to even be alone with the perpetrator. I have heard of young children being molested while sitting on a perpetrator's lap or lying under a blanket on the couch with mom or grandma in the same room. And then, who believes them, as mom and grandma were right there.*

Lisa Thompson (Lakota),  
Domestic Violence/Child  
Advocate

spectrum disorder, attention deficit hyperactivity disorder, bipolar disorder, and other learning or mental disorders may act to weaken internal inhibitors.

3. *Overcome external inhibitors*: The perpetrator must have an opportunity. If mother is always around, she is an external inhibitor blocking the assault. In the case of an offender working with a youth group, he needs an opportunity in which he is unsupervised. Children, who are isolated or have less supervision, make it easier for the abuser to have opportunity.

In tribal communities, at times, the victim's family may retaliate against a sex offender, and this threat of family retaliation may be an external inhibitor. Historically in many tribal communities, sexual abusers of children were shamed and/or excluded from the community. Shaming has not been shown to be an inhibitor of sexual abuse. Exclusion from a tribal community is very difficult to enforce, and tends to move the offender down the road to be dealt with in another community. An Anishinabe/Métis community in Manitoba, Hollow Water, has developed a process of community and individual healing based on Anishinabe beliefs and practices that have proven effective in inhibiting sex offenders from re-offending. Their healing practices will be discussed later in this chapter.

4. *Overcome the child's resistance*: In order for a perpetrator to succeed he must overcome the child's resistance. He could do this by force, or he could do this through grooming. Many perpetrators use their position of power to overcome resistance. A victim will be motivated to follow the directions of her father, as he is in a position of power and influence. Power can also be derived from being larger or more advanced in capability. A child can be easily manipulated by some one of advanced capability and greater size.

*One time we had a mother with three children with the abuser and three children from another relationship, the judge gave the father temporary custody of all the children. When mother finally got custody, the father had sexually abused one of the daughters. When you're on a reservation, you kind of know that politics play a role. The grandmother had political influence and the mother was from another tribe.*

Lisa Thompson (Lakota), Domestic Violence/Child Advocate

## C. Characteristics of Persons Who Sexually Abuse Children

We would like to easily identify those individuals in our community who sexual abuse children. If they fit a certain profile, it would help in their identification. However, they come with many different personalities, demographics, and of varying intelligence. Research has consistently shown there is no such thing as a sex offender profile, other than they are usually male.

Researchers, however, have identified some characteristics or traits that are common in sex offenders, which may help understand their behavior. Not all of these characteristics are present in every sex offender, nor does the presence of these characteristics make someone a sex offender. However, since these characteristics have been found in large samples of sex offenders, experts believe they are related to offending. The following is a summary of the characteristics of sex offenders as described in a training provided by the Center for Sex Offender Management (CASOM)<sup>51</sup>

*Abusers come with many different personalities, demographics and varying intelligence. Research has consistently shown there is not such thing as a sex offender profile.*

### 1. *Deviant sexual arousal, interests or preferences*

Some sex offenders are interested in or aroused by things outside the realm of healthy sexual activity, such as

- Engaging in sexual activity with children and adolescents
- Having sex with others against their will
- Inflicting pain or humiliation on others
- Participating in or watching acts of violence
- Exposing oneself in public
- Secretly watching others undressing or engaging in sexual activity

Because these interests, arousals or urges can be so strong, they are considered to be a driving force behind the initial onset of sexually abusive behaviors for some sex offenders and linked to recidivism. However, not all sex abusers have these characteristics and some of the general public have these characteristics, but don't offend. Regardless, it is an important risk factor.

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<sup>51</sup> Center for Sex Offender Management, Office of Justice, *Understanding Sex Offenders: An Introductory Curriculum*, Section 3, (2010). Available at [http://www.csom.org/train/etiology/3/3\\_1.htm](http://www.csom.org/train/etiology/3/3_1.htm), accessed June 12, 2012.

2. *Cognitive distortions or pro-offending attitudes*

Sex offenders are aware that acts such as rape and child molestation are illegal, but they engage in the activities anyway. This is likely a result of cognitive distortions. Sex offenders tell themselves (and maybe others) that the behavior is not harmful, less serious than generally believed or that the victim enjoyed it, caused, or initiated the behavior. They may justify the behavior by their belief that women/children deserve to be treated this way. The belief gives the violator permission to act in a deviant way. Cognitive distortions are present in everyone, but a sex offender specifically uses the distortions to support their sex offending behavior. A person with these beliefs is more likely to sexual offend and such beliefs may result in recidivism.

3. *Social, interpersonal and intimacy deficits*

Other common characteristics are those that demonstrate social or interpersonal shortfalls, such as ineffective communication skills, social isolation, or other problems in intimate or social relationships. Experts believe that these deficits may lead to the development of sexually abusive behavior and some are related to recidivism. Many people have these deficits and don't offend.

4. *Victim empathy deficits*

Sex offenders apparently have a difficult time putting themselves in their victim's place or generally empathizing with others. This may explain a bit about how they can sexually victimize others. Surprisingly this characteristic does not appear to be related to recidivism.

5. *Poor coping or self-management skills*

Emotional and self regulation difficulties may be part of what leads people to offending and re-offending. Some offenders have difficulty in handling their emotions, are highly impulsive, and tend not to think carefully about consequences. Many people have problems coping with their emotions at times and sometimes act impulsively, but don't sexually offend. However, these characteristics are common in sex offenders.

6. *Under-detected deviant sexual behavior*

The offense for which a sex offender is apprehended is usually not the first or only sexual offense in which he has engaged. Generally, there are undetected deviant sexual behaviors.

7. *History of maltreatment*

There does seem to be a high prevalence of child maltreatment (including sexual victimization) among sex offenders, especially where other risk factors are also present. However, there is no evidence that child maltreatment causes sex offending. There are many people sexually and physically victimized as children who do not sexually offend. A history of child sexual abuse has not proven to be related to recidivism.

## Characteristics Related to Recidivism

Some of the factors listed above are related to recidivism. Other factors as well can help in predicting recidivism. Researchers have found that the following static factors are related to recidivism.<sup>52</sup>

- A younger age at onset of sex offending
- Having prior convictions of sex offending
- Targeting male victims
- Having unrelated, unfamiliar victims, as opposed to victims within the family or known to the offender
- The presence of deviant sexual interests
- Being unmarried
- Having an antisocial personality disorder or psychopathy

In addition there are factors that tend to change over time that will help to predict sexual re-offending. These variable factors include:

- Problems with intimacy or conflicts in intimate relationships
- Increased hostility
- Emotional identification with children
- Becoming preoccupied with sexual matters or activities
- Lifestyle instability and self regulation difficulties such as employment problems, impulsivity, and substance abuse
- Attitudes and beliefs that tend to support criminal or antisocial behavior
- Demonstrating noncompliance with supervision or treatment expectations

There have been attempts to classify sex offenders by subtypes to help in identifying the risk of re-offending and the necessary management needed to keep the community safe. As previously stated, there is no sex offender profile, as sex offenders are a diverse group of people. Since we are dealing with intra-family child sexual abuse in this resource, it may be helpful to review some of the theories identifying various classifications of sexual abusers of children.

One of the earliest models, Groth's Typologies<sup>53</sup>, has been influential in classifying sex offenders of children. The model classifies sex offenders of children based on the sex offender's primary motivation and interest. Offenders don't neatly fall into one or another category, but rather tend to fall more along a continuum.

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<sup>52</sup> Ibid from Hanson, R. K. & Bussiere, M. T. (1998). Predicting relapse: A meta-analysis of sexual offender recidivism studies. *Journal of Consulting and Clinical Psychology*, 66, 348–362; Dhawan, S., & Marshall, W. (1996). Sexual abuse histories of sexual offenders. *Sexual Abuse: A Journal of Research and Treatment*, 8(1), 7–15.

<sup>53</sup> CASOM Training citing Groth, A. N., & Birnbaum, H. J. (1978). Adult sexual orientation and attraction to underage persons. *Archives of Sexual Behavior*, 7(3), 175–181.



- *Fixated*: Their sexual desires and preferences center around children and the interest probably developed during adolescence. They are unlikely to have healthy sexual contacts with age-appropriate partners, tend to be emotionally immature, and are preoccupied with children. Generally, these individuals go to great lengths to establish “relationships” with more vulnerable children, often through extensive grooming and pre-meditation. And they tend to target young male children who are not related to them. When thinking about the fixated typology, pedophiles often come to mind. Oftentimes, sex offenders in the fixated subtype are considered to be at higher risk for continuing to commit additional sex offenses because of their primary deviant sexual interests in children and because they target male victims. And as mentioned earlier, deviant sexual interests and preferences are associated with increased risk for re-offending.<sup>54</sup>
- *Regressed*. The individuals who are categorized as regressed primarily have “normal” sexual interests toward and encounters with appropriate partners. Although they do not tend to be interested sexually in children, they may turn to sexual contact with children as a means of coping or as a substitute for an appropriate partner during times of considerable stress in their lives. Thus, their behaviors may be more situational, opportunistic, and impulsive. This differs from the typically planned and entrenched offending behaviors of the fixated molesters. In addition, their victims—often girls—are more likely to be children who are either within their families or well known to them and who are easily accessible during those times of stress.<sup>55</sup>

Another method of classification of sex offenders of children is the Massachusetts Treatment Center Typologies, developed by Raymond A. Knight and Robert A. Prentky. It takes the two divisions described above and subdivides them into types based on the offender’s degree of fixation, social competence, amount of contact with children, and the reasons for the social contact (interpersonal relationship or narcissistic reasons). There are further divisions based on amount of injury to children and whether or not the contact was sadistic or not. More of an explanation of this method is found in Section 4: Subtypes and Typologies in the CASOM training, *Understanding Sex Offenders*.<sup>56</sup> It is helpful to know that some sex offenders are much more likely to re-offend than others and there are tools available to help in identifying risk of re-offending.

*It is helpful to know that some sex offenders are much more likely to re-offend than others and there are tools available to help identify risk.*

<sup>54</sup>ibid.

<sup>55</sup> Ibid.

<sup>56</sup> Available at [http://www.csom.org/train/etiology/4/4\\_1.htm#backtrack3](http://www.csom.org/train/etiology/4/4_1.htm#backtrack3), accessed June 13, 2012.

The general public believes recidivism for sex offenders is quite high. In actuality, the recidivism rate for untreated sex offenders who sexually abuse family members is from four to ten per cent. These are statistics of offenders who have been identified and convicted, not the victimizer who is unidentified and unreported.<sup>57</sup> Generally, re-offense rates for sex offenders who primarily target children are between ten to forty per cent.<sup>58</sup> The recidivism rate for offenders who sexually abuse family members is much lower than the recidivism rate for all sexual abusers of children.

*The recidivism rate for offenders who sexually abuse family members is much lower than the recidivism rate for all sexual abusers of children.*

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<sup>57</sup> Association for the Treatment of Sex Abusers, *Reducing Sexual Abuse through Treatment and Intervention with Abusers*, Available at <http://www.atsa.com/reducing-sexual-abuse-through-treatment-and-intervention-abusers>, accessed June 13, 2012.

<sup>58</sup> Ibid.

## D. Treatment for Sex Offenders

The purpose of sex offender treatment is to help sex offenders

- Identify and change thoughts, feelings, and actions that lead to sexual offending
- Develop strategies and plans to avoid, control or productively address risk factors before a re-offense occurs.
- Develop strengths and competencies to address needs appropriately.<sup>59</sup>

Experts believe that some sex offenders can benefit from treatment and that completion of treatment results in lower levels of recidivism, but it is a developing field. The Association for the Treatment of Sex Offenders maintains that a supportive environment that focuses on mental health and developmental and behavioral issues is required to reduce recidivism. Family and social stability and positive support increases the likely that the sex offender can become a productive member of society.<sup>60</sup> Unemployment, unstable housing, and lack of social engagement increase recidivism.

The core approach of many sex offender treatment programs is the Cognitive-Behavior Model. The Cognitive-Behavior Model has been proven to modestly reduce recidivism of sex offenders in a general population study.

Cognitive-behavioral therapy combines cognitive and behavioral methods. Behavioral methods have as their goal the reduction or elimination of deviant arousal and the increase of non-deviant arousal. All behavioral methods are based on the idea of *conditioning*—associating pleasant feelings with desired behavior and associating unpleasant feelings with undesired behavior.

Cognitive methods are based on findings that many sex offenders in general exhibit aggressive sexual behavior, manipulate others, lack empathy for their victims, and minimize, deny, and rationalize their abusive behavior. Cognitive methods assume that their sexual behavior is addictive and results from incorrect beliefs, antisocial attitudes, maladaptive thoughts, a lack of sexual knowledge, and impaired communication and social skills. Cognitive methods involve group discussions led by a therapist to address issues such as cognitive distortions, denial, victim empathy, social skills training, and other topics.

Cognitive methods usually rely on the relapse prevention model to help offenders cope with situational variables that may lead to offending, such as negative emotional states, interpersonal conflicts, and tempting environmental factors. This model has been adapted from addiction recovery models, based on the assumption that the offender's sexual behavior is addictive and compulsive. Offenders are taught to recognize the thoughts that may lead to re-offending and to

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<sup>59</sup> Association for the Treatment of Sexual Abusers, Public Policy Briefs, *Sex offender Treatment for Adult Males*, available at <http://www.atsa.com/sites/default/files/ppSOAdultMaleTx.pdf>, accessed June 13, 2012.

<sup>60</sup> Ibid.

think of those thoughts as deviant, temporary, controllable, and stoppable. Offenders are taught to avoid situations that increase temptation.

A Native specific model that incorporates Native values, traditions, and spirituality into the Cognitive-Behavior Model, similar to a Native specific drug and alcohol treatment model, may be appropriate for Native sex offenders. The 2003 Report of the Native American Advisory Group formed to address concerns of Native American's in the federal prison system, recommended the development of a sex offender treatment program for Native prisoners similar to the drug and alcohol treatment program.<sup>61</sup>

*Many tribes are in denial about the complicity of their own tribal members. Despite popular belief that federal employees in Indian schools do most of the sexual abusing, it is in reality Indian children's relatives, adult authority figures, and community members who by and large perpetuate this crime.*

Larry EchoHawk and Tessa Meyer Santiago, What Tribes Can Do to Combat Child Sexual Abuse, Tribal Law Journal (2007). Available at [http://tlj.unm.edu/tribal-law-journal/articles/volume\\_4/abuse/index.php](http://tlj.unm.edu/tribal-law-journal/articles/volume_4/abuse/index.php), accessed March 13, 2012.

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<sup>61</sup> Report of the Native American Advisory Group, U.S. Sentencing Commission, Nov. 2003. Available at [http://www.ussc.gov/Research/Research\\_Projects/Miscellaneous/20031104\\_Native\\_American\\_Advisory\\_Group\\_Report.pdf](http://www.ussc.gov/Research/Research_Projects/Miscellaneous/20031104_Native_American_Advisory_Group_Report.pdf), accessed March 13, 2012.

## E. Hollow Water, a Native Model

Healing is a term more commonly used than treatment or rehabilitation in Native communities. Healing refers to a recovery process that involves the sex offender, the victim, the family and the community. An “out-of-balance” individual is seen as a complex individual who is a part of a family and community network. The focus in the healing process is to restore balance.

In the 1984 a small group of service providers and political leaders in the community of Hollow Water, Manitoba, Canada (one Anishinabe and three Métis communities about 150 miles north of Winnipeg) formed a resource group to work on community healing and development. The community’s alcohol abuse rate was 100%, unemployment was 70%, and the community lacked adequate housing. The community rated their community health at 0%.

In 1986, a couple of years after starting on a healing path, the first disclosure of sexual abuse surfaced. Although the group’s focus had been healing from alcoholism and colonization, it discovered that the root cause of the alcoholism and other problems in the community was sexual abuse (a consequence of colonization). The community had chronic sexual abuse problems that dated back three generations and estimates were that 66 - 80% of the residents had been sexual abused and 35-50% of the population were victimizers.<sup>62</sup> Elders, parents, children, extended family and the victimizers had all been victims of sexual abuse. Sexual abuse became the focus of the community’s healing movement.

Over time it was necessary for the community to re-write its agreements with the justice system, child welfare system and other support systems in Canada in order to get the necessary commitment to cooperate with the community’s attempts to heal their community from the sexual abuse and the impact of colonization. The partnership became known as Community Holistic Circle Healing (CHCH). Hollow Water rejected incarceration as the mode of dealing with sexual abuse and sought to support both victims and victimizers on a healing path. The community returned to some of their traditional teachings and ceremonies and developed a thirteen-step process and protocol to respond to disclosures of sexual abuse.<sup>63</sup> In 2001, after several studies of the community by the Canadian government, an analysis was done,

*Hollow Water has a 2% recidivism rate, while the national average for sexual abuse offending in Canada is 13% and the average for all other kinds is 36%. Hollow Water is known for its work with sexual abuse, but they also deal with a wide range of other offenses.*

J.E. Couture, A Cost-Benefit Analysis of the Hollow Water’s Community Holistic Circle Healing Process

<sup>62</sup> Jarem Sawatsky and Rupert Ross, *The Ethic of Traditional Communities and the Spirit of Healing Justice, Studies from Hollow Water, the Iona Community and Plum Village*, Jessica Kingsley Publisher, Philadelphia, PA (2007) 72.

<sup>63</sup> Ibid. at 72.

*The whole traditional system working together is justice.*

Elder from Hollow Water

which showed that only 2 of the 107 sex offenders of Hollow Water, who had experienced the healing protocol, had re-victimized. This was six times lower than the Canadian national recidivism rate.<sup>64</sup>

The basis of Hollow Water's healing is Anishinabe traditional values, teachings and ceremonies. Their process embodies the seven sacred teachings handed down from their ancestors. The seven sacred teachings focus on courage, spiritual knowledge, respect for others, for the earth and for oneself, honesty, humility, love and truth. The teachings lead to *p'mad'ziwin*, translated *living the good life*, life in its fullest sense; life in the sense of health, longevity, and wellbeing, not only for oneself, but for one's family. These teaching and concepts are the core energy in finding healing.<sup>65</sup>

The Anishinabe worldview shares values and beliefs with other tribes. This resource does not seek to examine those teachings, but rather use Hollow Water as an example of a Native community that sought to repair the damage done by colonization and sexual abuse by returning to traditional teachings and using those teachings and ceremonies to heal, not just the victims, but the victimizers as well. The Anishinabe way recognizes that the victims and victimizers are all needed in their community.

Hollow Water developed a thirteen step process to respond to the disclosure of sexual abuse. The CHCH team as a whole works on this process. This resource will briefly outline this process, not to encourage replication, as this process was effective in Hollow Water's system of justice and culture, which may be quite different than others. But the thirteen step process does show an effective Native response to sexual abuse that may be helpful in developing other community's response.

*Once you recognize  
that as a human  
being you are the  
air, the water, the  
plant life and the  
animal life, and we  
take this in to  
sustain your  
physical being, once  
you can see that,  
understand that,  
recognize that, I  
think you are on a  
good road of  
learning and  
becoming complete,  
and being on a  
healing way.*

Hollow Water Elder

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<sup>64</sup> Ibid. at 73.

<sup>65</sup> Ibid. at 77.

Hollow Water has experienced many ups and downs in its healing, but issues such as sexual abuse, domestic violence, alcoholism, unemployment and housing have greatly improved since they started on their healing quest.

*The spirit piece is at the very core. It has to be in place to bring people back to balance. The whole field of psychology and psychiatry has developed its own language to determine who has a disorder, and how to get people well. We don't have the same concepts or definitions. Ours is holistic. We don't label people. We understand that the decisions that we make today will affect our people for several generations, and we use a traditional holistic approach to human living problems. We want our people in our community because it's our heart and soul. Without them, spiritual balance will not be achieved, nor healing attained.*

Berma Bushe, a founder of CHCH

## Community Holistic Circle Healing: 13 Step Process

1. Disclosing
  - a. Start to work and support the victim
  - b. Work with the victimizer even if denying responsibility
2. Establishing Safety for the victim
  - a. Listen to their story – believe
  - b. Provide support for the victim
3. Confronting the victimizer
  - a. CHCH team meets and plans the confrontation. Expects denial, minimization and manipulation
  - b. Goal to make victimizer feel safe enough to admit abuse, admission starts the healing process.
4. Support for victimizer's spouse/parent
  - a. Prove support for those affected by the disclosure.
  - b. Make sure everyone has the same information
5. Support the family and community
  - a. Families may be dealing with multiple layers of harm – more victims and more victimizers
  - b. Other trauma may be triggered
6. Meeting of assessment team with police
  - a. Victimizer can choose to plead guilty and take healing path or use the Western justice system
  - b. CHCH asks court for four months to make sure the victimizer is serious about healing
7. Conducting circles with victimizers
  - a. Expected to tell their stories and work with multiple circles of people
  - b. Victimizer seen as out of balance and in need of education
    - i. about what it means to be Anishinabe
    - ii. About the seven sacred teachings
  - c. First circle focuses on confession and taking responsibility to CHCH team
  - d. Second circle is the nuclear family – taking responsibility; third the extended family
  - e. Ceremonies incorporated into the circles
8. Conducting circles with the victim and victimizer
  - a. Occurs only after a long process of both victim and victimizer working on their healing
  - b. Time for the victim to speak and the victimizer to listen
  - c. Circle guided by the victim's pace – prayer, support, medicine to aid the victim
9. Preparing the families of the victim and the victimizer for the sentencing circle
  - a. Begin four days before a sentencing circle, each night a sweat ceremony
  - b. The victim and family and victimizer and family are invited
10. Preparing the victimizer's family for sentencing circle
  - a. Invited to participate in the sweats in preparation for the sentencing circle
  - b. The victimizer has a role to play in the sweats
11. Conducting Sentencing Circle
  - a. Sentencing happens through a judge but with input from the community
    - i. On the day of the circle there is a sunrise pipe ceremony and the building is smudged
    - ii. Creator is asked to be change the victimizer
    - iii. The eagle feather goes around the circle and everyone has an opportunity say why they came
    - iv. The second time around people focus on the victim – build up
    - v. The third time around people focus on the victimizer
    - vi. The forth circle is for giving recommendations
  - b. The team gives recommendations to the judge based on the whole process
  - c. Sentence comes in the form of a healing contract to be completed under the supervision of the CHCH
  - d. Healing contracts are usually 3-5 year commitments involving counseling, support groups, multiple circles, traditional ceremonies,
12. Sentencing review
  - a. Every six months until the end of the healing contract
  - b. Community circle is re-convened and the victimized must answer to the community
13. Cleansing Ceremony
  - a. A community review circle held to update and to see if there are outstanding issues
  - b. Successful completion of the healing contract is celebrated by ceremony.



## IV. INCEST AND DOMESTIC VIOLENCE IN NATIVE COMMUNITIES

### A. Relationship between Domestic Violence and Incest

Extensive nonnative studies have shown that batterers are several times more likely to physically abuse their children. The risk of abuse rises with the batterers' frequency and severity of battering. The most frequent and violent batterers have ten times the rate of child physical abuse than do non-battering men.<sup>66</sup> Other studies have shown that 49 to 70 percent of batterers physically abuse children.<sup>67</sup>

Studies have demonstrated that exposure to batterers is one of the strongest indicators of the risk of incest.<sup>68</sup> An incest perpetrator does not appear to have the elevated rate of sexual preference for children that is found in a predatory child molester.<sup>69</sup> He is more likely to have a sexual attraction to power and domination.<sup>70</sup> This tendency is also seen in batterers who have high rates of committing sexual assaults against their partners.<sup>71</sup>

The incest victimizer commonly has normal adult sexual interest and involvement that may co-occur with his offenses against a child. He tends to have a higher level of social competence than does a predatory child molester. He tends to prefer female victims although he may offend against males. He tends to primarily offend against children with whom he has a caretaking relationship or substantial familiarity or trust. He thus averages a much smaller number of victims (fewer than two) over his lifetime, than does a predatory child molester. Incest victimizers do not show higher levels of psychiatric disorders, while child molesters who prey on children outside his family do. Finally, he is less likely to use force against a child.<sup>72</sup>

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<sup>66</sup> Bancroft and Silverman at 43.

<sup>67</sup> *Ibid.* at 84.

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.* referring to Prentky, et al., 1997, and Barbarbee and Marshall, 1989.

<sup>70</sup> *Ibid.* at 93.

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.* at 97.

*Batterers appear composed and moms appear emotional and seem crazy. I worked with a group of non-custodial battered mothers and protective mothers. They advised protective moms "Don't show any emotion. Judges and custody evaluators will point fingers at you and say you are insane, if you are emotional." They would tell moms not to bring up child sexual abuse in custody cases or mom would lose custody and end up with supervised visitation.*

Lonna Hunter (Tlingit/  
Dakota), Domestic Violence  
Advocate

*It is the expert opinion of this writer after a records review and talking to many other health care providers that rape, sexual assault and incest occur at a much higher incidence than generally thought. Sexual abuse at a young age is quite frequent and almost always involves a relative such as a father, brother, cousin, uncle or grandfather.*

Phyllis Old Cross Dog, Public Health Service

*Listening Post*, Indian Health Services, Vol. 6, No. 2, April 1982, p.18.

## B. Similarities between Batterers and Incest Victimiziers

Incest victimizers and batterers use similar tactics on their victims. Some tactics used by incest offenders that are also used by batterers:<sup>73</sup>

1. Psychological abuse:
  - Harsh and frequent criticism;
  - Insults, invalidation, and ridicule;
  - In some cases abuse is directed at another family member;
  - May show favoritism of victim over other children;
  - May use victim as a confidant, presenting as needing help; and
  - Involving victim in an adult discussion as to why he feels hurt or rejected by mother of the child.
2. Authoritarian control over victim through social isolation, a dictatorial parenting style, and a controlling style of involvement in minute details of victim's life.
3. Preparation of the victim:
  - Charming and attentive in the early period with gradual mounting of verbal abuse, criticism, and control.
4. Preparation of the social environment:
  - Discourage assistance to their victims by shaping public perceptions of themselves and of himself that does not fit with public perceptions of what a sexual abuser would be like and creating a negative perception of the victim.
5. Preparation of the family environment:
  - Damaging the mother-daughter connection, and
  - May also create divisions among siblings.
6. The imposition of secrecy:
  - Threaten their victims regarding the consequences of any disclosure.
7. Discrediting of disclosures:
  - Characterize victims as dishonest, hysterical, or vindictive.
8. Manipulation:
  - Most incestuous violations do not involve the use of force, but rather use manipulation; and
  - May persuade the victim that it is her fault—she “led him on” or “seduced” him.
9. Denial and minimization regarding the history of offenses (skillful dishonesty and convincing denials).
10. Increased likelihood of substance abuse and encouraging mother's substance abuse.

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<sup>73</sup> Ibid. at 88.

Incest offenders and batterers also share a number of similar attitudes, including:

1. Entitlement and self-centeredness:
  - Sexual access to his daughter is part of his entitlement as head of family, and
  - He is entitled to be waited on by both wife and children.
2. Externalization of responsibility and victim blaming:
  - Action was caused by loss of self-control or by provocation of the victim;
  - Blame child's mother—mother was not meeting his sexual needs. Mother was rejecting the child so he was giving child caring and affection;
  - Alcohol, work problem, or other life circumstances; and
  - Claiming to have been victimized as a child.
3. Confusion of love and abuse:
  - Victimization is a result of love and caring for the victim, and
  - Suggest that it is good for the child,
4. Objectification of victims:
  - Batterers and incest victimizers both seem to shield themselves from the pain they are causing.
5. Sexualization of domination:
  - Tend to find subordination sexually arousing.

## V. INCEST AND SUBSTANCE ABUSE

Alcohol abuse has long been used as an excuse for sexual abuse, by sex offenders, and the excuse is sometimes repeated by incest victims: “I was drunk. I never would have done it if I hadn’t been drinking.” The victims might say, “He wouldn’t have done it if he hadn’t been drunk.” Although alcohol may lower inhibitions, it does not cause child sexual abuse. It may be a part of the perpetrator’s plan.

Alcohol abuse by the mother of the victimized child also has a dramatic effect on how cases are handled in the child welfare and court system. It appears to be relatively common for a Native mother of the victim to have been sexually abused as a child. One out of every three Native women was a victim of sexual assault sometime in her life.<sup>74</sup>

Unfortunately, alcohol and drugs can be a way to cope with sexual abuse. Native men are almost twice as likely to abuse alcohol if they had experienced a combination of physical and sexual abuse as children. Native women are almost twice as likely to have alcohol problems if they had been sexually abused and attended boarding school.<sup>75</sup> Many Native women also experience domestic abuse in their relationships, and alcohol and drugs can again be a way to cope. When the Native mother discovers that her child has been sexually abused, it may cause her to relive her own experience with sexual abuse and react in ways that are self-destructive or not respond appropriately to the situation.

If the mother is using alcohol excessively, she increases the possibility that she will not be taken seriously. Her accusations of sexual abuse will likely be dismissed as a fabrication. The perpetrator will use the mother’s alcohol or drug use to diminish her credibility.

*Safety and connecting to resources is a priority. Resources are often not available. You need to know your system’s strengths and weaknesses and resources.*

Lillian Jones (Fort Berthold), Tribal Court Advocate

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<sup>74</sup> Patricia Tjaden and Nancy Thoennes, *Prevalence, Incidence and Consequences of Violence Against Women: Findings From the National Violence Against Women Survey* (November 2000, NCJ 183781), exhibit 7, 22. Available at <https://www.ncjrs.gov/pdffiles/172837.pdf> (accessed February 2, 2012).

<sup>75</sup>Becky Ham, *Childhood Abuse Linked to Alcoholism*, Center for Advancing Health (September 2003). Available at [http://www.eurekalert.org/pub\\_releases/2003-09/cfta-car091703.php](http://www.eurekalert.org/pub_releases/2003-09/cfta-car091703.php) (accessed February 2, 2012).

*Many Native women also experience domestic abuse in their relationships, and alcohol and drugs can again be a way to cope. When the Native mother discovers that her child has been sexually abused, it may cause her to relive her own experience with sexual abuse and react in ways that are self-destructive or not respond appropriately to the situation.*

Perpetrators are strategic; he may have chosen her as a partner because of her drug/alcohol use, or he may have encouraged the use to provide him with opportunity to abuse. He may have threatened her that she would lose her children, if child protection becomes involved, because of her usage. In any case, it is common in contested custody cases involving Native women that their usage of alcohol and drugs becomes an issue. Even when usage is not excessive it may be brought up, as the stereotype of alcoholism and Natives works against Native women keeping custody of their children.

If the mother is believed and the child is believed (that the sexual abuse occurred), the mother may still need to deal with the accusations of alcohol and drug usage. If they are substantiated, it is not uncommon for children to be removed from the mother's care by child protection services, even though there has been no substantiation that the children have suffered abuse due to the mother's usage. Neglect may be assumed.

The mother's options for treatment for alcohol or drug abuse on many reservations often require her to travel long distances for inpatient treatment. That may mean the children are placed temporarily in the care of Tribal Child Protection Services (TCPS), which means they may be placed with the father's family or in foster care.

Once the children are placed by TCPS, the mother may

have a difficult time regaining custody. The mother must recover from her alcoholism and drug abuse, her own trauma (if she is a victim of child sexual abuse), and the trauma of separating from her family. Additionally, she needs to learn how to support her children as they deal with the trauma of the abuse and losing their family. In addition, there may be many other issues to deal with such as employment, a criminal action, housing, the community response, and the family's response. This all must be done within a limited time frame. The time and resources needed to work through the layers of issues may simply not be present in the community.

Awareness of the situation and its onion-like layers of problems is vitally important, so that time, effort, and resources can be devoted to preserve the family—the mother and children—providing opportunities for the family to heal together.

## VI. SEXUAL ABUSE ACCUSATIONS IN CUSTODY ACTIONS

### A. Introduction

Sexual abuse can be raised in the context of a custody action at various times.

**1. The abuse may lead to a separation, divorce, or custody action.**

The mother may become aware of the abuse and report it to child protective services and be told that unless she files for divorce or custody; the children will be taken from her home.

She also may become aware of the abuse; file for divorce/custody, but not mention the sexual abuse immediately; and not report it to social services because she is embarrassed or afraid of involvement with child protective services. If the mother or her family members has had past involvement with child protective services and was unsatisfied with their actions, contacting them for help is very unlikely. She also may believe, if she lives in a small tribal community, that the child protection staff is more likely to be supportive of the father because of family relationships, friendships, or politics. The high rates of out of home placement of Native American children by child protective services are good reason for a Native woman to shy away from any involvement with social service agencies.

If she is not married to the father, she may just move away and try to limit contact with the father. When or if that proves unsuccessful, she may file for custody.

**2. The abuse may start when father and mother are separated.**

When the mother is no longer around to supervise, the father may sexually abuse a child. The father may have more opportunity, fewer barriers, and may be unstable after separation. The father could also see abuse as a way to punish the mother, particularly if the mother was a victim of child sexual abuse.

**3. The child may reveal the abuse for the first time during or after the divorce.**

It is understandable that after a couple separates and the abused child is living with her mother, she may feel safer and more secure, and thus report sexual abuse that has previously occurred. If after separation the child or children are required to spend extensive time with an offending parent, they may reveal the abuse out of anxiety. A child may be told that disclosure would ruin the family, but because the family is divided, the child may see no reason to keep secrets any more.

Also, some non-offending parents may not have wanted to believe what was happening, because they were invested in the relationship, but after they give up on the relationship, the abuse seems real.

**4. False allegations of sexual abuse may be made during the divorce.**

Deliberately false allegations are very rare. Mother's allegations are shown to be malicious in fewer than 2 percent of cases. However, separated couples also see the worst in each other, so it is possible that incidents could be misinterpreted as well.



## B. Common Responses to Accusations of Sexual Abuse in Custody Disputes

A mother's report of incest immediately before or during a custody dispute is often met with disbelief by the courts and the professionals assisting the courts. The focus tends to be on her motivation to make the allegation rather than the abuse she is reporting. The frequent assumption is that she is making up a story of abuse and coaching her child in order to gain custody or to "win" child support. This is the position that is taken by the father, and frequently adopted by others in the system. In many cases, Native mothers have partnered with Caucasian fathers in a state system that is predominately white-orientated and male orientated. When the state system is forced to choose between the two parents, racism and sexism can intervene. The Caucasian father may be considered by the judge to be more "credible". Credibility of witnesses is highly influenced by the preconceived notions, fears, and stereotypes held by judges of races and sexes. Frequently, the racism is unintentional, but whether unintentional or blatant racism, the effect on the mother and children can be devastating.

The best interest factors used by judges in state court to resolve a custody dispute also favor the parent more economically established, as he is better able to provide for the children. Since a Native mother's income and resources is generally substantially less than a Caucasian father, the resources factor will also affect the custody decision and economic stability may make father more "credible" to a judge.<sup>76</sup>

If the mother raises the issue of sexual abuse, the system expects her to provide evidence of the abuse. In the vast majority of sexual abuse cases, there is no physical evidence of the abuse. The mother often finds she is accused of fabricating the abuse in an attempt to alienate the child from their father.

One extensive two-year, nonnative study, involving twelve states, researched custody cases in which sexual abuse was raised. It found that in 50 percent of the cases, allegations were believed to be true by the investigators (this doesn't mean the court found them to be true), and another 17 percent of the allegations were possibly valid. In one-third of the cases, investigators did not believe the allegations could be proven, even though they were made in good faith based on

*Keeping the protective parent and child together and safe is a best practice.*

Hon. Robert Blaeser  
(Anishinabe), Minnesota  
District Court Judge

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<sup>76</sup> The median earnings of American Indian and Alaska Native men (\$28,900) and women (\$22,800) who worked fulltime, year-round were substantially below those of all men (\$37,100) and women (\$27,200). Key Statistics of American Indian and Alaska Natives, the Graduate Management Admissions Council, 2008. Available at [http://www.gmac.com/NR/rdonlyres/3B683F19-18D9-4620-A73A-96F9CF0FF19E/0/HO\\_NativeAmericanIndiansData.pdf](http://www.gmac.com/NR/rdonlyres/3B683F19-18D9-4620-A73A-96F9CF0FF19E/0/HO_NativeAmericanIndiansData.pdf), accessed March 7, 2012.

*Another huge concern in a custody case, when mother is Native and father is Caucasian is racism and prejudice in the justice system.*

Tammy Swanson,  
(Anishinabe), Attorney

reasonable suspicions. Other studies have demonstrated as well that the rate of false allegations made by a mother in a custody case is about the same as those made at any other time.

Yet protective mothers are losing their children to abusive fathers. The California State University- San Bernardino conducted a study to better understand how protective parents are treated by the legal system. Self-identified protective parents (race not considered) were asked to complete a survey. This study found that prior to divorce, 94 percent of the protective parents were the primary caretaker of the children. After reporting child abuse, only 27 percent of the protective parents were left with custody. The protective parents reported that the court system ignored or minimized reports, half of the mothers were labeled alienators, 85 percent believed their

children were still being abused, and 63 percent said they stopped reporting abuse for fear that contact with their children would be terminated.<sup>77</sup> If this is happening to such a degree to protective mothers of any race, we can assume that adding racism and prejudice that exist in many judicial systems towards Native women will result in even greater impact on Native children and protective Native mothers.

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<sup>77</sup> Stahly, G. B., Krajewski, L., Loya, B. Uppal, K., German, G., Farris, W., Hilson, N., & Valentine, J. (2004). *Protective mothers in child custody disputes: A study of judicial abuse*. California State University, San Bernardino. Results discussed at [http://www.leadershipcouncil.org/1/res/cust\\_myths.html](http://www.leadershipcouncil.org/1/res/cust_myths.html), accessed March 14, 2012.

## C. Parental Alienation

*Parental alienation syndrome* is a term introduced in a 1985 paper written by Richard A. Gardner. Gardner introduced the term to describe clusters of symptoms he had observed during the early 1980s in his work. It describes the situation as a disorder in which a child belittles and insults one parent without justification, due to a combination of factors, including indoctrination by the other parent (exclusively as part of a child-custody dispute). The medical and legal communities do not recognize parental alienation syndrome as a disorder. Legal and mental health scholars have largely criticized Gardner's research and theory for lacking scientific validity and reliability. No professional association has recognized parental alienation syndrome as a mental disorder or a medical syndrome.

That being said, it is entirely possible that a child may be "alienated" from a parent. In domestic violence situations we see children siding with one parent or the other and witness "alienating" behavior, such as when one parent actively undermines the other parent by making derogatory remarks about the other parent or telling the child the other parent is responsible for the separation or is the cause of financial difficulties. Indirect alienation behaviors occur when one parent fails to support access or contact with the other parent. In high-conflict divorces, alienating behavior is the norm.

Clearly, if a mother believes her child has been sexually abused by the child's father (whether or not there is proof of the abuse), her behavior to protect her child from the father by denying contact with the child is often interpreted as alienating, but should rather be seen as protective. It is one thing to fabricate sexual abuse but quite another to simply not be able to prove the abuse took place. If the mother is acting in good faith in her belief that her child was sexually abused, her behavior to keep the child away from the alleged abuser should be interpreted as normal behavior of a protective mother.

*If a mother believes her child has been sexually abused by the child's father (whether or not there is proof of the abuse), her behavior to protect her child from the father by denying contact with the child is often interpreted as alienating, but should rather be seen as protective.*

## D. Reports to Law Enforcement Agency or Child Protective Services during Custody Disputes

Reports of child sexual abuse need to be reported to the law enforcement agency in the state or tribal community. They investigate crimes. Although this resource deals with sexual abuse in the context of a custody case, it must be remembered that child sexual abuse is a crime, and holding the perpetrator criminally accountable is desirable. Although protocols in communities vary, law enforcement may inform child protective services (CPS) (state or tribal depending upon the circumstances) or the initial report may come into the CPS and CPS then reports it to the law enforcement agency. Generally the case is discussed and information shared at a multi-disciplinary team (MDT) meeting. The focus of law enforcement is to gather evidence and determine if there is sufficient evidence to engage the prosecutor in a criminal case.

Unfortunately, the reports of child sexual abuse to law enforcement and CPS that come during a custody case often trigger false perceptions in the CPS workers and law enforcement officers, which affect the interpretation of the report, their approach to the case and the thoroughness of the investigations. Some common perceptions that affect the investigation are the officer and/or worker:

- Is skeptical of allegation in context of the custody case (looks at mother's motivation instead of the allegation),
- Is overwhelmed because they are difficult cases to substantiate (sexual abuse cases rarely have any physical evidence),
- Is worried about being a pawn (this is due to questioning mother's motivation),
- Prefers noninvolvement (some have the attitude that the family court should resolve the issue),

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*If a child discloses, it needs to be immediately reported to the police. A crime has allegedly occurred. There should be an immediate forensic interview with a trained adult listening and allowing the child to tell their story. This is the first step to healing.*

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Barbara Bettelyoun, PhD  
(Lakota), Child Clinical  
Psychologist

- Is too busy and has other priorities (they are usually overworked and have heavy caseloads),
- Let family court handle it, let them use their time and resources, (This is true even though the juvenile court system is generally much more able to provide remedial services to families and identify children's needs.)
- Could end up being a witness in family court and is too busy.

It is essential that a thorough investigation of the child sexual abuse be conducted and the imagined (rarely the actual) mother's motivation, is not the primary consideration. As discussed previously, a child may feel safer or be more likely to report after a separation of the parents and studies have shown that it is no more likely that a mother reports sexual abuse of her children during custody disputes, than during other times.

Family court must recognize the common reasons child sexual abuse reports connected to custody are not adequately investigated, that substantiating evidence is often lacking, and that the burden of proving sexual abuse in a custody action is lower than either a criminal or child protection action.

Some tribal courts may involve TCPS to provide resources to the family that are not available in the tribal court system or through the family's resource. In the tribal court, the family often has no resources and the tribal court has no resources to do a custody evaluation. Some tribal courts may count on TCPS to provide custody opinions to the court.

*A child may feel safer or be more likely to report sexual abuse by a father after a separation of the parents.*

## E. Standards of Proof

The burden of proof refers to a legal obligation on a party in a lawsuit to prove a disputed fact. In a criminal case, the burden is placed on the prosecution (tribal, state, or federal) to prove that a crime was committed and the defendant committed the crime, before a jury or judge can convict a person of a crime. In a criminal case, the standard of proof is *beyond a reasonable doubt*. Federal jury instructions define *beyond a reasonable doubt* as “proof of such a convincing character that a reasonable person would not hesitate to act upon it in the most important of his own affairs.” Other jurisdictions may define it somewhat differently, but *beyond a reasonable doubt* is the highest standard of certainty required by law. If a perpetrator is charged criminally with sexual assault or another crime, the prosecutor must prove *beyond a reasonable doubt* that the perpetrator committed the crime.

In a child protection case, such as when TCPS brings a case against a mother and/or father for child abuse or neglect, the state or tribe (TCPS) also has the burden of proof to prove that the parent committed the alleged abuse. But the standard of proof in a child protection case is usually *clear and convincing evidence*. This is a lesser standard than *beyond a reasonable doubt*. The definition may vary depending upon jurisdiction, but it generally means that the tribe or state needs to prove that it is *highly probable* that the parent committed the abuse.

In a custody action between two parents, in which there is an accusation of child sexual abuse, the burden of proof is on the parent making the accusation to prove that the other parent sexually abused the child. In a civil action, such as a custody case, the standard of proof is a *preponderance of the evidence*. This is the lowest level of proof and means that one side has a little more evidence than the other or that it is more likely than not that the parent committed the abuse. A lack of resources available to Native parents may affect their ability to adequately present a case.

Because of the standards of proof, it is possible that an individual may not be charged criminally, because the prosecution does not feel there is sufficient evidence to convict someone due to the high standard of proof required in a criminal action. However, the same perpetrator may be found to have abused his child in a child protection case. Additionally, it is also possible that there may be insufficient proof to find abuse or neglect in a child protection case, but the family court may still make a finding in a custody case that the same perpetrator abused his child.

In child sexual abuse cases, which are difficult to prove as there is often no physical evidence, the family court may be the last opportunity to protect the child from further harm. Ensuring that the issue of sexual abuse is fully considered by the family court is extremely important (even when other court systems have not chosen to respond or have responded but have not established abuse).

The family court may be the last opportunity to protect the child from harm.

# I. PROFESSIONALS' ROLES WHEN CHILD SEXUAL ABUSE IS REPORTED IN A CUSTODY CASE

## A. Introduction

In the family court there are a number of professionals involved in contested custody matters, and these professional are likely be involved in a case in which child sexual abuse is reported. In addition to the judge and lawyers involved in the custody case, there are professionals that could be hired by the father or mother and some that are appointed by the court to represent the children. Generally, the mother, father, or both are responsible for the costs of the professionals, so a lack of funds can be a limiting factor in coming to a knowledgeable decision. Additionally, there may be professionals working outside the family court system that significantly impact a custody case.<sup>78</sup>

Professionals include individuals who perform partial or full custody evaluations and make recommendations to the court on parenting time issues or individuals appointed to represent the best interests of the children in a case, such as a GAL or Court Appointed Special Advocate (CASA). Additionally, there may be other professionals that work for other systems, such as TCPS workers, who could be potential witnesses in a custody case involving sexual abuse. Advocates supporting the children and mother may also be involved in the background. Forensic interviewers also perform a related role. Each of the professionals has different responsibilities and priorities.

This section describes the roles of professionals drawn into a custody case involving allegations of child sexual abuse. In describing the responsibilities, knowledge, and experience, general educational requirements are not provided, but rather specific responsibilities and knowledge necessary to competently handle a complex case dealing with a sexual abuse allegation are offered. This type of case involves specific experience and knowledge in incest, family dynamics, and the impact of incest on children.

A brief synopsis of each professional is provided that may be used by professionals to assure themselves that they have the experience necessary to work on these complex cases. Additionally, it is meant to help other professionals understand the roles of others working in

*A guiding principle  
is to have an  
understanding of  
everyone's roles and  
respect those roles  
and guidelines.*

Hon. Peggy Bird (Kewa Pueblo), Tribal Judge

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<sup>78</sup> Law enforcement officers, child protection workers, medical and mental health providers.



*Tribal courts can develop their own practices based on cultural values.  
Tribal courts can be creative.*

Hon. Peggy Bird (Kewa Pueblo), Tribal Judge

areas related to the family court case and may be helpful to a judge in assessing the quality of professionals appearing in court.

## B. Judge's Role

A judge's role is to make a custody decision by objectively reviewing the information and evidence and by following the law of the jurisdiction. Generally, most laws require that the *best interests of the child* be considered in a custody case, but the definition of *best interests* varies with each jurisdiction. If this is a tribal court, the judge considering custody also has a responsibility to reflect community and Native values.

### **Responsibilities in a custody case with allegations of child sexual abuse:**

1. Make a decision on parenting time/custody that is in the child's best interests.
  - a. Provide a fair, unbiased review of the evidence; make no assumptions before reviewing all evidence.
  - b. Validate parents' concern and ensure they are heard.
  - c. Protect children and minimize the psychological impact on children
  - d. Look at all circumstances in the case, such as domestic violence or emotional or physical abuse of children.
  - e. Keep politics and community pressure out of decision making. If you cannot provide an unbiased decision because of family or community connections, remove yourself.
  - f. Carefully review and evaluate the evidence and opinions. Carefully weigh and evaluate the opinions of expert witnesses and custody evaluators.
2. Ensure that a report of child abuse has been made and investigated by the child protection system, and do not pre-judge or dismiss based on arguments, recommendations or opinions of individuals who are not qualified professionals.

*It is very difficult to be a civil court judge and have attorneys [or pro se] who are unequal in skill and experience before you. I have to depend upon the attorneys and look at the facts presented.*

Hon. Robert Blaeser (Anishinabe),  
Minnesota District Court Judge



3. Be responsible for the ruling in court; recognize the decisions of the criminal court and juvenile court, when applicable, but recognize that failing to prosecute a criminal complaint or to proceed with a juvenile child protection case does not mean that the child was not abused.
4. Recognize the difficulty in proving sexual abuse, especially of younger children, and understand that the lack of evidence does not mean the child was not abused.
5. Utilize people and resources from other systems to help support the family.

**Knowledge and experience recommended:**

1. An understanding of child sexual abuse and domestic violence and the frequency of co-occurrence.
2. An understanding of the responsibilities and roles of others in family court, the juvenile court/child protection system, and the criminal justice system.
3. An awareness of resources available in the community.
4. An awareness that a separation may be a safe time for a child to disclose and that statistics demonstrate that it is rare for a child to lie about sexual abuse and rare for a mother to lie about it.
5. An understanding of Native values and, if in tribal court, a clear understanding of the community's values and traditions.

**Guiding Principles**

- Respect and hold the professionals responsible for competently handling their roles.
- Hold the abuser accountable for his behavior.
- Keep the protective parent and child together and safe.
- Be creative in tribal court by using practices consistent with tribal values.
- Always consider the consequences of your decision to the child and err on the side of protecting the child.

*It's important to have the background [in domestic violence, child sexual abuse] to know what is going on. When you see the reoccurrence, judges have to know why. Judges try and do their training on their own. This is an issue for lots of courts because the funding is not there for training.*

Hon. Robert Blaeser  
(Anishinabe), Minnesota  
District Court Judge

- Be mindful of safety considerations for the child and the parent who may be fleeing an abusive relationship.

*We want to protect children, minimize psychological impact on children,  
but we rely on professionals for this.*

Hon. Robert Blaeser (Anishinabe), Minnesota District Court Judge

## C. Child-Custody Evaluator's Role

A child-custody evaluator is a professional, often a psychologist or social worker, who may be hired by a parent or appointed by the family court to conduct an evaluation to determine what custodial arrangement/parenting time schedule is in the child's best interest. The evaluator may conduct or require that psychological or chemical dependency testing be done and considered in the evaluation. It is possible that each parent may hire a custody evaluator. The requirements and role may vary a bit depending upon the laws of the particular jurisdiction.

### **Responsibilities in a custody case with allegations of child sexual abuse:**

1. Recommend parenting time/custodial arrangements to the court:
  - Collect a full psychological history of every family member,
  - Conduct full psychological evaluation on every family member (if economically possible),
  - Interview each family member separately,
  - Observe parent-child interactions,
  - Review all pertinent files,
  - Interview school personnel and family support people,
  - Make recommendations and discuss with family, and
  - Share recommendations with the court.

### **Knowledge and experience recommended:**

1. Advanced professional degree in child development and clinical psychology.
2. Experience in conducting and interpreting psychological assessments.
3. Expertise in the dynamics of child abuse within families and specifically about the process by which children disclose abuse.
4. Knowledge of the dynamics of domestic violence and its co-occurrence with child sexual/physical abuse and pet abuse.
5. Expertise in working within the culture of Native communities.
6. Training as a forensic interviewer and/or the ability to detect when a child has been "coached" by an adult.
7. Understanding of the dire, lifelong effects of child abuse.
8. Ability to prepare a comprehensive report for the court.

*I want to have the psychologist in court, in case someone has questions for the psychologist. I want to know how they got their information, who they talked to, and on what they based their opinion.*

Hon. Peggy Bird (Kewa)

## **Guiding Principles**

1. Always err on the side of protecting and believing children.
2. Children rarely lie about sexual abuse.
3. Not believing a child who has been sexual abused can cause lifelong psychological effects.

## D. Guardian ad Litem's (GAL) or Court Appointed Special Advocate's (CASA) Role

GAL's and CASA volunteer's responsibilities vary depending upon the jurisdiction, but they do have a common goal to represent the best interests of the child in court proceedings. They may be appointed by the judge in contested custody cases to ensure someone is speaking for the best interest of the child. Although their power and responsibilities vary, they generally conduct independent investigations and prepare a report for the court of their assessment and opinion on custody and visitation issues. They frequently are volunteers. Oftentimes CASAs and GALs work in juvenile courts in child protection cases. Many tribes do not have either a CASA or a GAL, but their function may be helpful to the court and appointing someone to a similar role may be possible. Some tribal courts may direct child protective services to bring a child protection action in tribal court and to provide services. An attorney may also be appointed to represent a child or may be appointed as a GAL. The role of an attorney representing a child will be different than that of one serving as a GAL.

*Court appointed special advocates and guardian ad litem—we don't have them. Supervised visits—where do you send people for supervised visits if no one is available to work with them? There are a lot of road blocks for workers. Where do I send the child when they need a safe place to talk to someone? Also the mother, what can I do to help her get access to resources?*

Hon. Peggy Bird (Kewa Pueblo), Tribal Judge

### **Responsibilities in a custody case with allegations of child sexual abuse:**

1. Establish a trusting relationship with the child or children.
2. Serve as a voice for the child in the court proceeding, when parents are contesting custody.
3. Thoroughly investigate the child's best interest, by talking to individuals involved in the child's life and reviewing court records.
4. Disentangle from the struggle of the parents and focus on the needs of the child or children.
5. Make recommendations to the court based on the best interests of the child or children relative to parenting time and other issues relating to the child, including services that may be necessary or helpful in assisting the child with recovering from the abuse and dealing or coping with any ongoing relationship that the child may have with the abuser.

### **Knowledge and experience recommended:**

1. Experience and knowledge of child sexual abuse within families (and specifically on how children disclose), indicators of sexual abuse, and the impact of child sexual abuse on a child.
2. Experience and knowledge of domestic violence and the co-occurrence of domestic violence and child sexual abuse.
3. Knowledge of the resources that support families in the community.
4. Experience and knowledge of Native values, customs, and communities.
5. Education and training on normal child development and age-appropriate behaviors and communicating with children.

*We need training for family court and the GALs. We need to be able to hook up with resources in a timely manner.*

Tammy Swanson  
(Anishinabe), Attorney

### **Guiding Principles**

- Child's safety comes first.
- Every child deserves to live with their family in safety.
- Children rarely lie about sexual abuse.

*When there is disclosure of child sexual abuse, there is a forensic interview. That is standard where I come from.*

Ann Baker, Child Protection Services

## **E. Forensic Interviewer's Role**

A forensic interviewer is an individual specifically trained to interview children to determine if they have been maltreated. The goal of forensic interviewing is to obtain a statement from a child in an objective, developmentally sensitive and legally defensible manner. To make sure facts gathered in a forensic interview are admissible in court, the interview must be carefully controlled, the interviewer's body language and statements must be neutral, alternative explanations to the child's statements must be explored, and the interview must be documented to meet judicial scrutiny. One of the objectives of forensic interviewing is to reduce the number of times a child is interviewed. Forensic interviewers generally work with prosecutors on criminal cases, but the information they provide may be helpful in a custody case as well.

*It is very difficult to get family courts to order forensic interviewing.*

Tammy Swanson,  
(Anishinabe) Attorney

### **Responsibilities in a custody case with allegations of child sexual abuse:**

1. Assist in the investigation of child abuse, including sexual abuse, physical abuse and neglect. They do not participate in treatment.
2. Obtain a statement from a child in an objective, developmentally, emotionally and culturally sensitive manner.
3. Obtain a statement that is legally defensible, obtained by methods that are non-leading, non-duplicative, and neutral (methods supported by the field).
4. Work with a multidisciplinary team (MDT) made up of law enforcement, prosecution, child protection, and others. The MDT members should be present during the interview to ensure their respective informational needs are met so there is no need to repeat the interview.

*Forensic interviews are not available on many reservations. Law enforcement may be doing the interviewing with no child-friendly interview rooms.*

Lonna Hunter (Tlingit/  
Dakota), Domestic  
Violence Advocate

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A CAC is a child-focused, child-friendly facility-based program where representatives from numerous disciplines meet to discuss and make decisions about investigation, treatment, and prosecution of child abuse cases. They also work together as a team to prevent further victimization of children.

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*Our child advocacy program is on Crow Creek Reservation in Buffalo County, the poorest county in the nation. If we can create a program, it can be replicated in other places. We need to invest in local people and local resources.*

**Lisa Thompson-Heth  
(Lakota), Domestic  
Violence/Child Advocate**

5. The Child Advocacy Center (CAC)<sup>79</sup> where the interviewer works should have written guidelines and protocols describing the interview process.
6. The interview should take place at a CAC or another child-friendly environment.
7. Be willing to testify in a family court or tribal court on the result of the forensic interview.

**Knowledge/experience required:**

1. Have received specialized training in forensic interviewing.<sup>80</sup>
2. Interviewers are required to continue training.
3. Experience and knowledge of child sexual abuse within families and specifically on how children disclose, indicators of sexual abuse, and the impact of child sexual abuse on a child.
4. Experience and knowledge of domestic violence and the co-occurrence of domestic violence and child sexual abuse.
5. Experience and knowledge of Native values, customs, and communities.

**Guiding Principles**

- Regardless of method and skill of an interviewer, some sexually abused children will never disclose.
- The child is our first priority.
- Recantation is often a normal occurrence in a child's disclosure process.

MDTs are teams of professionals that coordinate and ensure a timely, appropriate response to child maltreatment. They are designed to minimize additional trauma to children by coordinating the responses from the various agencies and professions. Generally a MDT is comprised of professionals from law enforcement, child protective services, prosecution, medicine, counseling, and related fields. They generally have no involvement with the family court.

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<sup>79</sup> Native American Children's Alliance provides resources in developing a CAC in Native communities. (See <http://www.nativechildalliance.org/index.html>, (accessed March 14, 2012))

<sup>80</sup> There are a number of organizations that train nationally or on the state level including the American Professional Society on the Abuse of Children (APSAC), The National Children's Advocacy Center, Corner House, and others. The National CAC publishes standards for minimum training.



## F. Child Protection Worker's Role

Immediately after a child discloses abuse, the first concern is the child's safety. TCPS workers are generally responsible for making sure that a child is safe from further abuse, including any pressure from non-offending relatives. In some tribal communities the tribe has its own child protection services within its social service department, and in others it may use BIA social services, county social services, or a combination of tribal and state social services. Although the systems may vary, the focus of the TCPS worker should be similar.

Although a TCPS worker does not work in family court or have direct involvement with a custody case, the TCPS worker has a tremendous impact on custody. Once a report of child sexual abuse is made to TCPS, TCPS may, depending upon the circumstances, remove the child or children not only from the father but from the protective parent as well. Once a report is made to TCPS, the family court generally would suspend its actions, except possibly to issue protective orders to protect the child or parent. Most courts would have a protocol that directs family court to report an allegation to TCPS (if required by statute) and requires a response from TCPS within a short time period. If TCPS decides not to file a child protection action in juvenile court within that time, the family court may then proceed. If a child protection action is filed in juvenile court, the family court is generally suspended.<sup>81</sup> In some tribal and state systems the same judge may handle family court and juvenile (child protection) court cases. In some systems, different judges would be involved. Coordination is important to ensure the children and family is protected.

*Children do not necessarily disclose during the first interview, especially children who are young, developmentally immature, or highly traumatized.*

Barbara Bettelyoun, PhD (Lakota), Child Clinical Psychologist, Forensic Interviewer

### **Responsibilities in a custody case with allegations of child sexual abuse:**

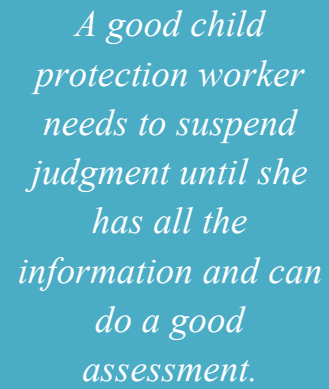
1. Perform a full family functioning assessment.
2. Refer to MDT and forensic interview/ physical exam (if warranted) cross-reporting to multiple jurisdictions.
3. Provide/coordinate services to child or children and protective parent (refer to crisis center if not already involved).
4. Create a safety plan (could be in home or out of home) and look for relatives if child is removed from home.

<sup>81</sup> See Superior Court of California, Family and Juvenile Court Management of Child Abuse Cases (1999). Available at <http://www.saccourt.ca.gov/local-rules/docs/chapter-20.pdf> (accessed February 6, 2012).

5. Observe and evaluate reunions/good-byes during visitations with parent (if child or children are placed out of home).

**Knowledge and experience recommended:**

1. Expertise in child development and family systems.
2. Experience and knowledge of child sexual abuse within families and specifically on how children disclose, indicators of sexual abuse, and the impact of child sexual abuse on a child.
3. Experience and knowledge of domestic violence and the co-occurrence of domestic violence and child sexual abuse.
4. Experience and knowledge of Native values, customs, and communities.
5. Knowledge of resources within the community.



*A good child protection worker needs to suspend judgment until she has all the information and can do a good assessment.*

**Guiding Principles**

- Child safety is of utmost concern.
- Keeping the protective parent and the children together is a priority.
- Suspend judgment until the family is fully assessed.
- Children rarely lie about having been sexual abuse.

## G. Sexual Assault Advocate's Role

A sexual assault advocate should be in the background of a civil action, not testifying or providing reports to the court. She provides support for both the protective parent and the child. Sexual assault advocates consider child and mother as victims in a case of incest. In reality in Native communities, the mother may well have suffered sexual abuse and be re-experiencing trauma once she becomes aware of the abuse of her child. However, even when there is no past sexual abuse of the mother, the mother is considered a secondary victim. The advocates are a voice for the mother and child as they work through the system.

*As an advocate we have to be biased. It's not our role to divulge her information and investigate, but just to believe her story.*

Nicole Matthews (Anishinabe),  
Sexual Assault Advocate

### **Responsibilities in a custody case with allegations of child sexual abuse:**

1. Provide support and accompaniment to victims.
2. Work with victims to develop a safety plan.
3. Be a voice for the mother and child to other disciplines.
4. Protect the sacred bond between mother and child.
5. Provide options information and assistance on accessing community resources.
6. Improve the system to support victims and hold offenders accountable.

### **Knowledge and experience recommended:**

1. Knowledge of the affects of sexual abuse on children and on adults.
2. Understand the co-occurrence of domestic violence and child sexual abuse.
3. Be aware of resources available in the community.
4. Skilled at educating others on sexual abuse.
5. Expertise in working within the culture of Native communities.

### **Guiding Principles**

- Believe the victim.
- Mother and child have a sacred bond.

## H. Domestic Violence Advocate's Role

Due to the frequency of the co-occurrence of incest and domestic violence, it is quite possible that a domestic violence advocate may be involved in the case. Like the sexual assault advocate, the domestic violence advocate should be working in the background, not investigating, reporting to the court, or testifying, but rather supporting the mother, the victim of domestic violence. The advocate works with the mother in providing and seeking services and developing a safety plan. She may accompany the mother to help her deal with agencies to acquire services or appear in court. In many tribes, there are no sexual assault advocates and the domestic violence advocates may provide their services to the child as well.

### **Responsibilities in a custody case with allegations of child sexual abuse:**

1. Provide support and accompaniment to victims.
2. Work with victims to develop a safety plan.
3. Be a voice for the mother to other disciplines.
4. Protect the sacred bond between mother and child.
5. Provide options, information, and assistance on accessing community resources.
6. Improve the system to support victims and hold offenders accountable.

### **Knowledge and experience recommended:**

1. Knowledgeable of the affects of sexual abuse on children and on adults.
2. Understand the co-occurrence of domestic violence and child sexual abuse.
3. Be aware of resources available in the community.
4. Skilled at educating others on domestic violence.
5. Expertise in working within the culture of Native communities

### **Guiding Principles**

- Believe the victim.
- Mother and child have a sacred bond.

*When you protect the mother,  
you protect the child.*

Lisa Thompson-Heth (Lakota),  
Domestic Violence/Child Advocate

## I. Civil Attorney's Role Representing a Parent

Hopefully an attorney is representing the mother and the father in the custody action. The attorney is the person who ensures that the evidence is presented to the judge in a fashion that meets the rules of the jurisdiction. It is also the attorney who will advise the client of their rights and obligations and ensure the client is aware of their options. It is very important that the attorney is familiar with the court and child protection system in the community and understands the strengths and weaknesses of the system.

### **Responsibilities in a custody case with allegations of child sexual abuse:**

1. Listen to the client.
2. Inform the client of her rights, the process, and the options.
3. Investigate independently.
4. Develop strategies with the client to achieve client's goals and to keep the client safe, recognizing that the case may be resolved outside the courtroom.
5. Offer open, honest, and clear communication with client, including possible negative consequences to the client of alleging child sexual abuse.
6. Prepare pleadings, motions, and testimony that will protect the client and assist in achieving the client's goals.
7. Tell the client's story to the judge in a convincing fashion.

*A bad decision is based on bad facts. If the judges don't have the information then their hands are tied.*

Tammy Swanson  
(Anishinabe), Attorney

### **Knowledge and experience recommended:**

1. Knowledgeable of the affects of sexual abuse on children and on adults.
2. Understand the co-occurrence of domestic violence and child sexual abuse.
3. Know the strength and weakness of the community systems, including law enforcement, child protection, mental health and legal system.
4. Understand the child protection system in the community.
5. Awareness of resources available in the community and beyond.
6. Expertise in working within the culture of Native communities.

### **Guiding Principles**

- Listen to the client.
- Make sure the client is informed.
- Fight for the client's rights.

## **J. Civil Attorney's Role Representing a Child**

In a contested custody case, particularly where sexual abuse is alleged, it is likely that the judge may appoint an attorney to represent the child in the case. The role of an attorney representing a child is different than the role of GAL. The child's attorney owes the duty of confidentiality, loyalty, and competent representation to the child. An attorney appointed as a GAL has a duty to the court to protect the child's interests without being bound by the child's expressed preferences.

### **Responsibilities in a custody case with allegations of child sexual abuse:**

- Listen to the client.
- Communicate in a developmentally appropriate manner.
- Elicit the child's preferences in a developmentally appropriate manner
- Advise the child and provide guidance.
- Represent the child's expressed preferences and follow the child's direction throughout.
- If a child cannot express his/her wishes, determine and advocate for the child's best interests.

### **Knowledge and experience recommended:**

1. Expertise in child development and family systems.
2. Experience and knowledge of child sexual abuse within families and specifically on how children disclose, indicators of sexual abuse, and the impact of child sexual abuse on a child.
3. Understand the co-occurrence of domestic violence and child sexual abuse.
4. Know the strength and weakness of the community systems, including law enforcement, child protection, mental health and legal system.
5. Understand the child protection system in the community.
6. Awareness of resources available in the community and beyond.
7. Expertise in working within the culture of Native communities.

### **Guiding Principles**

- Listen to the client.
- Make sure the client is informed.
- Fight for the client's rights.



# APPENDIX





CONTACTS IN MY COMMUNITY

Tribal Prosecutor _____	Phone _____
Law Enforcement Officer _____	Phone _____
Child Protection Worker _____	Phone _____
Tribal Court Judge _____	Phone _____
State Court Judge _____	Phone _____
Sexual Assault Advocate _____	Phone _____
Domestic Violence Advocate _____	Phone _____
Child Advocate _____	Phone _____
Forensic Interviewer _____	Phone _____
CAC contact _____	Phone _____
Attorney _____	Phone _____
Psychologist _____	Phone _____
Behavioral Health _____	Phone _____
Guardian ad Litem _____	Phone _____
CASA _____	Phone _____

## Annotated Resource List

1. *Checklist to Promote Perpetrator Accountability in Dependency Cases Involving Domestic Violence*, Southwest Center for Law and Policy, National Council of Juvenile and Family Court Judges (2008). Available at <http://www.vaw.umn.edu/documents/checklistpromoteperpetratoraccount/checklistpromoteperpetratoraccount.html>, accessed March 14, 2012.

This *Checklist* will help dependency judges intervene with those who use violence in ways that promote accountability and maximize the safety and well-being of children and victim parents.

2. *A Judicial Guide to Child Safety in Custody Cases*, National Council of Juvenile and Family Court Judges (2008). Available at <http://www.vaw.umn.edu/documents/judicialguide/Judicial%20Guide.pdf> (accessed March 13, 2012).

This tool is designed to maximize a child's safety as issues of custody and visitation are determined and can help.

- Assess whether a child or parent is at risk for physical, emotional, or mental abuse.
- Review the evidence so that the safety of the child is the primary factor in determining his or her best interest.
- Evaluate safety risks at various stages of a case, from initial filing through post disposition.
- Make findings that explain and prioritize safety concerns.
- Draft custody and visitation orders that maximize family safety.

3. *Navigating Custody and Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide*, National Council of Juvenile and Family Court Judges, (2004, revised 2006). Available at <http://www.stopfamilyviolence.org/info/custody-abuse/gals-and-custody-evaluators/the-role-of-psychological-testing> (accessed March 8, 2012).

This tool is written primarily to help judges determine whether ordering an evaluation is appropriate and, if so, to ensure that the evaluations they order are of high quality and properly attentive to the issues raised by domestic violence. However, a pressing concern for many judges is obtaining independent information to facilitate decision making when neither the parties nor the courts can afford an evaluation or investigation. This tool can still be helpful, enabling judges to form partial solutions in specific cases and providing ideas for system change.

4. *A Victim Centered Approach to Crimes Against American Indian and Alaska Native Children*, Tribal Law and Policy Institute (2008). Available at [http://www.tribal-institute.org/download/CCC\\_February\\_2009.pdf](http://www.tribal-institute.org/download/CCC_February_2009.pdf), accessed March 13, 2012.

This resource helps develop tribal criminal laws that protect children. It is a workbook designed to help a tribe develop culturally relevant criminal laws.

5. *Dealing With Disclosure of Child Sexual Abuse, Native American Topic*, Center on Child Abuse and Neglect (2000). Available at <http://www.oumedicine.com/docs/ad-pediatrics-workfiles/disclosure.pdf?sfvrsn=2>

This tool helps people respond to a child who discloses child sexual abuse in the best possible way. It also helps people understand the tribal, state and federal systems that may be involved in the systems that respond to abuse allegations.

6. *History of Victimization Issues in Native Communities*, Center on Child Abuse and Neglect (2000). Available at [http://www.unified-solutions.org/Pubs/history\\_of\\_victimization\\_in\\_native\\_communities.pdf](http://www.unified-solutions.org/Pubs/history_of_victimization_in_native_communities.pdf), accessed March 14, 2012.

This resource provides a historical overview of victimization of Native communities and looks at the generational cycle of abusive behavior.

7. *Pathways to Hope, Healing Child Sexual Abuse, Video Guidebook*, Tribal Law and Policy Institute (2007). Available at <http://www.tribal-institute.org/download/PathwayToHope.pdf>, accessed March 15, 2012.

A video and guidebook help provide direction on discussing sexual abuse within a community and leading a community to healing.

8. *Garden of Truth: The Prostitution and Trafficking of Native Women in Minnesota*, Minnesota Indian Women's Sexual Assault Coalition (2011). Available at <http://miwsac.org/images/stories/garden%20of%20truth%20final%20project%20web.pdf>, accessed March 14, 2012.

Garden of Truth is the first study detailing the personal experiences of Native women who have been prostituted and trafficked in Minnesota. The 105 women interviewed for the report describe extreme and frequent violence including child sexual abuse, rape, beatings, and traumatic brain injuries, with a majority experiencing symptoms of PTSD. 98% of the women have been homeless and 92% want to escape prostitution but believe they have no other options.

9. Rape, Abuse & Incest National Network's (RAINN) website <http://www.rainn.org/>, accessed March 14, 2012.

The website provides resources and information on reporting, offenders, victims, statistics, legislation and many other issues related to sexual abuse.

10. *Domestic Violence, Child Welfare and Supervised Visitation in Native American Communities*, Hon. Melvin R. Stoof (2005) Available at <http://mshoop.org/brochures-pdf/DV%20Child%20Welfare%20and%20SVC%20in%20Native%20communities.pdf>, accessed March 22, 2012.

This paper is directed to professionals working with Native American victims of domestic violence and child maltreatment. It provides an understanding of key issues in Native communities that must be addressed to keep women and children safe.

11. *Ozha Wahbeganniss, Exploring Supervised Visitation and Exchange Services in Native American Communities*, The Institute on Domestic Violence in African American Communities, Available at <http://www.idvaac.org/media/pubs/IDVAAC%20Visitat.Indian.pdf>, accessed March 22, 2012

This resource provides an overview of how a supervised visitation service, outside of child protection, might be implemented in Native communities. It provides input into key considerations in developing the services.

12. *Responses to the Co-Occurrence of Domestic Violence and Child Maltreatment in Indian Country: Repairing the Harm and Protection Children and Mothers*, Tribal Law and Policy Institute (2011). Available at [http://www.tribal-institute.org/download/OVWGreenbookReportHVS\\_TD\\_7-18.pdf](http://www.tribal-institute.org/download/OVWGreenbookReportHVS_TD_7-18.pdf), accessed August 26, 2012.

A report compiled from a survey, focus group, and four tribal community interviews relative to the systems treatment of the co-occurrence of child maltreatment and domestic violence. The report provides findings and recommendations.

13. *Child Custody Cases, Incest Allegations and Domestic Violence*, Joan Zorza, J.D., Commission on Domestic Violence, American Bar Association, E-Newsletter, Vol. 4, July 2006. Available at [http://www.americanbar.org/content/dam/aba/publishing/cdv\\_englishletter/custodyandincest\\_authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publishing/cdv_englishletter/custodyandincest_authcheckdam.pdf), last accessed March 22, 2012.

An article for attorneys examining what happens with incest allegations that are raised in custody disputes. It provides helpful information on what family judges can do to protect children.

14. *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamic*, Lundy Bancroft and Jay G. Silverman, s (Sage Publication Inc., Thousand Oaks, CA 2002).

A resource written for professionals who work with families affected by domestic violence to help them appropriately respond.. It describes the impact on children of battering fathers and examines the parental skills of batterers.

15. *Aboriginal Community Healing Process in Canada*, Ed Butler, Manchester, England 2005, available at [http://www.iirp.edu/pdf/man05/man05\\_buller.pdf](http://www.iirp.edu/pdf/man05/man05_buller.pdf), accessed June 17, 2012.

A paper presented at the International Institute for Restorative Justice on the practices of community healing used by Hollow Water, Manitoba.

16. *The Ethic of Traditional Communities and the Spirit of Healing Justice, Studies from Hollow Water, the Iona Community and Plum Village*, Jarem Sawatsky and Rupert Ross; Jessica Kingsley Publisher, Philadelphia, PA (2007)

Of particular interest in this book is a chapter describing the community healing work done in Hollow Water, Manitoba. It provides extensive background, descriptions of steps taken, discussion of obstacles faced, and successes achieved.

17. Center on Children and the Law website, [http://www.americanbar.org/groups/child\\_law.html](http://www.americanbar.org/groups/child_law.html), accessed August 26, 2012.

The website provides a substantial amount of information on representing children and parents in custody and dependency cases. It also addresses a wide range of current legal issues related to children and the law.

18. National CASA Association website at: <http://www.casaforchildren.org>, accessed August 26, 2012.

The National CASA Association is a network of 946 programs that are recruiting, training and supporting volunteers to represent the best interests of abused and neglected children in the courtroom and other settings. The website provides a wide variety of information on CASA volunteers and training opportunities.

19. National Resource Center for Tribes (NRC4Tribes) website at <http://www.nrc4tribes.org>, accessed August 26, 2012.

NRC4Tribes is the newest resource center within the Children's Bureau Training and Technical Assistance (T&TA) National Network. This new National Resource Center for Tribes joins the Children's Bureau's Child Welfare Training and Technical Assistance (T&TA) Network which is designed to improve child welfare systems and to support states and tribes in achieving sustainable, systemic change that results in greater safety, permanency, and well-being for children, youth, and families. The NRC4Tribes engages tribes to increase their access to and use of the T&TA Network, brokers T&TA, assists in the provision of T&TA as needed, facilitates peer-to-peer consultation between tribes regarding child welfare issues, and increases cultural competence and sensitivity to tribal voices in the T&TA Network and in state child welfare systems.

20. Children's Bureau Training and Technical Assistance National Network website at <http://www.acf.hhs.gov/programs/cb/tta/index.htm>, accessed August 26, 2012.

The purpose of the T&TA Network is to build the capacity of state, local, tribal, and other publicly administered or publicly supported child welfare agencies and family and juvenile courts through the provision of training, technical assistance, research, and consultation on the full array of federal requirements administered by the Children's Bureau. T&TA Network members provide assistance to states and tribes in improving child welfare systems and conformity with the outcomes and systemic factors defined in the Child and Family Services Reviews (CFSRs) and the results of other monitoring reviews conducted by the Children's Bureau to ensure the safety, permanency, and well-being of children and families.

## Snapshot of Quote Authors

### **Ann Baker, Child Protection Services**

Ann Baker has lived and worked on the Fort Peck Reservation, MT; most of her life. For the last twenty-five years she has worked in Indian education and most recently in Indian Child Welfare. She currently is a Permanency Planning Specialist.

### **Barbara Bettelyoun, PhD, Child Clinical Psychologist and Forensic Interviewer**

Barbara Bettelyoun (Sicangu Lakota, Rosebud Sioux Tribe) is a child clinical psychologist and forensic interviewer, currently working with adult Native survivors of childhood sexual abuse across Indian country. She is a founder of Buffalo Star People, a nonprofit devoted to providing strategic, transformative learning opportunities that promote healing and cultural life-ways that are physically, spiritually, emotionally and ecologically in balance with Mother Earth.

### **Hon. Peggy Bird, Tribal Judge**

Peggy Bird (Kewa Pueblo) is an attorney and tribal court judge. She is a cofounder of the Coalition to Stop Violence Against Native Women and on the board of Tewa Women United and the Coalition to Stop Violence Against Women. She is a leader in working to end violence against Native women nationally and internationally.

### **Hon. Robert Blaeser, Minnesota District Court Judge**

Judge Robert Blaeser (White Earth Anishinabe) is a district court judge serving Hennepin County, MN, since 1995. He worked for a number of these years in Juvenile Court on child abuse cases and ICWA implementation and has worked to eliminate racial bias in the Minnesota courts.

### **Lonna Hunter, Domestic Violence Advocate**

Lonna Hunter (Tlingit of Southeast Alaska and Sisseton Wahpeton Oyate Dakota) is the Technical Assistance Coordinator for Tribal Sexual Assault Services grantees at the Minnesota Indian Women's Sexual Assault Coalition. She was previously the Executive Director of the Sheila Wellstone Institute and worked at the Coalition for Battered Women.

### **Lillian Jones, Tribal Court Advocate**

Lillian Jones (Fort Berthold, ND) practices as a tribal court advocate on the Spirit Lake, Fort Berthold, and White Earth reservations representing Natives in family law and other matters. She also provides trainings on ICWA and domestic violence.



**Sherri Larsen, Domestic Violence Advocate**

Sherri Larsen (Anishinabe White Earth and Lower Sioux) worked as a domestic violence advocate in the Ho Chunk Nation for six years and for counties for two years.

**Nicole Matthews, Sexual Assault Advocate**

Nicole Matthews (White Earth Anishinabe) is the Executive Director and founder of the Minnesota Indian Women’s Sexual Assault Coalition, a coalition serving advocates in tribal areas throughout Minnesota by providing training, support, and movement building.

**Tammy Swanson, Attorney**

Tammy Swanson (White Earth Anishinabe) is a private attorney in a Native law firm, Swanson, Drobnick & Tousey, P.C. She worked at the Indian Child Welfare Law Center for nine years and currently represents the Lower Sioux Tribe of Minnesota Social Services and individuals in family law and ICWA cases, as well as other legal matters.

**Lisa Thompson-Heth, Domestic Violence/Child Advocate**

Lisa Thompson (Lakota Lower Brule) is a founder and the Executive Director of Wiconi Wawokiya, The Children’s Safe Place, a child advocacy center in Fort Thompson, SD, which provides services to Native American families. She also is a domestic violence advocate.

## **Focus Group: Child Sexual Abuse in Custody Cases**

### **Summary**

**January 20, 2012**

#### Participants:

Maureen White Eagle (facilitator), Tammy Swanson, Lillian Jones, Nicole Matthews, Bonnie Clairmont, Lonna Hunter, Sherri Larsen, Lisa Thompson-Heth, Peggy Bird, Robert Blaeser, Ann Baker, Barbara Bettelyoun (participants), Lois Yellowthunder and April Russell (note takers)

#### Objectives

- Identify the roles/responsibilities/objectives of various professionals in custody cases
- Identify issues or obstacles for each professional in keeping children safe with family
- Identify guidelines/principles/objectives/strategies that should be followed
- Identify differences between issues for Native children and other children
- Identify tools and information needed by novices in the professions

#### **Key Points in Introductory Discussion**

- Native mothers are losing custody of their children when they raise the issue of child sexual abuse.
- Mothers lose custody in family court – due to “hired guns” psychologists. Mothers may never see the child; judges follow their report; kids are re-victimized. When one is Native – there are prejudices. In every case, the children are victimized. The court system is creating parent alienation (alienating children from their parents). It is re-victimizing.
- When a judge handles both the criminal and juvenile case, there is more perpetrator accountability.
- The child protection viewpoint was “mom is not protecting the children.” She is the one who reports. We should begin by assuming what she said is true.
- Advocates and the child protection systems need to come together.
- There are more services in juvenile court, not in family court. Family court lacks the ability to provide services.
- We worked with moms – we told her don’t show emotion, be straightforward; do not show any emotion, do not waiver from that – judges, custody evaluators will point fingers at you and say you are insane if you are emotional. We told mom, don’t bring up child sexual abuse in custody cases, because you will lose custody. Courts will require supervised visitation for moms.
- How this relates to tribal court. Politics may play a role. Relatives of the abuser may work for social services. If mother is an enrolled member of another tribe, she may be at a disadvantage. Some tribal judges are dysfunctional or they don’t have the knowledge and training to deal with this issue.

- Sometimes kids did not disclose until two or three years of therapy. A court needs to be working with a family a long time to really know what is going on.
- New judges, doctors, lawyers, therapists need to be trained.
- A lot of tribal courts differ in sophistication. Some judges are trained, some not trained. Attorneys may not be available or untrained. There are scarce resources in small communities; There are no custody evaluators, no GALs. What kind of resources can you build in the community - resources in school – There is not enough training; no supervised visitation.
- Supervised visits have been a frustrating point in tribal areas. Where do you send them for visitation? Social services – we try to work with them. Are they trained? Are they trained to work with victims of DV or are they trained to put up road blocks? I get so frustrated. I know something is going on. I try to get that information. Then where can I send the children and women who are abused to get support and help? What can I do to get these resources? What can I do about this?

**The following chart summarizes a discussion by Native professionals on the roles of professionals involved in child sexual abuse cases in family court. It also lists key barriers or obstacles that professionals may face in working the case. The discussion encompasses both tribal and state courts.**

<b>Role</b>	<b>Obstacles/Barriers</b>
<b>Sexual Assault or Child Advocates</b>	
Believe the victim!	Turf issues
Provide support and accompaniment	Lack of resources for child and mother Attorneys lack knowledge of OFP options and don't work with advocates
Insist on offender accountability	Social services rather than advocacy, if program under social services
Promote social & systems change	Credibility Lack of sexual abuse codes in Indian country
Be a voice for mother and child to other disciplines	Few sexual assault advocates
Protect sacred bond between mother/child	Seen as home wreckers
<b>Judges</b>	
Role is to make a custody decision: a) objectively review information b) validate parental concerns – insure they are heard c) look at facts and compare with laws	Proof of the allegations Quality of evidence presented <i>Pro se</i> representation or widely differing skills in attorney representation Lack of informed and trained judges Limited number of judges in tribal court
Protect the children: minimize psychological impact on children	Legal timeframes required for decision making Lack of trained professionals

<b>Role</b>	<b>Obstacles/Barriers</b>
Responsibility to reflect community and Native values	Resources for the family: lack of trained professionals to assist the family
<b>Domestic Violence Advocates</b>	
Believe her	Lack of resources for mom and child
Confidentiality	Mandated reporting
Make sure they are safe	Re-victimization by system
Protect from re-victimization by advocacy	Legal timeframes – child protection
Financial assistance – legal, housing, etc.	Financial/legal funding
Systems change	Community backlash – ostracizing
	Offender accountability
	Advocacy under social services
<b>Legal Advocacy</b>	
Listen to the client!	Money
Inform/advise rights/represent all parties	Distance to providers (exam/services/expert witnesses)
Safety plan → accessible resources	Lack of/or insufficient counsel
Investigation that is independent of law enforcement	Family/community “climate”
Open, honest and clear communication with client	Untrained judges/court staff/law enforcement and service providers (apathy) Uninformed of rights (victim/law)
Know system’s strengths and weaknesses	Lack of/or insufficient services
	Misperceived safety choices, i.e. flees to save self and leaves children, perceived as bad mom
	Jurisdictional issues (including misinformation and ignorance)
	Lack of enforcement of ICWA and protection orders
<b>Child Protection</b>	
Full Family Functioning Assessment	Law enforcement not pursuing criminal cases so dropped by child protection
Refer to MDT – forensic interview/physical exam (if warranted) cross reporting to multiple jurisdictions	Judges need training and education on issue of child sexual abuse. Visiting doctors not trained; do not want to report as they might have to testify
Provide/coordinate services to child(ren) and protective parent (refer to crisis center if not already involved)	Tribal politics impede investigations and prosecutions
Safety plan (could be in-home or out-of-home)	CPS turnover – lack of experience and training on issues
Look for kin if child is removed from home	Lack of services – housing, jobs/income
Observe and evaluate reunions/goodbyes during visitations with parents (if child(ren) are placed out of the home)	Community culture of violence – tolerance High caseloads – agency, courts...

<b>Role</b>	<b>Obstacles/Barriers</b>
<b>Psychologists or Custody Evaluator</b>	
Recommend custody/family resources/parenting time based on what is in the best interest of the children	Lack of education and training Difficult to get the family court to order a forensic exam
Conduct full psychological evaluation on every family member	Lack of funds to do the full investigation
Collect full psychological history on every family member	Trained forensic interviewers
Interview each member separately	Some psychologists make a good living from being a “hired gun” and do not do the work before making recommendations
Observe family dynamics (child with each parent)	
Review all pertinent files	
Interview school personnel	
Interview (with family’s ok) family support people	
Make recommendations and discuss with family	
Share recommendations with the court	

### **Key Points in Concluding Discussion**

- Advocates have training on child sexual assault, but it is a very small amount of the 40 hour training.
- Counselors and therapists have not had child sexual abuse training at times.
- Classes around education for mother – regarding child witnessing violence – prompt women to leave husbands when they learn the effect of violence on children.
- First hearing on DV charge; victim is in court recanting – (reasons for this is often that the victim has) no home, no one to help with children.
- From CP we have a concern for the children.
- Protector ideas – DV Advocate keep mother and child safe, CP keep child safe = conflict in goals between these roles.
- Duplicate tribal judges’ orders so law enforcement will honor them (e.g., have a judge from the state court sign an order as well as the tribal judges’ order -- Lack of full faith and credit).
- Finding those allies whose ears work; importance of every party getting training – law enforcement, court personnel, etc.
- Applying criminal standards in a child protection case – this is a struggle. If criminal justice system doesn’t prosecute, child protection does nothing.

- Tribal court can develop its own practices based on cultural values. Many people are not represented by attorneys. People can write it down and it will be considered. Do not always want to look to state law. In tribal courts there are always ways to bring things in; tribal courts can be more creative than state courts.
- Forensic interviewers are not always available for interviewing. Law enforcement officers are making recommendations for children who have been sexually abused. There is no child interview room. Reservations are not even to the point of forensic interviewing.
- [Our agency is] on Crow Creek [Reservation?] in Buffalo County, the poorest county in the nation – if we can do this, it can be replicated in other places. We need to invest in local people and local resources.
- MDTs feel Mom does not believe what the child says. When children disclose, they have a life [outside the home]. It is easy for a parent not to know what is going on. Many times parents have been abused - they are emoting and it gets perceived as something else.
- The [courts/investigators, etc.] believe that the teenager [makes allegations] because he/she wants to get back at [the Dad] because he is enforcing curfew; [the fact is] they are still being abused. Kids will disclose when they think they will be safe. In very few cases do kids lie.
- Only incompetent forensic interviewer do not to know when coaching is going on.
- False information, false understanding – not true that most people abused as children go on to be abusers.
- A lot of psychologists make recommendations [without thorough investigation] so they don't need to put in a lot of work. Some abusers are really good liars – charming, high IQ. In my evaluation of the alleged abuser I use the Rorschach Test and the MMPI. Need to include all these things.
- Would like psychologists to explain to family court what they did in their investigation and how they arrive at their recommendations.

**Best Practices:**

- I want the psychologists to be there (in court) and know how they get that information.
- It is about suspending judgment until you get all the information, provide a good assessment and then letting the judge make the decision
- Have respect and a better understanding of other professional's role.
- We need to believe the child. Children don't make decisions and yet suffer the consequences.
- If a child discloses, there should be an immediate forensic interview, this is the first step to healing; an adult listened, allowed the child to tell their story, believed them – this interview needs to take place as soon as possible at the time of disclosure
- Put children first.
- Reinforce, give the child a plan; know the literature – children over the age of four are not easily coached
- Just because you can't prove it, doesn't mean it can't be believed; even if you can't substantiate it.

- Keep child and mother together and safe. Keep child and protective parent safe.
- Training for family court and for GALs is needed.
- Need to evaluate expert witness.
- Get people to talk about sexual abuse.

## Participants in Focus Group

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