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An Evaluation/Assessment of Navajo Peacemaking

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Monday, February 15, 1999

FINAL REPORT

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Preface

When dealing with issues involving American Indians, there has been the tendency among many academicians to observe and explore “issues” within these communities framed as “Indian problems”. It is the point of view of this writer that “Indian problems” do not exist without taking into account the relationship between the White conquerors and the subjugated Indians. Virtually the whole apparatus of western civilization, including its vaunted legal edifice, has been used to exploit and degrade the rights and privileges of all Indian communities. The law and its arm of force contained within its technology continue to exploit these communities and are an omnipresent factor in all so-called “Indian problems”. So when we talk about issues of social disorganization, domestic violence, substance abuse, we need to keep in mind the factors of conquest and imperialism.²

¹ This paper and presentation would not be possible without the generous support of the National Institute of Justice, Grant 97-IJ-CX-0039, a grant from Temple University’s Research Incentive Fund, and the support of the Criminal Justice Research Institute of Philadelphia. I am indebted to their continuing support for this project.

² Also, it needs to be noted that the deleterious effects are far from limited to the mere outcome of military conquest. Until 1934 Navajos were not permitted to speak in their own language or practice any indigenous

Secondly, it is my firm belief that all research conducted by non-Indian academics in Indian Country should be explicitly designed to serve the real needs of Indian communities. Moreover, these needs should be identified and defined with the host community and not unilaterally by the researcher. Frankly, this ought to be the primary driving force in Indian academic research. It is likely that other such research is unnecessary and probably unwarranted as well.

This research project is based entirely upon primary research. It was directly collected by the Principal Investigator and would not have been possible without the assistance of the Judicial Branch of the Navajo Nation. I am extremely grateful for their support and fervently hope that this work will further the development of indigenous approaches to community justice.

Introduction

The Navajo Peacemaking Division was developed in response to dissatisfaction with western approaches to conflict resolution. James Zion, Court Solicitor to the Navajo Nation, as well as Philmer Bluehouse, the current Peacemaking Coordinator, originally implemented the program in 1982. The program was enlarged and modified to reflect in-

custom! Throughout their relationship with white society, their children have been forcibly removed from their homes of origin and been placed in the homes of "Christians" or Christian boarding schools frequently hundreds and thousand of miles away from their homeland. The list of subjugations and degradations is very long. The important point is to realize that the message the Navajos have heard from the dominant culture is that their culture is inferior, if not worthless (Ross 1996, Benedek 1996)..

creasing integration with Navajo traditions concurrent with the involvement of the current Chief Justice of the Navajo Judiciary, the Honorable Robert Yazzie.

Peacemaking is a type of “restorative justice”, since its objective is conflict resolution through the healing of relations between individuals in conflict. Like many other justice programs identified as “restorative” in objective and process, Navajo Peacemaking occurs outside of the halls of formal justice. It eschews the characteristic elements of adversarial justice and does not admit lawyers, judges or legal support services. As in other restorative programs, its role in the community is less an alternative form of justice service delivery (i.e., a reasonable alternative to adversarial processes into which appropriate low-risk cases are siphoned), as much as it is a service to communities and families needing a minimally-formal, accessible, and affordable form of conflict dispute service. However, it differs from other restorative models on several critical points .

1. Peacemakers are not impartial
2. Direction from peacemakers is taken from traditional Navajo wisdom narratives
3. Its focus tends to be relational and communal healing, as opposed to emphasis on victim reconciliation (scope beyond individuals involved)
4. Western concept of evidence is secondary to process outcomes (evidence is not necessarily “objective”)
5. Primacy given to feelings of process participants
6. Objective of hearing conforms to the Navajo experience of *hózhó*

The English term “peacemaker” is a loose and fairly inaccurate translation of the Navajo word *naat'áanii*. *Naat'áanii* is more precisely translated as a combination of leader, teacher, and healer. Unlike the western concept of mediator as an impartial ‘master of

ceremonies', whose primary role is to maintain order and provide opportunities for each party to express their points of view, the *naat'áanii*'s role is to reflect the conflict brought before him/her within the context of traditional Navajo common law (as expressed in the society's creation and journey narratives) and within some of key elements of Navajo life-ways (the culture's traditional beliefs, values and norms). The *naat'áanii* is a type of guide whose purpose is to gently lead process participants in the direction of transformative healing, which is, ultimately, a consequence of emotional catharsis. But as a leader, the *naat'áanii* needs to have the insight and leadership qualities necessary to help in peeling away layers of denial and distortion that frequently characterize domestic conflict. Unlike a mediator, the *naat'áanii* is an engaged part of the dispute resolution course, signifying the weight of tradition and timelessness in the healing process. Direct observations of Peacemaking during this research have shown that the *naat'áanii* and the disputants are each engaged in a dynamic dialogue of emotional touching and catharsis where the presenting problem, by being contextualized into Navajo wisdom stories, takes on a significantly greater emotional vitality. It is this intensity that provides the basis for the opportunity and emergence of catharsis as the potentializing and active aspect of successful peacemaking outcomes. It is vital to note that unlike hierarchical justice (western), where an empowered authority renders judgment and sentence, justice, in the Navajo Peacemaking context, is an outcome of the talking out between process participants. The *naat'áanii* is a guide and the disputants are the decision-makers. Perceived graphically, the justice of Peacemaking is horizontal, while western justice is vertical (Yazzie 1994).

Unlike many other forms of restorative justice, Navajo Peacemaking focuses on relational healing between disputants and not, explicitly (or implicitly) on victim reconciliation.³ Moreover conflict resolution frequently extends beyond the parameters of the particular disputants or their family, to involve the whole of the effected community. One of the critical distinctions separating the Native concept of “crime” (or harm causing wrongdoing) is that the occurrence of such ‘events’ posits a type of problem for the whole community. This idea emerges from the idea of relationship. One’s relationship(s) extend from those that are immediately perceived and experienced to those that make the whole of the living context. These include the air one breaths, water, other living things and ultimately the cosmos (Reichard 1977; Brown 1985; Brown 1989).

It is the ‘embedded’ concept of relationship that best differentiates Navajo conceptions of justice from the reductionist/professional approach that characterizes western criminal justice. Western criminal justice typically attacks the symptoms of social disorder. It is concerned primarily with “correcting” the offender outside of the complex socio-economic and demographic context of criminality through the fundamental vehicle of punishment. The intentional infliction of pain and suffering is identified as the just deserts of crime. Even under a rehabilitative framework, the system’s structure often sets up opportunities for additional violations of sentence, which then set in motion the mechanisms of continuing punishment. People cease offending not because of some contribu-

³ Although it is not uncommon that Peacemaking sessions contain settlement agreements that specify restitution and reparations to be made to the victim.

tory effect of the system as much as they drop out of the system as a product of increased age.

In contrast, Native concepts of crime focus fundamentally on the underlying aspects of 'chaos'. Things are not reduced into distinct objects against which the system 'acts', but rather events are seen in terms of their relationship to larger systems. Crimes do not happen in a vacuum. Instead they are the outcome of complex processes, which can only come to light through a problem-solving venue that includes as many of the pertinent relationships as possible. It is a truth seeking process, because it is only through the immediate experience of the truth that is not intellectually mediated, through which genuine healing can occur. For all of its vaunted size, systemic complexity and immense cost, the western justice approach appears relatively simplistic and vengeful.

Native approaches to law and order understand that people possess power that effects others. If we are to be healed, we will need to perceive and understand these effects. Relational conciliation allows for this understanding to occur. Most importantly, the process catharsis occurs through the self without external coercion. The teaching is not pain and deprivation, nor is it something read in a book or seen on television. It is self-realization and it is through this process that both the offender and the victim can experience enduring healing and get on with their daily life challenges with a stronger and more integrated sense of self.

Navajo common law does not label one side as "offender" and another as "victim". There is the sense that each of the participants in a conflict possesses some qualities of victimization. Moreover, the actualization of violence perpetrated by one person on another will

ultimately be understood as the absence of love and nurturance for that person (personal communication with Philmer Bluehouse). From the perspective of strict victim reconciliation, the primary obligation of the court is to tabulate tangible losses and provide a vehicle for the offender to make up some or all of those losses to the harmed party.⁴ This approach fails to take into account the needs of the “victimizing” party. It is a formal process of reparations and not healing. Peacemaking seeks to provide healing through a talking out process through which a transformative “Truth” will ultimately emerge. This greater truth is what exists when all of the denial and obfuscation is removed and participants can know and feel the consequences of their acts. Only through such realizations can authentic healing take place (Zion and Zion 1996; Zion 1997).

The Peacemaking process is guided by the flow of feelings as the process unfolds. If the cathartic outcome can be envisioned as a pivot around which the flow of feelings and dialogue revolves, then the talking out may be seen as a movement that circulates inward, in a spiral, moving in a somewhat uncertain path toward that pivot. The manifestation of healing occurs once the participants attain the pivot, the core issue, and the underlying truth. Recognition of this truth provides the energy of catharsis and the opportunity for.

⁴ While such reparations may be incorporated into the sentence they are often never or only partially paid. Moreover, given the coercive context of the demand, reparations ordered by the court are often perceived as merely part of the punishment and not a vehicle toward restoring positive relations between the offender and the victim. The offender often perceives them as a fine. Reparative agreements resulting from restorative justice models have been much more successful in achieving full payments because they are not coerced but are the result of mutual agreement.

transformative healing. In this case the term “transformative” is used to mean a process in which the individual is changed in some intrinsic and abiding sense (Grohowski 1995).

Realization of the truth occurs when individual feelings on both sides of the dispute are fundamentally satisfied. The resolution of damaged feelings is the core material of Peacemaking sessions. Unlike western justice processes where feelings are perceived as immaterial and, at best, unreliable guides to justice attainment, the Navajo model posits the relative unreliability of material/financial settlement in fostering authentic and enduring reconciliation. From the Navajo perspective, a conflict is perceived as resolved when the feelings of each participant exist in harmony with the person with whom he/she was in dispute. While the achievement of harmonious feelings may only be possible with a particular material settlement, it is not the tangible elements of the settlement that signify a successful peacemaking session. The only outcome that is reliable and verifiable is one where feelings between disputants are in harmony (Bluehouse and Zion 1996; Yazzie 1996; Yazzie and Zion 1996).

The quality of *hózhó* can be likened in English to a condition of solidarity, balance, and harmony within one’s self and with one’s relations. Ultimately one’s relations extend beyond the family, clan and tribe to embrace the living world. While English translations of *hózhó* suggest an understanding of this key term as a type of static condition, it is more appropriate to understand *hózhó* as a dynamic process that is subject to constant change. The fundamental orientation of the Navajo language is active. Where English posits nouns as static entities, Navajo perceives process and change (Witherspoon 1977; Abram 1996). Stasis or the condition where change does not occur is highly uncommon and is

essentially applied only to ceremonial knowledge. Thus the world and one's experience of it is understood as one in constant motion. This motion can be further understood as one circulating around the poles of order (*hózhó*) and chaos (*hochxo*).⁵

The Etiology of Violence in Navajo Country

From a conventional perspective problems in Indian country tend to emphasize social disorganization (strain) theory. These theories suggest that disorder and community decay are associated with forces that undermine social order and stability. Social disorganization has been identified with concepts related to anomie where communities are stressed by forces causing breakdowns in structures connected with cohesion, as well as those associated with channels providing a means for positive personal and class mobility (Merton 1957).

Social disorganization theory is particularly appropriate for application to American Indian issues, because of its frequent association with communities and minorities that have experienced embedded and persistent economic disadvantage. Indians possess the additional factor of military conquest and civil assaults on their indigenous culture. Moreover, social disorganization theory has emphasized its value as it applies to people within a community context.

⁵ This dyadic concept is found throughout Navajo cosmology. Much of this material was related to me by Philmer Bluehouse, the current Coordinator of Navajo peacemaking.

Anomie theory is originally derived from Emile Durkheim. Order within a given community is made possible through the congruence of social structure (approved social means) and culture (approved goals and norms). Where conflict exists between these domains, there is the likelihood for the enhancement of forces supporting social disorder, thus stimulating conditions like crime and substance abuse. Specifically such forces are strengthened when people perceive themselves as alienated or incapable of accessing channels to reach such mutually supported societal goals (Durkheim 1972; Durkheim 1984; Garland 1990).

Merton augmented anomie/strain theory by positing a fundamental, if not intrinsic goal that is common throughout American society. This goal is identified with material success and acquisitions (including those that are non-material) that are symbolically associated with this goal. Disorder, according to Merton, is manifested in response to the failure of an individual to attain society's central goal through conventional/legitimate means. Since conventional approaches are perceived to be unavailable to disordered populations, they need to "innovate". The process of innovation involves implementation of a form and action directed toward attaining the core goal through non-legitimate means. Such innovation is often associated with crime when it is understood as an attempt to achieve or produce an economic opportunity or advantage. Failing to attain the central aspiration can also result in "retreatism" which is manifested through escapist life modes. Unlike innovative responses, retreatism does not seek to create a means to achieve the central objective, but concedes that impossibility of personally achieving this goal. Manifesta-

tions of escapist responses are alcoholism, vagrancy, drug and alcohol addiction, and mental illness.

Anomie theory has been substantially enlarged through the work of Robert Agnew. He has identified three subtypes of strain theory. These are: 1-blocked opportunities through personal inadequacies and/or lack of competence; 2-the gap between expectations and actual achievements; and 3-anger and discontent resulting from what are perceived to be fair outcomes and actual outcomes. Agnew understands innovation (crime or other deviant behaviors) and escapism as natural adaptations to the “strains” caused by these emotional, psychological and actual discrepancies (Agnew 1992; Agnew 1993).

Zion and Yazzie have identified such “strains” as the “*nayéé*” of contemporary Navajo life (Yazzie and Zion 1995). These have been enumerated many times and include hopelessness, frustration, depression, etc. Moreover, speculation about these issues has been associated with the social/economic isolation of reservation life, as well as the vicissitudes of living as a conquered and alienated minority.

The term *nayéé* is understood as something that comes between a person and how he/she lives their life. Literally, the Navajo word *nayéé* means “monster” and is typically understood by Navajos as associated with the mythic Monster Slayer (*nayéé neezghani*). However, this term is generally used to denote an interior state of mind, an internal state of being. Thus *nayéé* cannot be simply be represented as a “condition” of poverty, but it can be understood as the depressed disposition that might contextually be linked to living in poverty (Farella 1984).

Understanding that essentially all Navajo 'qualities' possess a dual or dyadic nature, Monster Slayer is posited against his opposite. This is his twin brother Born for Water. The two brothers represent the two ends of a continuum of behavior, where Monster Slayer is the extroverted, dynamic, heroic aspect and Born for Water is contemplative, pensive and introverted. Metaphorically, Born for Water is the inner aspect of Monster Slayer, as thought is the inner aspect of speech.⁶ The actions of Monster Slayer made it possible for human beings to live on this earth by destroying those brutal forces that would have made human life impossible (Zolbrod 1984). However, without Born for Water, this process would not have been modulated by the intelligence of thought and introspection. An integrated, whole action needs to possess the dynamism of Monster Slayer with the pensiveness of Born for Water.

Monster Slayer did not destroy all the monsters. Navajos continue to deal with the monsters of depression, poverty, worry, abusive marital relations, etc. Understanding these conditions as monsters allow a person to act on them or process through them. In the latter case, violence and abuse are spawned. However, a careful reading of the heroic narrative suggests that *nayéé* have both a positive and negative context. It is positive in the sense of allowing one to have the capacity and power to deal with the monster and it is negative in connoting the monsters themselves. Moreover, the idea of monsters representing the forces arrayed against one living a chosen life suggests that the concept is related to the Mertonian concept of anomie. The monsters are therefore the intervening

⁶ In turn, Monster Slayer is the outer aspect of Born for Water, as speech is the outer aspect of thought.

variables that act to motivate responses conforming to Merton's categories, they are the obstruction separating an individual from achieving the central social aspiration. Certainly, violence within the family, between relatives, and among neighbors is symptomatic of such responses. It is in this sense that we obtain a powerful insight in the transformative process. The crisis of abuse or criminality can act as a catalyst for self-transformation. Thus, the violent act is not altogether negative. Like the *nayéé*, violence provides the fuel for potentially integrated reconciliation.

In the context of Peacemaking, healing may be manifested through the **living** example of Monster Slayer. Within the overarching context of Peacemaking, this aspect conforms to the Navajo concept of warriorship. Optimally in Peacemaking, one needs to ultimately face one's "monster(s)". The process of digging into one's self and addressing these challenging issues requires one to adopt the warrior aspect. Unlike western religion, that posits Biblical activities within their mythic/historical context, which is typically remote and inappropriate for personal modeling for most people, Navajo tradition exists in non-linear time. Monster Slayer exists both in mythic and present time. The temporal differentiation is essentially non-substantive from a Navajo perspective. Each person potentially or actually 'possesses' his/her own Monster Slayer in an entirely tangible and contemporary sense. Thus the Peacemaking participant is challenged to actualize this inner condition and give it a living external reality.⁷ The process of inner transformation occurs, in part,

⁷This process reflects the dyadic universe of the Navajo. Everything in the universe possesses an inner and outer reality. For example, speech is the outer form of thought, which is the inner form of thought. In the example above, Monster Slayer ideally exists in both his inner (thought) and outer (action) forms.

through the recognition of these inner, but hidden conditions that, once perceived and experienced, can be actualized for self-empowerment. The *naat'áanii*'s role is to activate this process through her/his understanding of the present problem and her/his knowledge of Navajo wisdom stories. This is one critical way demonstrating how Navajo problem solving works.⁸

Survey Objectives

The intent of this study was to investigate the relative effect of Navajo Peacemaking as an intervention in family conflict, in comparison with a Family Court intervention.

This survey has several groups of dependent or outcome variables. These include:

1. Perception that the hearing was fair.
2. Family Court or peacemaking (depending on the respondent's court venue) helped respondent to find or experience *hózhó*.
3. Court process (Family Court or Peacemaking) settled the presenting problem.
4. Court process gave respondent the opportunity to voice his/her feelings.
5. The judge/*naat'áanii* helped in settling the problem.
6. The judge/*naat'áanii* was fair.
7. The judge/peacemaker liaison clearly explained the court process to respondent.

⁸This discussion implies that Navajos across all ages and communities, irrespective of variable levels of acculturation, are capable of actualizing traditional healing processes. This issue will be examined in this report when we consider reported knowledge of traditional Navajo terms. This topic is also treated in a separate paper on the efficacy of Navajo Peacemaking across social sectors (Gross 1998).

The focus in this evaluation is on the participant's perception of fairness and *hózhó*.

Thus, the fundamental questions that we are seeking to answer is:⁹

1. How do process participants evaluate their justice experience?
2. What were the primary causative factors underlying that experience?
3. Did the presenting problem reoccur during the period (at least one-year) after the hearing?

Previous research has shown that a perception of fairness is based on a participant's opportunity to express her/his interests and that his/her participation is accorded appropriate value and importance. The cognitive experience of fairness is more substantively linked with justice satisfaction than the hearing outcome. Therefore, even if the outcome is disappointing for the participant, as long as there is the experience of being fairly heard and accorded appropriate value and importance, there is satisfaction with the justice process.

This theoretical assumption rests on the positive association of two conditions. A perception of fairness will need to be strongly correlated with satisfaction with the case process.

The current data set supports this position. The most significant overall correlation (.775 $p < .000$) within the data set consisted of (1) the *hózhó* and (2) hearing fairness variables.

Hózhó and fairness are therefore very closely linked (co-varying) in the minds and expe-

⁹ Many other questions were posed in the survey, but these are the most important.

riences of survey respondents, suggesting support of Tyler's perception of the justice model (Tyler 1988, Tyler 1994, Tyler 1996).¹⁰

Research Method

For several reasons, it was not possible to produce a true experimental or quasi-experimental design in Navajo country. First, the Judicial Branch of the Navajo Nation would not agree to random assignment of domestic violence cases. Their position was based on the well-founded position that they would not deny traditional and esteemed approaches to family/community justice to any individual. Therefore, even if this were a prospective study, true random assignment would not have been possible, nor will it be possible for future research. The challenge then was, how to optimize group comparisons given the structural, physical, and cultural limitations of this study? The issue is one of seeking to control the effect of as many situational variables as conditions would allow. The following controls were applied to the research design: each case dealt with interpersonal violence, all cases involved exclusively Navajo participants, the distribution of case dates was essentially identical¹¹, cases are also identical with respect to levels of income, education, and residential ecology. The case selection differed in these ways: interpersonal problems were more diverse among Peacemaking participants (however, most cases involved conflicts between husbands/boyfriends and wives/girlfriends, therefore the

¹⁰ This association is not adequately developed in the data set to posit an internally valid support for Tyler's position. The data "suggest" this inference.

¹¹ This would influence memory effects among survey participants.

amount of variance on this factor was not high), Family Court participants generally used the Court to obtain Protection Orders, which was not a factor among Peacemaking participants, and knowledge of Peacemaking was low among Family Court participants. Perhaps the most important biasing difference was that the Family Court group appeared to experience greater levels of inter-personal violence. This is, in part, conjectural and is impossible to determine based strictly on readings of the case data. Qualitative data collection among Court employees suggested that there was no *pattern* of difference between the two groups. Does this mean that the two groups are not comparable, that a selection bias effect contaminates the intra-group comparison? I would submit that it does not, but it is an experimental structure that is, admittedly, less than ideal, however, given the difficulty of collecting quantitative data in Navajo country, it was the best that local circumstances would allow.

The survey was distributed to two separate populations. The control group consisted of complainants and respondents from the Family Court representing a western approach to interpersonal domestic conflict. The test group consisted of petitioners and respondents drawn from Peacemaker files. All survey respondents live in the Chinle Administrative District of the Navajo Nation and all survey respondents (100%, n=94) stated that they were full-blooded Navajos.

Essentially all cases involved disputes within families as well as with relatives and neighbors. There was greater variance within the problem categorization variables in the Peacemaker files than those drawn from the Family Court files. Peacemaking cases tended to be less focused on the husband/wife or boyfriend/girlfriend dyad(s). A larger

percentage of Peacemaker cases involved disputes with neighbors or relatives. The vast majority of Family Court cases involved fairly significant conflict between the husband/wife and boyfriend/girlfriend dyads. Family Court files were more informative with respect to details about incidents that resulted in requests for court intervention. Many contained vivid accounts of violent conflict. Peacemaker files were considerably less detailed and it was more difficult to ascertain the scale and/or severity of the conflict. However, quite a few of the files contained descriptions of significant violence including the burning down of people's homes, threats to murder, and occasional assault and battery cases.

Collecting these data on the Navajo Reservation is a very considerable challenge. It was not possible to contact potential respondents using the telephone. Very few households on the Navajo Reservation have telephones. Housing units, outside of the few towns, tend to be scattered across vast stretches of open semi-desert/mesa country without paved roads. Homes are unmarked and identified in the court files in terms of vague distance estimates from gasoline stations frequently many miles from the home site.

Community organization on the Navajo Reservation is based on an extensive system of Chapter Houses. After months of discussion and exploring dozens of data collection approaches, it was decided to contact each of the potential survey participants using the mail. Potential respondents were requested to appear at their local Chapter House at a particular time. While Chapter Houses were a logical and sensible solution to organizing data collection, even these places are as much as 60 miles from the nearest main road and difficult to locate by people not intimately familiar with the local environment.

The distribution of the survey required the assistance of local people familiar with the environment and fluent in Navajo. Data collection occurred on three separate dates and at about 12 Chapter Houses located throughout the Chinle District (an area almost as large as New Jersey). The response rate was approximately 25% of the mailed notifications. Of the 94 completed surveys (about six of the surveys were inadequately compiled and were not usable) 57 were Peacemaking participants and the remainder (37) were Family Court. Where survey terms were complex, confusing, or culturally specific, translations were made into Navajo so those survey respondents were able to fully understand questions. Moreover, where responses were given in Navajo, survey administrators translated these responses back into English.¹² Completed survey forms were collected and coded for data entry. All analyses were completed using SPSS.

One of the primary objectives of this study was to make some observations of the longer-term effects of court processes within this comparative framework. At the time the survey was conducted, 12 and 24 months had elapsed since the original trial date for each of the survey participants. This was done to allow for the opportunity for the primary problem to re-occur. In several cases, respondents reported a quality of *hózhó* because the court outcomes allowed them to separate from their abusive spouse, so that the presenting problem would be unlikely to re-occur based on geographical considerations.

¹² I am grateful to the outstanding assistance of Russell Thomas, Matilda Klade, Shirley Bedonie of Chinle, AZ and Victoria Bahe of Pinon, AZ.

Since the cases were not randomly assigned to each of the court venues, this project does not incorporate a true experimental model. In addition, it is possible that some form of selection bias influenced the venue case type. The Family Court Judge reports that he refers cases to Peacemaking when he believes that there is the opportunity for the disputants to reconcile.¹³ It could therefore be argued that Peacemaking tends to handle less serious issues. This presumption is substantiated by the fact that the vast majority (96%) of Family Court (FC) survey respondents claimed that their perceived need for a protection order was one of the core reasons that they selected that Family Court (see Table 1).

Table 1 Reasons for Selecting Family Court

Used FC because of protection order

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	12	32.4	36.4	36.4
	Agree	17	45.9	51.5	87.9
	Neutral	2	5.4	6.1	93.9
	Disagree	1	2.7	3.0	97.0
	Strongly disagree	1	2.7	3.0	100.0
	Total	33	89.2	100.0	
Missing	System	4	10.8		
Total		37	100.0		

Since peacemakers are not empowered to issue protection orders, the possibility is presented that Family Court, by necessity, handles more serious conflicts or only cases where

¹³ In this data set 26% of the Peacemaking cases were referred to Peacemaking through Family Court.

the victim does not feel sufficiently compelled to request a protection order.¹⁴ However, this analysis also clearly shows that most Family Court participants were not aware of Peacemaking as an option at the time of their Family Court hearing (67% reported that they did not have knowledge of Peacemaking). Therefore, this population cannot be expected to know the extent or limits of a Peacemaker's authority. Further, Family Court participants could not be expected to know that a Peacemaker, in fact, does not have the authority to request, but not issue, protection orders.¹⁵ All that can reasonably be assumed is that FC participants wanted a protection order and that they knew that Family Court could provide them with that service. Nonetheless without true random assignment, it is possible that outcomes will result, in part, from selection bias. Moreover, controlling for entry into the particular court venue does, not necessarily eliminate this bias. Even by controlling for FC referrals, individuals opting for FC could be motivated to

¹⁴ It is important to note that much of the family violence occurring on the Navajo Reservation is contained "secretly" within the home. I know of cases of extremely violent domestic abuse, where the abuser was perceived very positively by the community, since the reign of household terror allowed for the containment of the violence within the household. This kind of pattern is supported by the ways Navajo people prefer to live. In general, there is a cultural preference to live fairly isolated from one's neighbors. This is a particularly frightening reality when one considers, that very few households have a telephone. There is no 911 available to Navajo women or children and there is no easy escape from the cycle of violence and danger. This is why requests for Orders of Protection are so commonplace in Navajo Country, but it also explains why they are also so difficult to enforce.

¹⁵ Although a peacemaker can refer a case to Family Court if it is thought that consideration for a protection order is appropriate in a particular case.

avoid Peacemaking given the scale of their problem or if their interpersonal differences are perceived as irreconcilable and are therefore potentially inappropriate for Peacemaking.¹⁶ Moreover, it is probably not unusual that some Navajo people experiencing conflict perceive Peacemaking as a process where reconciliation is encouraged and facilitated and where that objective is not of interest to the individual experiencing conflict.¹⁷ Where the interest is identified with punitiveness, Peacemaking will be seen as inappropriate. Peacemaking practice recognizes this problem and addresses it through conferencing with the Peacemaking liaison or within the Peacemaking session itself. However, if selection for court venue precludes Peacemaking because of anger and the desire to punish, then selection will orient itself around options supporting punitive interests. Informally, this will move the conflict to higher levels of intensity (which can take many forms) or, if there is interest in formal processes, it will guide the conflict resolution decision to select for a western process, where punishment and “winning” are perceived as more likely. This is a subtle selection effect that only very late in the project was recognized as a factor in decision-making among people in conflict in Navajo Country.¹⁸

¹⁶ It would be incorrect to think that Peacemaking only handles cases where reconciliation is desired.

Many agreements involving irreconcilable conflict occur in peacemaking, such as divorces.

¹⁷ People in conflict are typically angry. The catharsis of anger can act against interests for reconciliation.

¹⁸ Virtually all of the survey participants expressed a belief in punishment for those who violate “the law”, but the PI knows of only one person who selected for a western court venue because of an absence of interest in reconciliation. This person did not participate in the survey. But since this issue was not addressed in the survey, it is not possible to estimate its actual influence of choice of court venue.

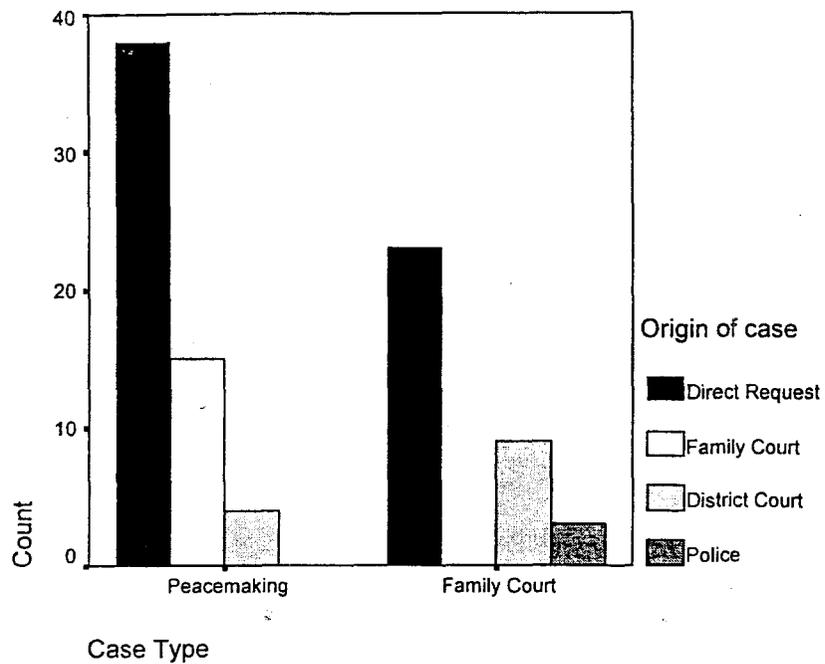
This discussion focuses on two key possible bias issues: one, the potential effect of the Protection Order; and two, selection to Family Court based on the presumption of irreconcilability. Regarding Protection Orders, the data suggest that most Family Court participants would have taken their cases to Peacemaking had they known about it. Interviews underscored this point, particularly when participants were informed that Peacemakers are authorized to request and obtain Protection Orders when circumstances appeared to require them. This response alone would appear to minimize selection bias concerns across the data set. The effect of irreconcilability is somewhat more difficult to assess. While Peacemaking deals with many conflicts where reconciliation, *per se*, is not necessarily a primary objective, there is the general belief that Peacemaking is more oriented to reconciliation than general perceptions about Family Court. If this factor possesses a bias effect (a condition not supported explicitly in the data set or in individual interviews), it is believed that the effect is very minimal.¹⁹ It is worth repeating that there is nothing in the data set or expressed in the focus group interviews that suggests that differentials in the scale of conflict discriminate FC cases from those found in Peacemaking. Each of the data groupings was characterized by high rates of interpersonal violence.

Case Origins

The topic of case selection and selection bias is closely related to case origins as they have occurred in this project. In general, cases are admitted into Peacemaking in order of

¹⁹ This issue raises an interesting research question. In conflict between husband and wives, do rates of reconciliation differ between Family Court and Peacemaking?

frequency through (1) direct request; (2) referral from Family Court; (3) referral from District Court; or (4) the police. The route of entry is show in Figure 1 below.



The bar chart shown above shows how cases enter each of the primary family dispute domains. It is likely that the actual referrals from formal court (Family and District) are somewhat over represented.

Findings

Since the purpose of this project was to evaluate the efficacy of Peacemaking in providing perceived justice and in reducing reoccurrence of the presenting problem, it was neces-

sary to measure the process' outcome objective in terms espoused by the program developers and current directors. Through discussions with Philmer Bluehouse and James Zion, we were able to identify the program's principal goal as *hózhó* with respect to the experience of the Peacemaking justice process. This condition is analogous to an experience of satisfaction with a program. However, *hózhó* implies a more global sense of satisfaction.²⁰ Here satisfaction suggests contentment with the justice process whereby each of the process participants were satisfied with the process and not only its outcome. In fact, satisfaction with the hearing outcome had very little association with satisfaction with the justice process. Moreover, analysis of the outcome variables suggest that process satisfaction was closely linked with the opportunity to express one's views and that those views were taken seriously and constitute an important part of the hearing process. Therefore the principal outcome (dependent) measure was the experience of *hózhó* among program participants in the substantive meaning described by Tyler. Within the survey instrument, the outcome was measured by the response to the question, "Peacemaking helped me to find *hózhó*"²¹. The response was in the form of a lickert variable with five options ranging from "strongly agree" to "strongly disagree" with "no opinion" or "neutral" as the middle choice. Program participants from FC and Peacemaking were asked the whole

²⁰ One of the "sub" intentions of this survey was to evaluate a respondent's ability to understand Navajo philosophical constructs that can be associated with such terms as *nayéé* and *hóchó*. An analysis of this part of the project will appear in a future paper.

²¹ This larger contextual understanding emerges from the data set through simple correlations, as well as running a conventional factor analysis on the core outcome variables.

range of outcome variables listed earlier in exactly the same wording with the obvious exception of the justice venue references.²² Where respondents were uncomfortable in English, interviewers were able to read survey material in Navajo.

With respect to the entire battery of core outcome measures (see page 17 for that list), participants in Navajo peacemaking were very satisfied with the process. Below are the raw frequencies for each of the core outcome measures.

Table 2 Hearing Fairness Among Peacemaking Participants

		Hearing fairness			
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	19	33.3	33.3	33.3
	Agree	27	47.4	47.4	80.7
	Neutral	4	7.0	7.0	87.7
	Disagree	5	8.8	8.8	96.5
	Strongly disagree	2	3.5	3.5	100.0
	Total	57	100.0	100.0	

²² The term “judge” was substituted for the term “*naat’ááni*” in the FC surveys.

Table 3 Hearing Fairness Among Family Court Participants

Hearing fairness

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	4	10.8	11.1	11.1
	Agree	14	37.8	38.9	50.0
	Neutral	7	18.9	19.4	69.4
	Disagree	7	18.9	19.4	88.9
	Strongly disagree	4	10.8	11.1	100.0
	Total	36	97.3	100.0	
Missing	System	1	2.7		
Total		37	100.0		

Table 4 Experiencing *Hózhó* among Peacemaking Participants

Experienced hozho

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	26	45.6	45.6	45.6
	Agree	19	33.3	33.3	78.9
	Neutral	5	8.8	8.8	87.7
	Disagree	5	8.8	8.8	96.5
	Strongly disagree	2	3.5	3.5	100.0
	Total	57	100.0	100.0	

Table 5 Experiencing *Hózhó* Among Family Court Participants

Experienced hozho

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	6	16.2	16.7	16.7
	Agree	17	45.9	47.2	63.9
	Neutral	3	8.1	8.3	72.2
	Disagree	6	16.2	16.7	88.9
	Strongly disagree	4	10.8	11.1	100.0
	Total	36	97.3	100.0	
Missing	System	1	2.7		
Total		37	100.0		

These last two variables are apparently measuring the same perception (they co-vary) and suggest support of Tyler’s theory of perceived justice satisfaction noted earlier. In both Peacemaking and FC, “petitioners” are defined as those individuals who have requested the proceeding or judicial intervention and “respondent” is defined as the individual “causing” the harm. It is important to note that the experience of *hózhó* and perceived fairness did not differ substantially between petitioners and respondents.²³ Both groups were overwhelmingly satisfied with the Peacemaking process with respect to experiencing justice and fairness. The comparative relationship is summarized below.

Table 6 – Summary of Fairness and Hozho Variables

Agreement in process satisfaction on the “fairness” and “hozho” variables	
Peacemaking/Fairness	81%

²³ However, respondent approvals were substantially higher in the Peacemaking population. The respondent population among the FC cohort was probably too low to draw any kind of statistical conclusions.

FC/Fairness	50%
Peacemaking/Hozho	79%
FC/Hozho	64%

Differences in rates among the “fairness” and “*hózhó*” variables were tested using a t test for independent groups. The resulting hypothesis test clearly rejects the null hypothesis indicating a statistically significant difference in the program’s core objectives ($p < .022$).

On a statistical level of significance the two venues also differed with respect to the core issues of settlement. Peacemaking sessions were significantly more likely to result in a case settlement than cases taken to Family Court. Tables 7 and 8 show the survey results for this variable.

Table 7 – Frequencies for Case Settlement Among Peacemaking Participants

Venue resulted in settlement

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	11	19.3	19.6	19.6
	Agree	33	57.9	58.9	78.6
	Neutral	5	8.8	8.9	87.5
	Disagree	5	8.8	8.9	96.4
	Strongly disagree	2	3.5	3.6	100.0
	Total	56	98.2	100.0	
Missing	System	1	1.8		
Total		57	100.0		

Table 8 – Frequencies for Case Settlement Among Family Court Participants

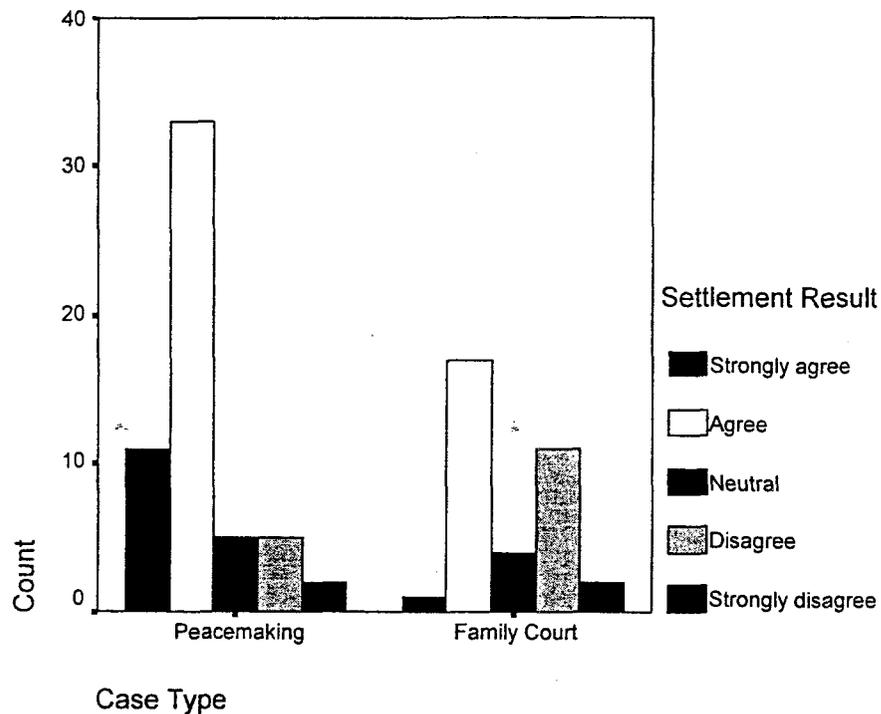
Venue resulted in settlement

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	1	2.7	2.9	2.9
	Agree	17	45.9	48.6	51.4
	Neutral	4	10.8	11.4	62.9
	Disagree	11	29.7	31.4	94.3
	Strongly disagree	2	5.4	5.7	100.0
	Total	35	94.6	100.0	
Missing	System	2	5.4		
Total		37	100.0		

Where only 51% of Family Court cases resulted in outcomes that survey participants perceived as a “settlement”, 79% of Peacemaking participants expressed their experience that Peacemaking was provided a sense of case settlement. This is a substantial difference and there is the possibility that settlement was more obtainable in Peacemaking, because it was dealing with cases possessing conflict issues of less gravity or seriousness. Since it was not possible to control for this factor, it is not possible to draw definitive conclusions. However, at this risk of stating this point too frequently, it was the overall impression of the principal investigator that the relative seriousness of conflict was *approx-*

mately similar between Family Court and Peacemaking Cases. Moreover, none of the involved justice officials in the Chinle District Courts suggested that there were qualitative differences between the two groups with respect to levels of inter-family violence and conflict. Below is a graphical representation of the two venues on the variable of case settlement.

Figure 1 – Comparison of Peacemaking and Family Court on Case Settlement by Actual Count



Differences between Family Court and Peacemaking on the “opportunity to express my feelings” were even greater than the issue of case settlement. If justice is associated with having the opportunity to tell one’s story and to know that your story is important and is a factor in the experience of fundamental fairness, then Peacemaking has a very substantive

advantage over conventional Family Court. Here the level of statistical significance was <.000. Differences by case venue are shown in Tables 9 and 10.

Table 9 – Frequencies on Having the Opportunity to Express One’s Feelings Among Peacemaking Participants

Venue gave me opportunity to voice my feelings

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Strongly agree	22	38.6	38.6	38.6
Agree	27	47.4	47.4	86.0
Neutral	5	8.8	8.8	94.7
Disagree	1	1.8	1.8	96.5
Strongly disagree	2	3.5	3.5	100.0
Total	57	100.0	100.0	

Table 10 – Having the Opportunity to Express One’s Feelings Among Family Court Participants

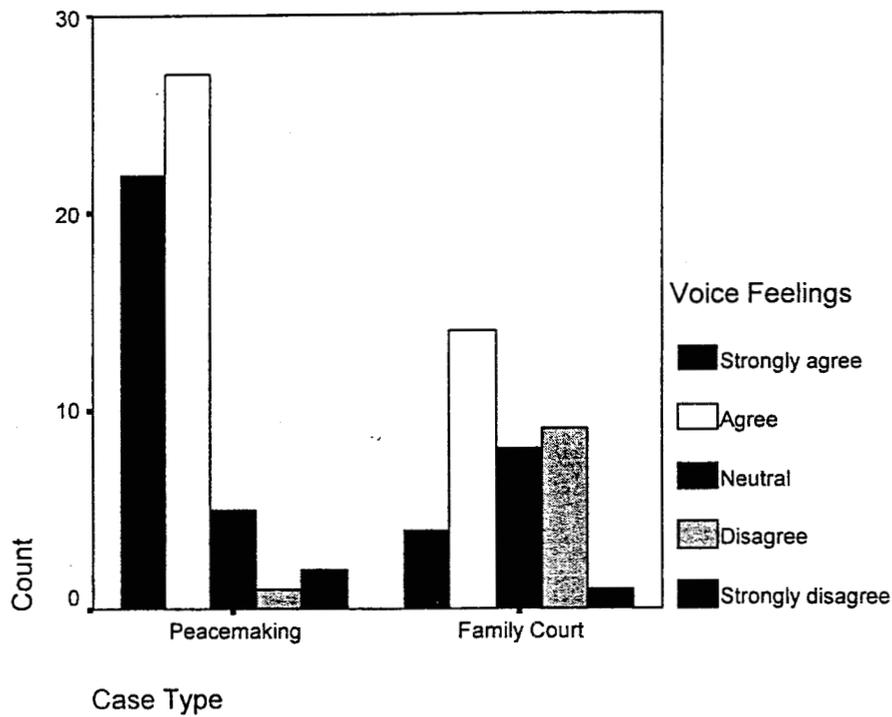
Venue gave me opportunity to voice my feelings

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Strongly agree	4	10.8	11.1	11.1
Agree	14	37.8	38.9	50.0
Neutral	8	21.6	22.2	72.2
Disagree	9	24.3	25.0	97.2
Strongly disagree	1	2.7	2.8	100.0
Total	36	97.3	100.0	
Missing System	1	2.7		
Total	37	100.0		

Among Family Court participants 50% agreed that the venue gave them the opportunity to express their feelings. This compares with 86% of Peacemaking participants. There is a developing literature within the restorative justice field suggesting that having the ability to tell your story is perhaps the key element in achieving satisfactory case settlements, in

cases where both victim and offender express high levels of satisfaction with the justice experience. Moreover, this literature is beginning to amass quantitative assessments on the effect of successful victim-offender mediation (VOMs) where in controlled experimental evaluation assessments, that indicate lower levels of recidivism among process participants (Umbreit 1994, Van Ness 1999) (although the difference was not statistically significant, which reflect the effect of low case numbers, were case frequencies greater, the same numerical relationship would likely be statistically significant). Below is a graphical representation of the difference between Family Court and Peacemaking on the variable of having the opportunity to express one's feelings.

Figure 2 – A Comparison of Having the Opportunity to Express One's Feelings in Family Court and Peacemaking



Rates for Fairness, Voicing feelings, and Clarity of Explanation all differed significantly between FC and Peacemaking, with Peacemaking having higher approval status in each of these key variables. This is an interesting point, because on the vector of case settlement, there is not a statistically significant differential (although there is a substantial frequency difference where Peacemaking is perceived as more likely to result in a positive case settlement). Therefore, the intuitive assumption of case settlement as a pivotal issue in process satisfaction is not explicitly supported in this data set. This supports Tyler's analysis of justice satisfaction measures mentioned above. Process satisfaction depends on perceptions of fairness and not, explicitly, on the case outcome.

The outcomes were examined for possible variations associated with religion, income, education, use of alcohol, gender, age, and residential environment. Rates of Peacemaking process satisfaction and settlement were consistent throughout the range of each of these variables. Therefore high levels of satisfaction for Peacemaking prevail across all primary social and demographic divisions.²⁴ It is also interesting to note that the second strongest association occurs in the area of “*naat’áanii*/judge helped with settlement” ($p < .001$). The *naat’áanii* is an active and potentially critical component to the success or failure of the Peacemaking session. This survey clearly indicates the higher esteem (or approval) attributed to *naat’áanii*’s in comparison with the western justice process judge. The western judge is imbued with symbolic and real authority associated with Anglo-American administrative law.²⁵ Family Court Judge Ray Gilmore, who presides over Chinle’s Family Court, states that the greatest difference between his Court and Peacemaking is that in the latter venue, each participant is given essentially unlimited time to “talk things out”. In his court, the formal rules of civil court determine how cases are handled. The judge is required to conform to civil procedures associated with the adjudication of domestic, small claims, and probate issues. This is starkly different from Peacemaking, where there is the understanding, founded within Navajo common law, that each person is responsible and accountable for his/her “journey”. From the perspective of a judge or *naat’áanii*, western procedure is established through the maintenance of rules

²⁴ This issue is discussed in much more detail in Part 2 of this report.

²⁵ Such symbolic associations with power and authority have no cultural precedent in Navajo culture.

and Peacemaking by open problem solving. Focus group data consistently reaffirm this difference. From the Navajo perspective, the process of truth finding is the intrinsic and central goal of the traditional justice process. Placing primacy in rules and formal procedure is anathema to Navajo Peacemakers (but not to the Nation's Family Court judges who see the application of the civil rules as perhaps the single most important distinction between their venue and that of Peacemaking). Systems that are rule dependent are perceived as antagonistic to truth finding from a traditional Navajo perspective. Navajo justice officials understand the need for rules and structure, but believe that their concrete role in the justice process should be minimized and take on an explicit aspect of the process.

But how is one to recognize the "truth"? Peacemaking provides a forum for people in dispute to work out their differences within the context of traditional Navajo custom. Thus it is the actual participants, with the assistance of the *naat'áanii*, who fashion their own hearing outcomes.²⁶ The truth emerges through the extensive talking out phase of Peacemaking.²⁷ Ideally, as layers of denial are peeled away through the complex interac-

²⁶ Truth, from the Native perspective, is entirely plastic and is inevitably a factor of the inter-relationships found in specific contexts.

²⁷ Discussions with western treatment specialists have often centered around the similarity of Family Therapy with Peacemaking, because it involves extended relations. I believe that there are two important distinctions between Family Therapy and Peacemaking. One, conventional therapy sessions are limited to less than an hour, while Peacemaking sessions can easily take more than five hours; and two, Family Therapy is usu-

tions of direct participants (petitioners/respondents), other nuclear family, extended family, and community, the cathartic moment approaches. The attainment of truth occurs when feelings between disputants are fundamentally transformed and there is a heart level experience of harmony. Obviously catharsis is an optimum process outcome. Interviews with Peacemakers (*naat'áanii's*) suggest that it happens regularly, but it is not possible to ascertain its rate. Since it is dependent on the individual Peacemaker, the honesty of the participants, the emotional receptivity of the respondent, and the flow of verbal and non-verbal interaction between participants, its incidence and predictability is not possible to estimate. However, this catharsis has been described as a transition in the mode of communication. This change has been identified as commencing at "head to head" communication, which evolves to "head to heart" communication and ends as "heart to heart" communication (Grohowski; 1995). It is at this level of communication that authentic catharsis can occur.

It is important to note that the perception of a *naat'aanii*/judge's fairness is not strongly linked to the perception of the *naat'aanii*/judge's capacity to help with the case settlement. Thus Family Court participants appear to perceive western type judge's as fair, but not necessarily helpful in case settlements. Peacemaking participants clearly express the central and influential role of the *naat'áanii* in sustaining and concluding successful

ally inclusive to including the nuclear family, while Peacemaking can include much of the effected community and far larger family groupings.

Peacemaking sessions. In comparison the FC judge is perceived as relatively unhelpful despite his/her fairness.

Among the most important aspects of program efficacy is the perceived effect a particular program has to prevent or minimize the re-occurrence of the presenting problem. While raw frequencies indicate that problem re-occurrence was more frequent among FC participants, the difference was not found to be statistically significant.²⁸

Table 11 - Test of Problem Re-Occurrence on Case Venue

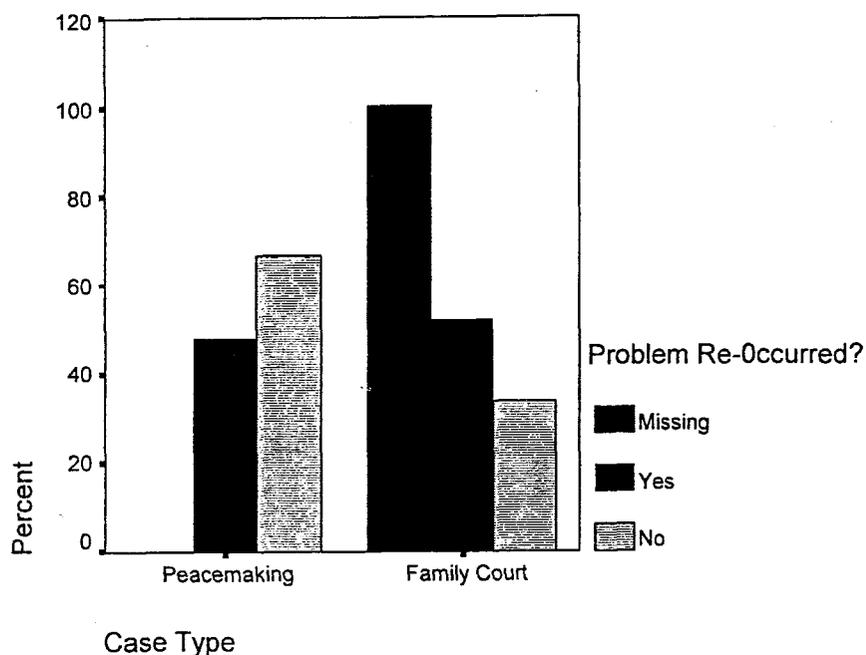
Independent Samples Test			
		Has problem reoccurred	
		Equal variances assumed	Equal variances not assumed
Levene's Test for Equality of Variances	F	8.988	
	Sig.	.004	
t-test for Equality of Means	t	1.671	1.614
	df	91	66.062
	Sig. (2-tailed)	.098	.111
	Mean Difference	.16	.16
	Std. Error Difference	9.62E-02	9.97E-02
	95% Confidence Interval of the	-3.03E-02	-3.82E-02
	Lower Upper	.35	.36

Given the very low incidence of problem re-occurrence, non-parametric testing was used to evaluate differences in the subsequent (to court process) occurrence of the presenting problem. As Table 12 indicates a significant difference in recidivism is not noted between the two court venues.

Figure 3 – Problem Re-Occurrence by Court Venue Type

²⁸ Based on a t hypothesis test.

Problem Re-Occurrence by Court Venue



While the rate of problem re-occurrence is fairly close the rate of respondents reporting that the problem has **not** re-occurred is substantially different between Peacemaking participants and those whose case was processed by Family Court. Where over 65% of Peacemaking participants reported that the problem had not reoccurred, only about 37% of Family Court respondents reported that the presenting problem had not reoccurred. Were the numbers larger, this difference would likely be statistically significant.

The Alcohol Factors

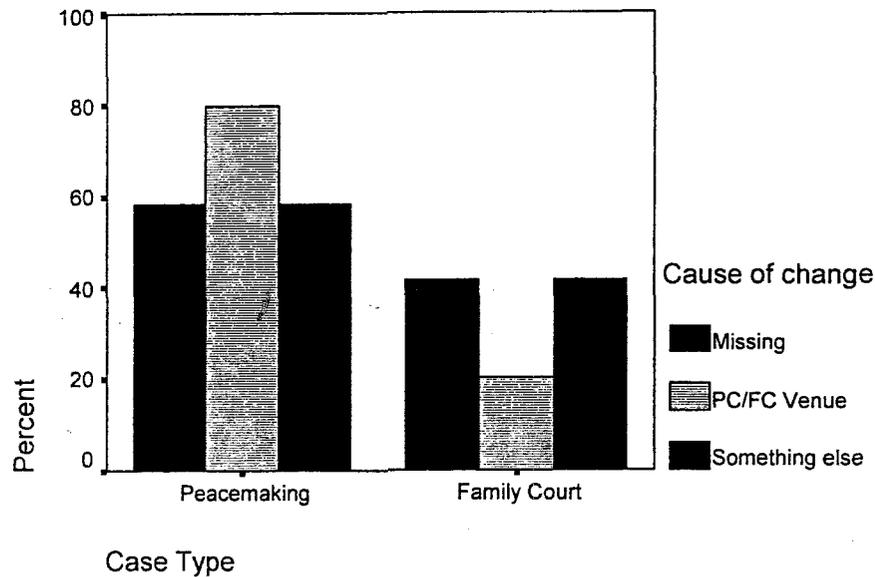
While over half of the cases involved the use of alcohol as a factor in the family problem, that rate was less than expected. Since most of the survey respondents fell into the petitioner's category, most reported that it was the "other's" drinking that was the source of

the problem. However, about 40% of the Peacemaking respondents reported that it was their use of alcohol that was a major cause of their dispute and 25% of the FC respondents reported similarly. This variation is probably associated with a higher rate of petitioner responses in the FC category. While many respondents reported that their rates of alcohol consumption declined or stopped altogether after their hearing, those that went through Peacemaking attributed that change to the Peacemaking process, while those processed in FC tended to report that it was “something else” that motivated the change. A reduction in alcohol use in the family was associated with lower rates of problem recurrence, but the association was not statistically significant. The source of the change is shown in the bar chart below.

Figure 4 – Self-Reported Source of Alcohol Use Change

Identified Source of Change

Use of Alcohol



The chart above shows that only two FC respondents reported that the source of their change in alcohol use was something learned or experienced in Family Court, while 8 of 15 respondents in Peacemaking attributed the change to their Peacemaking session. In summary, individuals who selected or were referred to Peacemaking showed higher rates of alcohol use change in the primary direction of stopping altogether than those processed through FC. In addition, problem re-occurrence was higher among FC participants, which may be, in part, explained by higher rates of post-adjudicational alcohol consumption. These results continue to add to the overall perception that Peacemaking was more effective in establishing patterns of inter and intra family harmony than those cases processed through FC. While these differences might be attributed to variance in selection between

the two venues, interview information suggested that prolonged and intensive alcoholism was consistent throughout each of the groups.²⁹

There was an interesting pattern noted when the relationship between alcohol use change was tabulated against age categorization. Peacemaking as a source for that change was consistently more identified as the source for that change among younger participants. None of the oldest Peacemaking participants noted the Peacemaking process as a source for that change, while most of the youngest participants identified Peacemaking as the inspiration for that change. This relationship between youth and tradition as catalyst is seen throughout the data set and is explored in more detail in Part Two of this report.

Conclusion

This study suggests that Peacemaking offers individuals and groups experiencing conflict a compelling opportunity to achieve resolution and community/family justice. Overwhelmingly process participants expressed their sense of *hózhó* with Peacemaking, indicated a pervasive sense of fairness with the process, experienced higher levels of case settlement, expressed their view that Peacemaking allowed them to communicate their feelings much more freely and maintained the centrality of the *naat'áanii* as essential to the process. These data are bolstered by the fact that many of the Peacemaking participants had previously dealt with family conflict within Family Court and had a personal basis of comparison. Moreover, Peacemaking was shown to be, in terms of delivering a sense of

²⁹ Obviously the amount and time span of use varied *within* each of the groups as well.

justice, a more powerful court venue than Family Court in each of the core variables.

While this study supports these conclusions and suggests that they are likely to be significant, these statements need to be understood within the proviso that the sample size was small and the methodological design was not random.

Peacemaking participants show a rate of reoccurrence of the presenting problem of 29%, while those processed through FC show a rate of 64%. In part, this difference may be linked to potential selection bias that FC deals with more violent and embedded types of conflict. While my own fieldwork does not necessarily support this contention, it does not rule it out either. This is an area where additional research is needed. But even if there is a selection bias effect in the variation of rates noted above, I do not believe that this difference can be attributed to case selection differentials. This study would contend that Peacemaking is more effective than FC in reducing conflict within and between families and neighbors.

It was the objective of this study to assess and evaluate the efficacy of Peacemaking to reduce family conflict based on the outcome measures selected by the program administrators in Window Rock, the capital of the Navajo Nation. While it was not possible to resolve problems associated with case selection, this study supports program administrators and participants reported experiences, that Peacemaking is more efficacious than FC in reducing family conflict and community disorder.³⁰

³⁰ My work with the Navajo Judiciary has convinced me that it will never be possible to remove selection bias effects from an evaluation/assessment of Peacemaking on the Navajo Reservation. It is the position of

As one clarifying point, Family Court participants were asked if they would have brought their case to peacemaking based on their current knowledge of this program. Of this group (n=37), only 24% disagreed with this statement, while over 47% responded affirmatively.³¹ This response would appear to add further support to the minimal effect of selection bias in this sample. If it were proposed that FC is used for more serious cases, because the gravity of the harm exceeds the capability of Peacemaking to deal effectively with it, then we would expect that most FC participants would reject Peacemaking as a viable alternative. Instead, the opposite is demonstrated in this data set. Were knowledge of Peacemaking as an alternative form of justice more available, then most of these FC cases (63% - see footnote 10) would have been heard in Peacemaking.

Robert Yazzie, the Chief Justice of the Navajo Judicial Branch, that venue referrals cannot be made on a random basis because he will not allow coerced referrals to Family Court or District Court for the sake of an outside observer's experimental design. He insists that individuals or groups wishing to use the services of Peacemaking will need to have the option available to them. I personally agree with his position. This study maximized on reducing selection bias by selecting cases where family conflict was at least on the customary level of felony battering was expressed by the case file or was at least substantially threatened, but was not able to entirely remove it.

³¹ If the "Neutral" response is split in half, then 63% of the FC respondents would have used Peacemaking had they knowledge of it when they brought their case to court.

Table 15 - Family Court Participants Who Would Have Brought Their Problem to Peacemaking Given Their Current Knowledge

From what I know now, peacemaking better

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	6	16.2	17.6	17.6
	Agree	10	27.0	29.4	47.1
	Neutral	10	27.0	29.4	76.5
	Disagree	7	18.9	20.6	97.1
	Strongly disagree	1	2.7	2.9	100.0
	Total	34	91.9	100.0	
Missing	System	3	8.1		
Total		37	100.0		

This study suggests that the peacemaking program has performed well on essentially all of the primary outcome measures. Based on the objectives of the venue's formulators and directors, it has succeeded extremely well, at least with respect to program participation within the Chinle District. These are important findings, since the case list drawn from Peacemaking was exhaustive with respect to selecting cases involving serious domestic and community strife. However, several vital qualifiers are in order. The quality of Peacemakers may vary throughout the vast Navajo Nation. It is possible that the Chinle area has a particularly effective group of Peacemakers in comparison with other Districts. In addition, we need to remember that Family Court *may* be engaging a population less amenable to resolution in a manner that would be conducive to producing systemic satisfaction among program participants. Moreover, even if their cases are resolved, the process can be potentially painful and shaming. The personal agony of domestic abuse is likely to influence perceptions of justice and *hózhó* among Family Court

participants. How these factors are manifested within each of the justice venues is an area for future research.

However, as a first step, this survey indicates the profound power of Navajo Peacemaking in addressing issues of family and community conflict in a manner that inspires confidence and satisfaction among participants. The program has been shown, in a preliminary sense, to be highly effective in dealing with a broad range of problems. Moreover, Peacemaking settlements appear to possess enduring positive consequences. This might be seen as a particularly remarkable achievement given the relative financial poverty of the program. Currently Peacemaking uses minimal monetary and physical resources. Its developers have taken on a large task with very little financial support and have crafted a program that appears to demonstrate a positive capacity in dealing with some of the most challenging social problems.

Appendix 1: A Description of an Actual Peacemaking Session

Unless one has witnessed a Peacemaking session, this is a difficult process to express in mere language. If I may stray from the province of social science verbiage, I believe that it might be helpful to describe a Peacemaking session that I personally witnessed to approach this process from a different perspective, which I believe will make it easier to understand. A detailed description of a Peacemaking session also will allow readers to explore the function of shame/guilt and its complex association with process outcomes. I tend to believe that the interaction of 'reintegrative shaming' (Braithwaite; 1989) is more complex than it is affectively described by Braithwaite. I hope to have the opportunity to investigate this critical issue in considerably greater detail in a future paper.

This case involved a young man battering his mother in the face with a rifle butt. He had a long rap sheet and had been in and out of jail many times. Each time his family bailed him out shortly after his internment. However, in this case his family decided to let him sit in jail for about three weeks prior to his arraignment in District Court. In addition, this man was an alcoholic.

Attending the session was the man's parents, his brother's family (wife and young child), his girl friend and their young child, a *naat'aanii*, the Peacemaker liaison, and myself.

The session began with the *naat'aanii* making a joke in Navajo (not translated, but everyone in the room, beside myself, laughed heartily). He then intoned a solemn prayer in Na-

vajo, but consisting of Christian content.³² Then the mother (victim) spoke in Navajo, but I received a complete translation. She spoke uninterrupted for over 50 minutes and did not mention the violent incident once. Instead, she spoke of her experience as this man's mother. She went back to the time of his birth, of rocking him in her arms, of watching the moon together, of singing to him. She spoke at length of her dreams and hopes for him, how proud she was of him. As she spoke the tears began to flow around the table. Everyone was grabbing for tissues. When the mother spoke she usually looked directly at her son, but he tended to avoid her eyes by putting up a hand to block her view. His girl friend tried to hold his hand, but he shooed her away. She ended her talk with a request, that she did not want an apology from his son, but only his appreciation for her as his mother. And then, she reaffirmed her dreams for him.

Everyone was weeping, when the naat'aanii spoke of what a blessing it is to have our parents alive, when we are grown up. Now the children have the wonderful opportunity to care for the parents, as they cared for us when we were dependent on them. He said that his own father was incontinent and of the joy he experienced in changing his undergarments. And why is this a joy, he asked. It is a joy because it allows us to reciprocate and bring balance to the world (this is one of the most intrinsic Navajo universal truths). As he spoke the weeping continued.

³² For each Peacemaking session, the petitioner is asked to choose a preferred religion. The choice consists of "Traditional", "Native American Church", and "Christian". For this hearing Christian was the requested religion.

Then the man's father spoke. He was a big, tough looking person wearing typical "cow-boy" type clothes, yet he spoke as gently and dreamlike, in a manner similar to that of his wife. He spoke of his dreams and hopes for his son. He did not speak as long, but when he spoke he also looked straight at his "boy". The man (batterer) continued to avoid looking at his family. Like the mother, the father never mentioned the actual event that was the cause of the Peacemaking session. The father's words focused on his dreams and hopes for his wayward son. As he spoke there was frequent weeping around the table.

The next person to speak was the batter's brother. His talk introduced the redemptive power of Christ into the session. The brother talked about his own experiences as an alcoholic and an abuser. His own transformation was credited to the influence of Christ in his life. Now he had a good job and a healthy family. He physically reached out to his brother and held his hands as he spoke. Like his parents, he spoke of his dreams, hopes and familial aspirations. Throughout his tone was filled with a very intense sincerity.

Finally, it was the turn of the batterer to speak. Fortunately for me, most of his talk was in English. He talked about his life abusing alcohol, of getting into trouble with the law, of beating up his girl friend. He complained to his family, that when he was arrested, they quickly bailed him out of jail. This time was different. For this offense he spent over three weeks in Navajo jail. This is a particularly inhospitable environment. He shared a residence with a convicted murderer who was awaiting transfer to a federal facility. Together they started a Jesus Christ study group, which grew to encompass nearly the whole facility.

Navajo worldview says that our “soul” is conceived when “holy wind” enters the mother’s womb at the time of conception (McNeely; 1981). The unique swirl of the wind is visible on the body at the crown of the head, on the tongue and on the tips of one’s fingers and toes. Handshaking is common among Navajo people, but I believe that its meaning and social context is somewhat more intimate than the formal greeting ritual common in western society. For Navajos handshaking is a literal touching of souls. This very brief digression has been placed into this part of the narrative to help in understanding the next phase of the Peacemaking.

The son ended his talk by looking straight at his mother. He described himself as an artist. And that as an artist he was “a painter of sunsets”. Then he reached out to his mother and placed his whole hand onto his mother’s hand in such a way to allow for each of the finger tips to touch directly. He then said that through the power of Christ and this Peacemaking session, that he will now be dedicated to paint “only rising suns”. He pledged his love for his mother and vowed to no longer drink alcohol or abuse anyone. The whole table was in tears and it was difficult even for me to watch this event without becoming overcome by the sheer intensity of the emotional environment.

The *naat’aanii* then asked all of us (me included) to hug the people around each of us thus forming a connected circle. With our arms around each other, he intoned a prayer in Navajo. He then said a joke causing raucous laughter around the room and the session ended with handshakes and smiles.

I have included this lengthy description of a Peacemaking session to try to help the reader get a “feel” for the process using a narrative approach and to obtain a sense of the ex-

traordinary emotional power of the process. My own observations would suggest that it is this element that is potentially transformative and enduring. This is community justice in its most entirely unprofessional form.

Appendix 2 – A Brief Quantitative Review of the Core Variables

A Statistical Analysis of Core Variables

The table below shows a means comparison for the survey’s key variables. While this analysis indicates that Peacemaking is significantly more successful in creating a positive justice experience than Family Court, several provisos are in order. One, the design of this project did not allow for a true control/test group comparison, secondly, all Family Court proceedings were held before the same judge, while this individual is among the most esteemed of the Navajo Judiciary, it is likely that were data from another district used in the analysis, results would have been different. Given the respect and professionalism of this judge, it is entirely possible that the results would have been even more favorable to Peacemaking.

Independent Samples Test

Equal variances assumed									
	Levene's Test for Equality of Variances		t-test for Equality of Means						
	F	Sig.	t	df	Sig. (2-tailed)	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference	
								Lower	Upper
Hearing fairness	4.725	.032	-3.327	91	.001	-.79	.24	-1.26	-.32
Experienced hozho	2.775	.099	-2.686	91	.009	-.67	.25	-1.17	-.17
Venue resulted in settlement	4.962	.028	-3.232	89	.002	-.71	.22	-1.14	-.27
Venue gave me opportunity to voice my feelings	4.341	.040	-4.090	91	.000	-.85	.21	-1.27	-.44
Judge helped with settlement	10.416	.002	-3.746	90	.000	-.91	.24	-1.39	-.43
Judge/Naat'aanii was fair	.020	.888	-2.092	90	.039	-.51	.24	-.99	-2.56E-02
Judge/Liaison clearly explained process	4.503	.037	-3.526	91	.001	-.83	.24	-1.31	-.36

Focusing on the systemic effect of the judge, it is in this variable where the statistical differences between Peacemaking and Family Court are most extreme. With respect to the influence of the Peacemaker/Judge to contribute to case settlement, Peacemakers are evi-

dently far more influential in providing process participants a positive justice experience. If research on Victim Offender Mediation offers an explanation for this variance, it would suggest that this phenomenon is closely associated with the totally free opportunity for individuals involved in Peacemaking to tell their story and express their feelings. In Peacemaking the *naat'áání* is both a facilitator providing participants the opportunity to express their story and talk about their feelings.

Of equal importance is the stage where the individual stories are told. Peacemaking is fundamentally a ceremonial event. When the participant speaks, he/she is the primary actor and is accorded great respect. Never have I seen a speaker interrupted in a Peacemaking session. The opportunity to speak and to be heard is among the most critical elements in the justice process. If successful peacemaking is dependent on the catharsis of self-realization/understanding, then this factor is pivotal.

The relationship between the spoken story and respondent catharsis is the key to understanding Peacemaking. No native American language possesses a word for communication (Cooper 1998). The closest term in Navajo would be translated as “communion”. Successful Peacemaking is a ceremonial communion. In an ideal sense, the process benefits both the individuals involved in the conflict as well as the community.

List of References

Abram, David (1996). The Spell of the Sensuousness: Perception and Language in a More-Than-Human World, New York, Pantheon Books

Agnew, R. (1992). "Foundation for a General Strain Theory of Crime and Delinquency." Criminology 30(1): 47-87.

Agnew, R. (1993). "Why Do They Do It? An Examination of the Intervening Mechanisms Between "Social Control" Variables and Delinquency." Journal of Research in Crime and Delinquency 30(3).

Benedek, Emily (1996). Beyond the Four Corners of the World: A Navajo Woman's Journey, New York, Alfred A. Knopf.

Bluehouse, P. and J. Zion (1996). Hozhooji Naat'aanii: The Navajo Justice and Harmony Ceremony. Native Americans, Crime, and Justice. M. Nielsen and R. A. Silverman. Boulder, Colorado, Westview Press: 181-189.

Braithwaite, John (1989). Crime, Shame and Reintegration. London, Cambridge University Press.

Brown, J. E. (1985). The Spiritual Legacy of the American Indian. New York, Crossroad.

Brown, J. E. (1989). Becoming part of it. I Become Part of It: Sacred Dimensions in Native American Life. D. M. Dooling and P. Jordan-Smith. New York, Parabola Books: 9-20.

Cooper, Thomas W. (1998). A Time Before Deception: Truth in Communication, Culture, and Ethics. Santa Fe, Clear Light Publishers

Durkheim, E. (1972). Selected Writings. Cambridge, Cambridge University Press.

Durkheim, E. (1984). The Division of Labour in Society. London.

Farella, J. R. (1984). The Main Stalk: A Synthesis of Navajo Philosophy. Tucson, University of Arizona Press.

Garland, D. (1990). Punishment and Modern Society. Chicago, University of Chicago Press.

Grohowski, L. M. (1995). Cognitive-affective model of reconciliation. Yellow Springs, Antioch University.

McNeley, James K. (1981). Holy Wind in Navajo Philosophy. Tucson, The University of Arizona Press.

Merton, R. (1957). Social Theory and Social Structure. Glencoe, IL, Free Press.

Ross, Rupert (1996). Returning to the Teachings: Exploring Aboriginal Justice, Toronto, Penguin Books (Canada).

Reichard, G. A. (1977). Navajo Religion: A Study of Symbolism. Princeton, Princeton University Press.

Witherspoon, Gary (1977). Language and Art in the Navajo Universe, Ann Arbor, University of Michigan Press.

Yazzie, R. (1996). Traditional Indian Law, The Navajo Nation Judiciary.

Yazzie, R. and J. Zion (1996). Navajo Restorative Justice: The Law of Equality and Justice. Restorative Justice: International Perspectives. B. Galaway and J. Hudson. Monsey, Ny, Criminal Justice Press: 157-174.

Yazzie, R. and J. W. Zion (1995). 'Slay the monsters': Peacemaker court and violence control plans for the Navajo Nation. Popular Justice and Community Regeneration. K. Hazlehurst. Westport, Ct., Praeger: 67-88.

Zion, J. and E. B. Zion (1996). Hozho's Sokee'--Stay Together Nicely: Domestic Violence Under Navajo Common Law. Native Americans, Crime, and Justice. M. O. Nielson and R. A. Silverman. Boulder, Colorado, Westview Press: 96-112.

Zion, J. W. (1997). The Dynamics of Navajo Peacemaking. Western Social Science Association, Albuquerque, New Mexico.

Zolbrod, P. G. (1984). Diné Bahané: The Navajo Creation Story. Albuquerque, University of New Mexico Press.

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