EXPERIENCES OF FEDERAL PROSECUTORS AND INVESTIGATORS OF SEXUAL ASSAULT CASES OCCURRING IN INDIAN COUNTRY

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ABSTRACT

EXPERIENCES OF FEDERAL PROSECUTORS AND INVESTIGATORS OF SEXUAL ASSAULT CASES OCCURRING IN INDIAN COUNTRY

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This thesis is a qualitative evaluation of how federal criminal justice professionals work together in the investigation and prosecution of sexual assault cases on reservations. Historically, sexual assault was one of the tactics used by European settlers to control and dominate Native Americans, and this, among other colonial processes, has resulted in historical trauma that has continued to impact tribes to this day (Smith, 2015). Today, Native American women experience sexual violence at rates higher than any other demographic (Evans-Campbell, 2008; Riley, 2016). Another effect of colonialism was the establishment of the paternalistic relationship between the U.S. government and Indian Nations that many attribute partly to the creation of the General Crimes Act in 1834 and the Major Crimes Act in 1885 (Price, 2013; Riley, 2016; Rolnick, 2016; Sands, 1998). The General Crimes Act extended federal law to Indian Country for interracial offenses, and the Major Crimes Act diminished tribal sovereignty by mandating that certain felonies committed by Indians in Indian Country were to be investigated and prosecuted federally - sexual assault being one of these crimes. Although tribal courts retain concurrent jurisdiction in these cases, the Indian Civil Rights Act and the 2013 Re-authorization of the Violence Against Women Act have restricted tribal courts, who often refer sexual assault cases to federal criminal justice officials. This makes the Federal Bureau of Investigation (FBI) and U.S. Attorneys primarily responsible for the investigation and prosecution of sexual assault occurring

in Indian Country. This research aimed to understand the experiences of some of these federal criminal justice officials in the investigation and prosecution of sexual assault cases occurring in Indian Country. The findings of this research suggest a need for cultural and educational training to be required of federal criminal justice personnel who will be working in Indian Country, and they also question the necessity of federal criminal justice involvement in sexual assault cases occurring in Indian Country

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CHAPTER ONE: INTRODUCTION

Native Americans have had a turbulent and violent history with the United States federal government, and the trauma suffered by Native Americans has had devastating effects on tribes ever since European contact (Evans-Campbell, 2008; Poupart, 2002; Weaver 2009). Led by a belief in Manifest Destiny, or the "…belief that the indigenous people and their cultures were of no value and Western civilization had a duty to supplant and obliterate them," Europeans used many different forms of violence to kill, forcibly remove, and marginalize Native Americans in order to take their land (Hukill, 2006; Poupart, 2002; Weaver, 2009, p. 1553). This violence was rooted in structural oppression, and was legitimized and justified by the implementation of federal policies designed to further the assimilation and domination of American Indians (Evans-Campbell, 2008; Weaver, 2009). Among these forms of violence, most of which were rarely experienced by Native Americans prior to European contact, was sexual assault. Sexual violence was perpetrated by European colonizers onto Native American women as a "primary tool of conquest," which many have argued has turned Native American women into "rapable" objects (Bubar and Thurman, 2004; Hukill, 2006; Poupart, 2002; Smith, 2003, p. 73; Smith, 2015; Weaver, 2009, p. 1555). Although there were many other methods used to marginalize Native Americans, gender-based violence was one way of violating both people and their land by instilling patriarchal values and gender roles in tribes, who were oftentimes matrilineal with relatively low rates of domestic violence or sexual assault pre-colonialism (Hukill, 2006; Poupart, 2002; Weaver, 2009).

The trauma endured during colonialism due to violence of all kinds, forced relocation, disease, and various assimilation attempts was so collectively destructive that it has been transmitted intergenerationally (Evans-Campbell, 2008; Gebhart and Woody, 2012; Weaver,

2009). This intergenerational transmission of historical trauma permeates many Native American communities, who continue to experience violence at much higher rates than any other racial or ethnic group in the United States (Bubar and Thurman, 2004; Hukill, 2006; Weaver, 2009). Native American women experience sexual assault at three-and-a-half times the rate of the general population, and "…report domestic violence more than any other population" (Weaver, 2009, p. 1557). More than one in three Native American women is sexually assaulted in her lifetime (Rosay, 2016). 56% of Native American women have experienced sexual violence (Rosay, 2016). Native women are also more likely to be injured or killed as the result of s sexual assault, and "…a larger percent of victimizations against American Indian…women are committed by white offenders compared to American Indian and Alaska Native offenders (Bachman, Zaykowski, Kallmyer, Poteyeva, Lanier, 2008, p. 38). The fact that the majority of people who commit sexual assault against Native American women are white becomes especially problematic because, due to the court's decision in *Oliphant v. Suquamish Indian Tribe,* tribes do not typically have the jurisdictional power to prosecute non-Native perpetrators (*Oliphant v. Suquamish Indian Tribe,* n.d.; Weaver, 2009). Federal policies, such as the General Crimes Act, the Major Crimes Act, and the Indian Civil Rights Act, have mostly served as obstacles to tribal courts, who may be able to better address these issues (Evans-Campbell, 2008; Hukill, 2006; Smith and Ross, 2004; Weaver, 2009).

It has been well documented that Native Americans experience sexual violence at rates higher than any other demographic (Bachman et al., 2008; Evans-Campbell, 2008; Poupart, 2002; Weaver, 2009). Federal legislation such as the General Crimes Act, Major Crimes Act, and the Indian Civil Rights Act have succeeded in disempowering tribal courts and giving more power to the federal government (Poupart, 2002; Smith and Ross, 2004). Prior to European

contact, tribes had their own methods of social control and their own definitions of crime, but a commonality found within many tribal justice systems was the goal of restoring harmony to the victim and the community (Ennis and Mayhew, 2013; Lujan and Adams, 2004; Russell, 2006). Because of these federal statutes, federal investigators and prosecutors are responsible for both looking into, and deciding whether or not to prosecute, many crimes occurring in Indian Country, including sexual assault (Gebhardt and Woody, 2012; Smith and Ross, 2004; Weaver, 2009). Despite this fact, federal investigators and prosecutors declined to prosecute more than two-thirds of the sexual assault cases they received in 2013 (Amnesty International, 2007; Bubar and Thurman, 2004; Gebhart and Woody, 2012; Poupart, 2002).

Federal prosecutors have cited a few reasons for this major lack of prosecution: (1) the difficulties of prosecuting sexual assault cases in general, but especially the difficulties in prosecuting any cases occurring in Indian Country; (2) lack of evidence; and (3) a lack of witnesses (Government Accountability Office, 2010, p. 3). Violent crimes, such as sexual assault, rarely leave any evidence or have any witnesses, which makes them hard to prove and could explain the high rates of declination (Government Accountability Office, 2010). In addition to this, "…federal…prosecutors may encounter difficulties developing the rapport and trust needed to encourage a [Native American] victim to see a case through, because they are often not located in the community…" (*Indian Country Investigations and Prosecutions,* 2014, p. 38). Not being a member of the community that they serve means that federal prosecutors may not be aware of the culture of the community or the needs of the community, and they may not be trusted by the community (Riley, 2016). Overall, "…the federal government simply does not have the time, money, or incentives to investigate and prosecute most Indian Country crimes," including sexual assault (Riley, 2016, p. 1587).

Due to the restrictions imposed on tribal courts, tribal courts tend to depend upon federal prosecutors and investigators to provide justice for Native American victims of sexual assault, and the fact that most of these cases are not properly investigated and/or prosecuted by the FBI and/or U.S. Attorneys further victimizes these women, discourages victims from reporting sexual assault, and, oftentimes, results in a total lack of justice for Native victims of sexual assault (Amnesty International, 2007). It is for these reasons that I suggest that tribal courts and tribal justice officials may be able to better assist Native American victims of sexual assault if they were given more authority to do so. My research question will focus on this aspect of sexual assault in Indian Country: What are the experiences and/or perceptions of federal criminal justice professionals in northern Arizona regarding the investigation and prosecution of sexual assault cases occurring in Indian Country? A second question I would like to answer is: What do federal criminal justice professionals think about the possibility of giving tribal criminal justice systems more authority to investigate and prosecute all types of sexual assault cases that occur in Indian Country? Since I am trying to understand the perceptions and experiences of federal criminal justice officials when they work on sexual assault cases occurring in Indian Country, I interviewed one former U.S. Attorney, and two agents from the Federal Bureau of Investigation (FBI). Though this is a small sample size and will not be generalizable to all federal criminal justice officials, it will help me in understanding their insight into these cases.

For the purposes of my research, Indian Country will be defined as, "…all lands within an Indian reservation, dependent Indian communities, and Indian trust allotments" (Bureau of Justice Statistics, 2017). Specifically, my research will pertain to Indian Country in northern Arizona, which includes Hopi, Navajo, Havasupai, Hualapai, and Kaibab-Pauite land. Although the Navajo Nation is the largest reservation in the United States, the former U.S. Attorney and

FBI Agents who I interviewed were responsible for prosecuting and investigating in all of the above areas mentioned. My research will also pertain to Northern Arizona, which includes Flagstaff, Prescott, Sedona, Page and Williams. When I use the term "federal prosecutor," I am referring to U.S. Attorneys, defined as "an attorney, acting under the direction of the Attorney General, who enforces federal laws within his or her jurisdiction and represents the federal government in civil and criminal cases" (Cornell Law School, 2010). The term "federal investigator" will refer to an agent working within the FBI, who is responsible for investigating violations of federal law. Sexual assault will be defined as "…any type of sexual contact or behavior that occurs without the explicit consent of the recipient. Falling under the definition of sexual assault are sexual activities as forced sexual intercourse, forcible sodomy, child molestation, incest, fondling, and attempted rape" (U.S. Department of Justice, 2017). When I use the terms "sexual assault" or "sexual violence" I am referring to the FBI's definition of sexual assault in the previous sentence. Since the Navajo Nation is the largest reservation in the United States and 97% of those who live on it are Native American, I would expect to find that the majority of the sexual assault cases occurring on the Navajo Nation are between Indian perpetrators and victims (http://www.discovernavajo.com/fact-sheet.aspx). I am unsure of the demographics of the other reservations located in northern Arizona. The questions I asked in my interviews did not focus on the race of the perpetrator; they only focused on sexual assault cases involving Native American victims in Indian Country. Since sexual assault cases involving both Native and non-Native perpetrators have the potential to be prosecuted federally, I will be including all sexual assault cases involving Native American victims that are referred to the FBI and U.S. Attorneys in my research.

This paper will begin by going over the literature that is relevant to my study. This will include the theoretical frameworks of colonialism and the intergenerational transmission of historical trauma that has resulted from it, as it is essential to understand the impact of sexual assault on Native Americans within these contexts. The review of literature will also include information on the pieces of federal legislation that have affected the way sexual assault in Indian Country is classified and prosecuted, and how this has led to a neglect to protect Native Americans. This chapter will finish by going over typical issues faced by victims, investigators, and prosecutors of sexual assault cases, both in general and at the federal level. The next chapter will discuss the methodology of my research, including the process of gathering my sample, the procedure of collecting my data, and the way in which the data was analyzed. Following that chapter, I will discuss the analysis of my findings by naming and defining themes that I found within the data I collected. The final chapter will include a discussion of my findings, the limitations of my study, and recommendations for further research.

CHAPTER TWO: REVIEW OF LITERATURE

Introduction

A theoretical literature review is an examination of the "…corpus of theory that has accumulated in regard to an issue, concept, theory, phenomena" (How to Conduct a Literature Review, n.d.). This chapter is a theoretical literature review, as it is will go over the the theory of colonialism and the relevant literature that is pertinent to understanding the issue of sexual assault in Indian Country. It will begin by introducing the theories of colonialism and historical trauma. This will then lead into the paternalistic federal statutes that have both taken power away from tribes, and have failed to protect Native American victims of sexual assault. The chapter will conclude by discussing sexual assault, both generally and in the context of Indian Country, in terms of the issues faced by victims, prosecutors, and investigators.

Colonialism

It would not be appropriate to discuss the sexual violence experienced by Native Americans without first addressing the theory of colonialism and the impact colonialism has had on Native American peoples, as this is the context in which sexual violence has occurred and continues to occur in Native American communities. Colonialism is defined as "…the displacement and undermining of societies, including their values, cultures, beliefs, and ways of life by outside peoples…" (Weaver, 2009, p. 1552). Colonialism, as opposed to colonization, is a more appropriate term for the purposes of this research because it implies that these processes are ongoing, rather than finished and in the past. European settlers first arrived in North America in the 1500s. Led by the Doctrine of Discovery and Manifest Destiny, Europeans felt entirely justified in forcefully taking land and resources from the Native inhabitants, who they deemed to be inferior and savage (D'Errico, 1999; Dörr, 2013; Hixson, 2013; Loewen, 2008; Weaver,

2009). It is important to note that Native American tribes were well-established, organized, and relatively peaceful prior to European contact; however, the belief that Native peoples were "savage" or somehow "uncivilized" was so pervasive that it continues to this day (Hixson, 2013; Weaver, 2009). The Doctrine of Discovery was established by the Pope and first utilized by the Spanish, but continued to be the driving force of later colonizers, including the English (Hixson, 2013; Loewen, 2008). It stated that, in the name of Christianity, European settlers were justified in whatever tactics they wished to employ in order to "civilize" the savage Indian and gain control of their land - the enforcement of Christianity being an essential part of this "civilization" (D'Errico, 1999; Dörr, 2013; Hixson, 2013; Loewen, 2008).

The mission of the Doctrine of Discovery would not have been successful without the help of the influx of new diseases. Europeans brought a plethora of new diseases that Indians had not been previously exposed to, and were, therefore, unable to fight off. Loewen estimated that there were about ninety-three epidemics among Native Americans post-European contact, and that these epidemics were responsible for the deaths of millions of indigenous people (Loewen, 2008). European settlers utilized many different forms of violence, war, and exploitation in order to dominate, and maintain control over, Native Americans. Physical, psychological and sexual violence were among the many techniques of colonialism; many of these techniques were very new to the relatively peaceful tribes. Among these methods of control, sexual violence perpetrated by European colonizers was perhaps the most damaging form of violence for Native American women (Bachman et al., 2008; Smith and Ross, 2004; Smith, 2005; Weaver, 2009).

Prior to European contact, many tribes were matrilineal; women were the property-owners and gender roles were typically very balanced (Weaver, 2009, p. 1554). However, colonialism imposed the patriarchy and a devaluation of women that have been internalized and

have persisted among many tribes to this day (Smith and Ross, 2004; Weaver, 2009). One of the ways this was done was by the perpetration of sexual violence by European settlers against Native American women. Rape and sexual assault have been understood to be tools used by men to assert dominance and control over women and whole peoples. European settlers utilized these actions for the same purpose. Sexual assault and/or rape helped reinforce the dehumanization of, and maintenance of control over, Native populations (especially Native women), which were two of the main purposes of colonialism (Bachman et al., 2008). Federal policies aimed at destroying the identity of indigenous peoples and forcing their assimilation into the dominant Western culture reflected this sentiment as well. For example, in the late 1800s and continuing into the 1900s, sexual violence towards American Indians became institutionalized through the forced removal of Indian children to off-reservation boarding schools where the majority of them were sexually abused and stripped of their culture (Bachman et al., 2008; Bubar and Thurman, 2004; Engel, Phillips, and DellaCava, 2012; Smith, 2005; Weaver, 2009).

Ravaged by war, disease, and abuse, American Indians were not the same after contact with European colonizers. The sexual violence experienced by Native American women must be examined in the context of colonialism, as many have argued that colonialism has facilitated and permitted sexual violence to happen to Native American women (Bachman et al., 2008; Bubar and Thurman, 2004; Smith, 2005; Smith and Ross, 2004; Weaver, 2009). The legacy of sexual violence is especially evident in the way that it continues to affect the lives of many Native women today. Native women, compared to women of other racial or ethnic groups, experience the highest rates of violence, particularly domestic violence and sexual assault, in the United States (Bachman et al., 2008; Weaver, 2009). In addition to this, the impact of rape and sexual assault has commonly been understood to be a "violation of a person's humanity;" thus

impacting a community as a whole (Bachman et al., 2008, p. 106). This is especially clear in the way that historical trauma due to the sexual violence and genocidal events of colonialism has been intergenerationally transmitted among Native American communities for centuries (Bachman et al., 2008; Engel et al., 2012; Evans-Campbell, 2008; Smith and Ross, 2004; Weaver, 2009).

Intergenerational Transmission of Historical Trauma

Historical trauma is defined by Evans-Campbell as "…a collective complex trauma inflicted on a group of people who share a specific group identity or affiliation—ethnicity, nationality, and religious affiliation" (2008, p. 320). The collective nature of historical trauma implies that many people within a group are both traumatized by certain events and continue to be impacted by the trauma caused by those events, generation after generation (Evans-Campbell, 2008). Colonialism resulted in intense violence, a loss of identity, forced assimilation into an unfamiliar culture, and, most importantly, trauma for Native Americans. Federal legislation has furthered the colonial agenda of the United States government by serving as oppressive forms of social control, designed to legitimize and justify the disparate treatment of Native Americans (Bubar and Thurman, 2004; Weaver, 2009). All of these factors have contributed to the historical trauma faced by the majority of American Indians (Bubar and Thurman, 2004; Bachman et al., 2008; Engel et al., 2012; Evans-Campbell, 2008).

Many events in the trajectory of colonialism have led to the intergenerational transmission of historical trauma; however, perhaps one of the most notable and devastating events was "…forced boarding school education for Native children" (Bachman et al., 2008; Bubar and Thurman, 2004, p. 74; Engel et al., 2012; Smith, 2005; Weaver, 2009). Originally operated by the federal government through the BIA, Indian Boarding Schools were formalized

in 1869 under a piece of federal legislation called Grants' Peace Policy, and they lasted more than one hundred years (Bubar and Thurman, 2004, p. 74). At this point, they became Christian schools operated by Christian denominations using federal funding (Engel et al., 2012). Native children were forcibly removed from their homes and placed into mostly Catholic boarding schools, where they were forced to adopt Western traditions, speak English, and practice Christianity (Bubar and Thurman, 2004; Engel et al., 2012). They were forced to live in total institutions, where they were unable to see their parents and were forced to abandon their own culture. Native American boarding schools were very much an extension of colonialism, as many of the same methods used to colonize Native Americans were also used in Federal Indian Boarding Schools to "kill the Indian, save the man" (Captain Richard Pratt cited by Engel et al., 2012, p. 281; Grinde, 2004). Physical and sexual abuse were rampant in many of the boarding schools, and as a result of this abuse, many people endured emotional and psychological distress, confusion, alienation, and resentment afterwards (Davis, 2001, p. 20; Richie, Heape, Agent, and Rich-Heape Films, 2008). Many others died as a result of the abuse, in the process of running away from these schools, or as a result of the deadly diseases that were commonly found in these institutions (Dejong, 2007; Engel et al., 2012). It is important to note that not all of the boarding schools in the United States inflicted abuse onto Native American children; however, they were created with the intent of assimilating Native youth into the dominant Western, Christian culture.

Not all boarding schools were violent and abusive; however, the abuse suffered by many in Indian boarding schools, along with the trauma caused by colonialism, have continued to impact communities to this day. Their impacts have "…evolved into long-term social problems that have continued to threaten the structure of many Native American families and, in many cases, have contributed to ongoing unemployment, alcoholism and fetal alcohol syndrome, and

reservation poverty" (Engel et al., 2012, p. 286). Many of those who went to boarding schools came out of them unable to function within their own culture or the dominant culture (Engel et al., 2012, p. 297). Much of the violence that exists in many Native communities, especially sexual violence, can be attributed to the impact of colonialism, especially boarding schools, which are now known as a colonial, ethnocidal project (Bubar and Thurman, 2004; Engel et al., 2012; Weaver, 2009). The sexual abuse experienced in boarding schools was perpetuated by many of the survivors, leading to the intergenerational transmission of historical trauma (Engel et al., 2012). The use of Indian boarding schools is but one example of how physical, psychological, emotional, and sexual violence are legitimized and justified in federal policies that are designed to further the assimilation and domination of American Indians (Bubar and Thurman, 2004; Engel et al., 2012; Weaver, 2009).

Sexual Violence: Prevalence and Definitions

Falling under the umbrella term of sexual violence are the following acts: "completed forced penetration, completed alcohol- or drug-facilitated penetration, attempted forced penetration, sexual coercion, unwanted sexual contact, non-contact unwanted sexual experiences" (Rosay, 2016, p. 13). The U.S. Department of Justice defines sexual assault as "…any type of sexual contact or behavior that occurs without the explicit consent of the recipient. Falling under the definition of sexual assault are sexual activities as forced sexual intercourse, forcible sodomy, child molestation, incest, fondling, and attempted rape" (U.S. Department of Justice, 2017). For the purposes of my research, I will be using the U.S. Department of Justice's definition of sexual assault, as this is the definition that is used by U.S. Attorneys and the FBI. I will also be looking strictly at sexual assaults committed against Native American adult females in Indian Country.

Currently, Native American women are more likely to experience sexual assault than any other demographic; they are sexually assaulted at a rate that is 3.5 times higher than the general population (Weaver, 2009). According to a Department of Justice report that was released in 2016, 56% of Native American women have experienced sexual violence (Rosay, 2016). Additionally, Native American women are more likely to be sexually assaulted by a white perpetrator (Bachman et al., 2008). This becomes problematic when it comes to who has jurisdiction over the offense, as will be discussed next.

Paternalistic Federal Legislation and its Neglect to Protect Native Americans

In addition to violence and historical trauma, colonialism also established the paternalistic relationship between the federal government and Native Americans. Paternalism is defined by Prucha as,

> "…a determination to do what was best for the Indians according to white norms, which translate into protection, subsistence of the destitute, punishment of the unruly, and eventually taking Indians by the hand and leading them along the path to white civilization and Christianity" (1996, p. xxviii).

In other words, as Chief Justice John Marshall famously proclaimed, the relationship between Native Americans and the federal government has come to resemble that of a ward and its guardian (Prucha, 1996). The belief that Native Americans were "inferior savages" (the same reason European colonists used to justify taking land from Native Americans) reinforced the supremacy of the federal government over tribal authority. It was not believed that tribes were capable of taking care of themselves or capable of becoming civilized without the help of Christianity and the "fatherly" presence of the United States' federal government (Prucha, 1996).

Paternalism also acted as a coercive exchange (Fixico, 2006; Wolterstorff, 2015). Native

Americans were to assimilate into white, Christian society, and in exchange, the federal government was to provide protection and financial support. After disease, violence, and wars brought by European colonists had significantly weakened the presence and power of tribal nations, Native Americans had no choice but to assimilate and become completely dependent upon the United States' government for survival. It was in this way that the concept of paternalism was inherently coercive (Fixico, 2006; Henderson, 2009; Prucha, 1996; Wolterstorff, 2015). Despite supposedly being "good" for Native Americans, paternalism has been very damaging to tribes. This is apparent in the way that legislation created for tribes has increasingly taken sovereignty away from tribes and given more power to the federal government.

General Crimes Act. The General Crimes Act, also known as the Indian Country Crimes Act (ICCA), was enacted in 1790, and re-enacted in 1834. It extended federal law to any offense committed in Indian Country, with three exceptions:

> "…(1) crimes committed by Indians against other Indians; (2) crimes committed by Indians against anyone if such Indian perpetrator has already been punished under the laws of the tribe; and (3) any case where by treaty stipulations, the exclusive jurisdiction over such offenses has been reserved to the Indian tribe (Skibine, 2017, p. 51).

Essentially, the General Crimes Act affects interracial crimes, and much like the Major Crimes Act (which will be discussed next), the race of the perpetrator and the victim are used to determine who has jurisdiction over an offense (Skibine, 2017, p. 52). The General Crimes Act extended the Assimilative Crimes Act to Indian Country. The Assimilative Crimes Act extended federal law to Indian Country by making the criminal laws of the state federal, in the absence of an already established federal law ("The Federal Assimilative Crimes Act," 1957; Washburn, 2006). The General Crimes Act came about as a "…way to address conflict between Indians and

settlers and to federalize protection of each against one another" (Washburn, 2006, p. 717). What the General Crimes Act did was allow "…federal prosecution for virtually any conceivable offense, whether misdemeanor or felony" (Washburn, 2006, p. 716). In terms of sexual assault specifically, the General Crimes Act established that tribal courts are not able to prosecute non-Native perpetrators of sexual assault. Knowledge of the General Crimes Act is critical to understanding the jurisdictional issues involved with sexual assault in Indian Country, as the majority of sexual assaults are committed by non-Native perpetrators against Native women.

Major Crimes Act. One of the first major pieces of federal legislation to disregard tribal sovereignty was the Major Crimes Act of 1885 (Harring, 1994). The creation of a major crimes act had been advocated for by the Bureau of Indian Affairs (BIA) since 1874; however, it was not until the case of *Ex parte Crow Dog* that this actually came to fruition (Harring, 1988). Crow Dog, sub-chief of the Brule Sioux and captain of police on the Rosebud reservation, had shot and killed Spotted Tail, the chief of the Brule Sioux. Crow Dog was jealous of Spotted Tail's power as chief and, having been removed two times from his position as police captain, he was bitter towards Spotted Tail. He assassinated his chief, and, under the traditional, dispute resolution system of justice, it was consensually agreed upon that Crow Dog would give $600, eight horses, and a blanket to Spotted Tail's family (Harring, 1988, pp. 198-199). Despite the fact that tribal harmony had been restored to the Brule Siuox, the federal government was not satisfied with this form of justice and decided to intervene. Crow Dog was tried in the Federal District Court of the Dakota Territory, and was sentenced to death (Harring, 1988).

Crow Dog's case was appealed to the U.S. Supreme Court and his conviction was reversed in *Ex parte Crow Dog* (Harring, 1988). The court upheld the notion that, as sovereign nations, Indian tribes were able to enforce their own law, and the federal government had no

criminal jurisdiction over crimes committed by Indians against Indians on reservations (Harring, 1988, p. 192; Harring, 1994; Sands, 1998). Initially, this was seen as a major victory for tribes; however, it sparked a "popular outcry" within the federal government (Harring, 1994, p. 134). Thus, the Major Crimes Act was created in 1885 (Christofferson, 1991). The Major Crimes Act originally included seven crimes that, when committed by an Indian against another Indian on a reservation, were to be investigated and prosecuted federally. The Major Crimes Act has since been expanded to include fourteen serious offenses, and these are:

> "…murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, a felony assault under section 113, an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under section 661 of this title…" (18 U.S.C.A. § 1153).

Tribal courts have concurrent jurisdiction over Native perpetrators, provided that they have a written law in their tribal code; however "…the limitations under the Indian Civil Rights Act strictly curtail the punishment of violent offenders…" which I will go on to discuss in the next section (Bachman et al., 2008).

The Major Crimes Act is largely seen as a paternalistic statute that further encroached upon the sovereignty of tribal nations (Deer, 2005; Harring, 1988; Harring, 1994; Sands, 1998). The message behind the Major Crimes Act was that "…Indians needed to be protected by the U.S. law but also to be held responsible under this law in order to prepare them as citizens" (Harring, 1994, p. 135). It is clear that this act was yet another way of coercively offering "protection" for Native Americans, while imposing the Western adversarial justice system upon them; thus, ensuring their assimilation into the dominant white society (Riley, 2016). Unsurprisingly, the Major Crimes Act has had a significantly negative impact on Native

Americans since its implementation. Determining who has jurisdiction over a crime, depends on whether or not the perpetrator and victim are Indian. A non-Indian and an Indian who commit a crime in Indian Country could be subject to different jurisdictions and prosecutions, with very different punishments, depending on the races of the victims. For example, if a non-Native person commits a crime against another non-Native person in Indian Country, the state that the crime occurred in would have jurisdiction in this case. The way race is used to determine what entity has jurisdiction over crimes occurring in Indian Country would appear to violate the equal protection and due process rights of Indians, but has been found not to do so (Sands, 1998; Senkel, 1975). Because of the reliance upon the FBI and U.S. Attorneys to investigate and prosecute crimes and the limitations imposed by the Indian Civil Rights Act (which will be discussed next), "…fewer major crimes have been pursued through the tribal justice system" (Amnesty International, 2007, p. 29; Rolnick, 2016). For crimes such as sexual assault, this can be especially troubling. Tribal prosecutors sometimes decline to prosecute sexual assault cases because they expect federal prosecutors to handle them; however, federal prosecutors decline to prosecute the majority of the sexual assault cases they receive from Indian Country (Amnesty International, 2007). This often results in a total lack of prosecution; therefore, a total lack of justice for many Native American victims who have been sexually assaulted by a Native American perpetrator.

Indian Civil Rights Act. In the 1960s, hearings were being held regarding the lack of constitutional protections in tribal criminal proceedings (Riley, 2016, p. 1580). These resulted in the Indian Civil Rights Act (ICRA) of 1968, which outlined the rights Indians had under the protection of tribal governments (Riley, 2016, p. 1580). The ICRA was yet another blow to tribal sovereignty, especially in cases of sexual assault (Christofferson, 1991; "In Defense of Tribal

Sovereign Immunity," 1982). Among other things, it established sentencing limitations for tribal courts for any offense. Tribal courts were only allowed to imprison someone for up to six months, and were only allowed to fine someone up to $500 (Riley, 2016). This has been amended a few times. Most recently, in 2010, the Tribal Law and Order Act amended the ICRA so that tribes are now able to imprison a person for up to three years per crime (maximum of nine years total), and fine a person up to $15,000 (Riley, 2016, p. 1585).

One particular issue within the ICRA is that it only applies to Indian perpetrators of crime. Due to the 1978 Supreme Court decision of *Oliphant v. Suquamish Indian Tribe,* Indian tribes do not have jurisdiction over non-Indians (Amnesty International, 2007; Christofferson, 1991; "In Defense of Tribal Sovereign Immunity," 1982; Riley, 2016, p. 1581). This is problematic, considering that 3.5 million of the 4.6 million people living in Indian Country in 2010 were not Indian. This means that the majority of those who live in Indian Country cannot be prosecuted under tribal law or the Major Crimes Act. Without any threat of punishment or legal repercussions within tribal court, non-Indian offenders are able to get away with all kinds of crime in Indian Country (Deer, 2005; Riley, 2016). In addition to this, in terms of sexual assault, the majority of sexual victimizations against Native American women are perpetrated by white offenders (Amnesty International, 2007; Bachman et al., 2008; Bubar and Thurman, 2004; Flay, 2017). Due to the General Crimes Act, this means that the majority of the offenders who commit sexual assault against Native women are not able to be prosecuted by tribal courts, and they must be federally prosecuted; however, as discussed previously, federal prosecutors decline to prosecute most of the cases they receive from Indian Country. This means that most Native American victims of sexual assault never see justice for the harm they endured, discouraging Native women from reporting crime because of the prevailing truth that nothing will be done

about it (Amnesty International, 2007; Riley, 2016). The Indian Civil Rights Act is another example of yet another paternalistic federal statute that has impeded justice for Native American victims of sexual assault.

2013 Reauthorization of The Violence Against Women Act. Prior to the 2013 reauthorization of the Violence Against Women Act (VAWA), tribes were still unable to prosecute non-Indian perpetrators of domestic violence and sexual assault (Amnesty International, 2007; Riley, 2016). Amidst a lot of opposition by the Republican-controlled House of Representatives, the Democratic-led Senate reauthorized VAWA (James, 2013). This reauthorization also amended the ICRA, so that tribes are now able to enforce civil protection orders violated in Indian Country, and have criminal jurisdiction over non-Indians with "…sufficient ties to the prosecuting tribe…" who commit acts of domestic violence or dating violence in Indian Country (Riley, 2016, p. 1591).

At first glance, the 2013 reauthorization of VAWA is largely seen as a step in the right direction in terms of tribal sovereignty and ensuring the safety of Native American women (Riley, 2016). However, despite the advances made, there are still limitations. Tribes are still unable to prosecute non-Native people for crimes that often co-occur in domestic violence, such as child abuse and/or elder abuse, and are not able to prosecute sexual assaults or rapes committed by somebody the victim is not familiar with (Flay, 2017; Riley, 2016). Because of this, sexual assaults that occur in Indian Country are only able to be prosecuted by tribal courts when they occur within the context of domestic violence or dating violence (Flay, 2017). This means that, for women who are sexually assaulted or raped by a non-Native person they do not know, they must continue to rely on the federal government to prosecute their perpetrator. Due to the aforementioned high declination rates among federal prosecutors, many women choose not to

report the crime, as they know that it is very likely that their perpetrator will not be prosecuted (Amnesty International, 2007; Flay, 2017; Riley, 2016). In addition to this, like most criminal justice legislation created for tribes, the VAWA reasserts the paternalistic relationship between the federal government and tribes by, again, enforcing a Western adversarial justice system on tribes. This implies that tribes are only able to exercise sovereignty when they do it within the prescribed guidelines of the very government that has "…sought to dismantle tribal justice systems" (Riley, 2016). Paradoxically, it is in this way that increased tribal criminal jurisdiction has also meant a decrease in tribal authority. While tribal courts retain some authority to prosecute some sexual assault cases committed by non-Native people against Native Americans occurring in Indian Country, depending on the association of the non-Native perpetrator with the tribe and/or whether or not the tribe has a written law defining sexual assault, the limitations imposed by the federal government on tribal courts lead many tribal courts to refer sexual assault cases to federal prosecutors. I wanted to learn more about what federal criminal justice professionals think of the idea of giving tribal justice systems more authority to prosecute sexual assault occurring among tribal members and non-members on their land. That is why my second research question is: What do federal criminal justice professionals think about the possibility of giving tribal criminal justice systems more authority to investigate and prosecute all types of sexual assault cases that occur in Indian Country?

Neglect to Protect Native Americans. Colonialism has continued in arguably more subtle ways due to the established paternalistic relationship between the federal government and tribal nations, which has been maintained by the implementation of laws that encroach upon tribal justice and sovereignty. These paternalistic federal statutes have further disempowered tribes, and have forced them to rely on the federal government to distribute justice (Smith and

Ross, 2004). The confusing way in which these laws are applied, and the general lack of knowledge among some criminal justice providers as to who is responsible for prosecuting certain crimes, has created a "maze of injustice" for Native Americans (Amnesty International, 2007). This maze of injustice discourages Native Americans, especially victims of sexual assault, from reporting crimes; thus creating a pattern of silence and "…ultimately a loss of faith in the criminal justice system" (Flay, 2017, p. 237).

In addition to this, the application of these statutes in sexual assault cases is determined by the race of the perpetrator and victim. If a non-Native person sexually assaults a Native American, then, pursuant to the General Crimes Act, the crime would be prosecuted federally. If a Native American sexually assaults another Native American, then, pursuant to the Major Crimes Act, the crime would be prosecuted federally. Although the Major Crimes Act entails that tribal courts retain concurrent jurisdiction over all listed offenses within the Act that are perpetrated by Indian offenders against Indian victims in Indian Country, tribal courts have often referred major crimes that occur within these contexts to federal investigators and prosecutors due to the "…scarce resources, lack of personnel, and restrictions on sentence length faced by many tribal courts" (Rolnick, 2016, p. 1652). Tribes do retain the ability to prosecute crimes, such as sexual assault, that occur between Native Americans, provided that they have a written tribal law regarding the crime; however, due to the limitations on the abilities of tribal courts created by the ICRA and the 2013 Re-authorization of VAWA, tribal courts may opt for federal criminal justice involvement since federal prosecutors are able to obtain longer sentences for perpetrators of violent crimes, such as sexual assault (Rolnick, 2016).

Although tribal courts maintain some ability to prosecute Native perpetrators of sexual assault, provided that they follow the prescribed guidelines of the Major Crimes Act and the

ICRA, the federal government has largely hindered tribal nations' ability to distribute justice. Through these federal statutes, the federal criminal justice system has claimed much of the responsibility for prosecuting major crimes occurring in Indian Country; however, the high sexual assault rates and major lack of prosecution by federal prosecutors means that the federal government is failing to protect Native Americans. This, again, raises the questions I studied: (1) What are the experiences and/or perceptions of federal criminal justice professionals in northern Arizona regarding the investigation and prosecution of sexual assault cases occurring in Indian Country?, and (2) What do federal criminal justice professionals think about the possibility of giving tribal criminal justice systems more authority to investigate and prosecute all types of sexual assault cases that occur in Indian Country?

Federal Investigation and Prosecution of Sexual Assault Cases

Sexual assault is generally a difficult crime to investigate and prosecute. Investigators are tasked with gathering enough evidence to create a case for the prosecution. This can include background information on the victim and perpetrator, physical evidence, and/or forensic evidence (Seelinger, Silverberg, and Mejia, 2011, p. 18). Background information and details about the crime are often gathered by interviewing the victim or witnesses; however, this can be difficult if there were no witnesses to the assault, or if the victim does not want to discuss what happened. If the victim is willing to discuss what happened to her, the trauma she endured may impact her ability to accurately recount what happened (Seelinger et al., 2011, p. 19). If a victim does not immediately report a sexual assault, it may be very difficult to gather physical or forensic evidence, such as DNA, as this tends to be lost very quickly. I would like to explore whether or not the FBI encounters these same issues when they investigate cases of sexual assault occurring in Indian Country, and that is why I interviewed two FBI agents as part of my

research. The difficulties in gathering evidence for sexual assault cases can lead to difficulties in prosecuting sexual assault, as a lack of sufficient evidence can make it very difficult for a prosecutor to win a case (Seelinger et al., 2011).

According to Cassia Spohn, in general, a prosecutor's decision to prosecute a case or not prosecute a case (otherwise known as prosecutorial discretion) is known as "the gateway to justice" (Spohn, Beichner, and Davis-Frenzel, 2001, p. 2). Prosecutors use an immense amount of discretion when they are assessing a case (Washburn, 2006). Their ability to use discretion affects all aspects of a case; they are able to decide whether or not to charge the defendant, what charges to include, whether or not the defendant will be held in custody until their trial, whether to offer alternative sanctions, what kind of plea they will accept, and whether to seek sentencing enhancements (Washburn, 2006, pp. 725-726). Prosecutors tend to reject many cases at screening (Spohn et al., 2001, p. 2). Typically, prosecutors are more likely to choose to prosecute a case when they believe that a conviction is likely. They also base their decision to prosecute on certain characteristics of the victim: background, relationship to suspect, and willingness to cooperate being some of these "focal concerns" (Spohn et al., 2001, p. 4).

In terms of sexual assault specifically, it is a generally underreported and under prosecuted crime. On average, only 14% to 18% of all reported sexual assaults are prosecuted (Campbell, Patterson, Bybee, and Dworkin, 2009, p. 712). Prosecutors focus on a different set of criteria in determining whether or not to prosecute cases. The victim's age, education level, evidence of risk-taking behavior by the victim, and the reputation of the victim all affect a prosecutor's decision to prosecute (Spohn et al., 2001, p. 4). Additionally, the relationship between the victim and perpetrator also play a role in how prosecutors view the case (Spohn et al., 2001). Generally, since prosecutors have a central concern with the probability of convicting

the perpetrator, they tend to be skeptical of the stories coming from the victims in sexual assault cases (Frohmann, 1991; Spohn et al., 2001). They may find inconsistencies in the victim's story, and compare the victim's story to what they believe is the "typical" sexual assault. Not only does this re-victimize the victim, but it also typifies cases of sexual assault, giving the prosecutor justifications for declining to prosecute a case (Frohmann, 1991). These same reasons for declining to prosecute a sexual assault case in general may also apply to sexual assault cases in Indian Country.

The statutes described in the previous sections place most of the power to investigate and prosecute crimes occurring in Indian Country in the hands of the FBI and U.S. Attorneys, respectively, by limiting the sentencing abilities of tribal courts. This means that the burden of protecting Native American victims of sexual assault largely falls upon U.S. Attorneys and their decision of whether or not to prosecute these cases. In terms of Indian Country, the job of a U.S. attorney is to "…represent—and protect—the Indian Country community;" however, this has proven to be very problematic, as federal prosecutors are typically not members of the tribal community they are supposed to represent, and are largely unaware of tribal concerns or values (*Indian Country Investigations and Prosecutions,* 2014; Washburn, 2006, p. 730). The difficulty in prosecuting sexual assault cases in general (but especially those that occur in Indian Country), and the prioritization of cases that have a better chance of achieving a conviction prevent the proper prosecution of Indian Country crimes, and makes it less likely that crimes occurring in Indian Country will be prosecuted by federal prosecutors (Spohn et al., 2001; Washburn, 2006). Thus, further research about how federal prosecutors and investigators work on sexual assault cases in Indian Country is warranted.

The history between the United States' federal government and Native Americans mentioned previously also affects the way in which federal prosecutors are able to represent and prosecute cases in Indian Country. Because of colonialism and historical trauma, anyone employed by or representing the federal government may have difficulties in gaining the trust of Indian communities. This could create another obstacle in investigating and prosecuting sexual assault cases occurring on reservations. As mentioned previously, the majority of major crimes occurring on the reservation must be federally investigated and prosecuted due to the limitations created by the General Crimes Act, Major Crimes Act, and the Indian Civil Rights Act (Krakoff, 2004; Washburn, 2006). This effectively robs tribal justice officials of the ability to be responsive to the communities that they live in (Frickey, 2005; Krakoff, 2004; Washburn, 2005). According to Washburn (2006, p. 740),

> "…the federal Indian Country regime creates an unfortunate and indefensible paradox. It wrests control of the key and inherently local issue of felony criminal justice away from tribal leadership and places control over these issues in the hands of federal officials who have little accountability to the tribal community and little incentive to be responsive." This has created an underreporting of crime due to a lack of trust in federal law enforcement officials (Krakoff, 2004; Washburn, 2006).

Sexual violence against women has long been an issue that has lacked prioritization in the United States' criminal justice system; however, due to colonialism and historical trauma, it has been arguably even more detrimental for Native American communities. Native American women are overwhelmingly more likely to be sexually assaulted, and they are more likely to be sexually assaulted by a white perpetrator (Rosay, 2016). Limited by the guidelines established by the General Crimes Act, Major Crimes Act, Indian Civil Rights Act, and the 2013 Re-

authorization of the Violence Against Women Act, tribes are tend to rely largely on federal prosecuting attorneys and the FBI to serve justice. As discussed previously, the combined use of sexual assault by European settlers as a tool of conquest and the limitations imposed on tribal courts that prevent them from being able to prosecute non-Native perpetrators of sexual assault places much of the responsibility for the extraordinarily high rates of sexual victimization in Native communities on the U.S. government, or more specifically, on the FBI and U.S. attorneys; hence, my aforementioned research questions: (1) What are the experiences and/or perceptions of federal criminal justice professionals in northern Arizona regarding the investigation and prosecution of sexual assault cases occurring in Indian Country?, and (2) What do federal criminal justice professionals think about the possibility of giving tribal criminal justice systems more authority to investigate and prosecute all types of sexual assault cases that occur in Indian Country? (Bachman et al., 2008; Weaver, 2009).

Colonialism has caused historical trauma that has been transmitted intergenerationally in many Native American communities. On top of this, the federal government has continued its paternalistic agenda through the implementation of the General Crimes Act, the Major Crimes Act, the Indian Civil Rights Act, and the 2013 Re-authorization of the Violence Against Women Act; all of which have severely limited the potential of tribal courts, and have given power to the federal government, which has led to a failure to protect Native American victims of sexual assault. While sexual assault cases are difficult for prosecutors and investigators in general, I would like to learn more about the experiences of federal criminal justice officials in the prosecution and investigation of sexual assault cases in Indian Country. In the next chapter, I will discuss the methods I used to explore my research questions.

CHAPTER THREE: METHODOLOGY

Introduction

A qualitative study is defined by "…an emphasis on the qualities of entities and on processes and meanings that are not experimentally examined or measured [if measured at all] in terms of quantity, amount, intensity, or frequency" (Denzin and Yvonna, 2005). A phenomenological approach to research is describing the "'lived experience' of a phenomenon" (Waters, 2017). This qualitative study used a phenomenological approach to analyze the individual experiences of federal criminal justice professionals in the investigation and prosecution of sexual assault cases that occurred in Indian Country through the use of semi-structured, individual interviews with a former U.S. Attorney and two FBI agents. I chose to do a qualitative study as opposed to a quantitative study because my research questions have to do with how these individuals give meaning to the cases before them, and their accounts of the processes by which they make decisions (Hammersley, 2003; Sofaer, 1999). I used a phenomenological approach because I wanted to thoroughly understand the experiences of three different criminal justice professionals when they dealt with sexual assault cases occurring in Indian Country (Creswell and Poth, 2018). Since I wanted a more in-depth look at the experiences of my participants, I chose to collect my data using semi-structured interviews (Jamshed, 2014). Semi-structured interviews tend to be more open-ended, allowing the interviewee to elaborate on their personal experience and perspective (Jamshed, 2014; Sofaer, 1999). The research questions I was trying to answer, as well as the size of my sample (three participants) called for the depth that could be achieved through semi-structured, individual interviews. If I had a larger sample and wanted to generalize my results to a large group, a survey method would have been more appropriate (Blackstone, 2014). Had I decided to use surveys

instead of interviews, my questions for the participants would have been more closed-ended, the data I would have collected would have been very general, and I would not have been able to analyze, in-depth, each participant's unique decision-making process (Blackstone, 2014).

This chapter will begin by discussing my sample and how I obtained it. Then, I will discuss the process of getting my study approved by the Institutional Review Board at Northern Arizona University, and the steps I took to collect my data. Finally, I will discuss the technique I used to analyze my data, followed by the limitations of my research.

Sample

When I began my research into the issue of sexual assault in Indian Country, I became particularly interested in the low prosecution rates in these cases. That prompted me to try to interview five U.S. Attorneys, in order to learn about how they decided whether or not to prosecute sexual assault cases occurring in Indian Country. I attempted to contact U.S. Attorneys in the northern Arizona area, until I received a call from the head of the U.S. Attorneys in the District of Arizona who informed me that U.S. Attorneys are not able to participate in interviews due to various ethics codes. At this point, I changed my research question to include both federal prosecutors and investigators in my study, and I decided that I would try to interview retired U.S. Attorneys instead. After IRB approval was secured, I began gathering my sample.

Since my research questions were aimed at learning about the experiences of federal criminal justice professionals in the investigation and prosecution of sexual assault in Indian Country, my research had to involve the opinions and perceptions of FBI agents and federal prosecuting attorneys, as they are the federal criminal justice officials who can end up being responsible for prosecuting and investigating these cases. As stated previously, due to the Major Crimes Act and the 2013 reauthorization of VAWA, tribal courts have some ability to prosecute

sexual assault cases; however, they are limited by their inability to prosecute non-Native perpetrators outside of the context of domestic violence or dating violence, and by the sentencing limitations imposed by the ICRA (Riley, 2016). For these reasons, many sexual assault cases occurring in Indian Country are turned over to the FBI and U.S. Attorneys, and that is why I focused my research on these criminal justice professionals (Riley, 2016).

I gathered a sample containing one former U.S. attorney and two FBI Special Agents in the northern Arizona area. Northern Arizona includes Flagstaff, Prescott, Sedona, Page and Williams. I chose to conduct this study in the northern Arizona area because it is surrounded by Hopi, Navajo, Havasupai, Hualapai, and Kaibab-Pauite land. This proximity to Indian Country made it very likely that the U.S. attorneys and FBI agents in northern Arizona would have experience and knowledge on the questions I asked them. Additionally, I live in Flagstaff, so focusing on the northern Arizona area meant I did not have to travel as far to collect my interview data. I gathered my sample using both the snowball sampling technique and the typical case sampling technique. The snowball sampling technique is defined "… as a technique for gathering research subjects through the identification of an initial subject who is used to provide the names of other actors" (Lewis-Beck, Bryman, and Futing, 2004). I used snowball sampling because I did not have contact information for any federal law enforcement officials, and so I had to rely on the help of my thesis committee in order to gain access to these criminal justice professionals (Esterberg, 2004). My thesis chair first facilitated contact with an FBI agent who agreed to participate in my study. I asked this FBI agent if he knew of anyone else who would be willing to participate in my study, and he approached a colleague and asked if he would be willing to participate in my study. His colleague agreed to participate in my study. In the interest

of time, I stopped once I had interviewed two FBI Agents. If I had more time, I would have included more FBI Agents in my sample.

The typical case sampling technique is "… a type of purposive sampling useful when a researcher wants to study a phenomenon or trend as it relates to what are considered 'typical' or 'average' members of the affected population" (Crossman, 2018). Since I wanted to learn about the experiences of those who prosecuted sexual assault cases in Indian Country, I had to interview a U.S. Attorney, as they are the ones who are tasked with doing this. As stated previously, I found out that U.S. Attorneys are not able to participate in interviews, so I decided to interview a former U.S. Attorney instead. A member of my thesis committee had recommended that I contact a particular former U.S. Attorney. I emailed this former U.S. Attorney requesting his participation in my study, and he agreed to do so. Since I was only able to interview a former U.S. Attorney, my interview data is only applicable to the time frame in which he was a federal prosecutor. This makes my findings less applicable to the present-day, as laws could have changed from the time he was a federal prosecutor to now.

Since I only had a semester to complete my research and I wanted to gather data using semi-structured interviews, I purposefully chose to keep my sample small. Additionally, I did not wish to generalize my results to a larger population, and I only wanted to learn about the experiences and perspectives of some FBI agents and U.S. Attorneys; I felt that I was able to do this with the size of my sample.

Procedure

Semi-structured, individual, in-depth interviews were used in order to conduct my research. According to Turner III (2010, p. 754), "Interviews provide in-depth information pertaining to participants' experiences and viewpoints of a particular topic." Interviews are able

to provide greater detail and depth than surveys, and they can be structured so that they are specific to the knowledge and profession of the interviewee, which is essential to the research I am going to be conducting (Clifford, 2017, p. 1). I conducted semi-structured interviews, which are described by Esterberg (2004, p. 87) as being "…less rigid than structured interviews…", allowing the interviewer to "…explore a topic more openly and to allow interviewees to express their opinions and ideas in their own words." Semi-structured interviews are used in order to obtain information about different perspectives. Since I wanted to learn about the personal experiences of a U.S. Attorney and two FBI agents, semi-structured interviews appeared to be the most ideal method (Esterberg, 2004).

Since I conducted semi-structured interviews, I used interview guides to "…help focus the interview" (Esterberg, 2004, p. 94). I adapted my interview questions based on the flow and course of each interview, and I asked follow-up questions when necessary (Esterberg, 2004, p. 94). I created two interview guides; one that was designed for the U.S. Attorney and one that was designed for the FBI agents. Each interview guide contained four categories of questions: an introductory section; a section regarding the typical process of prosecuting or investigating crimes, in general, that occur in Indian Country; a section regarding their experience prosecuting or investigating sexual assault in Indian Country; and a conclusion section. For example, one question I asked the U.S. Attorney regarding the typical process of prosecuting crimes in Indian Country was, "What kinds of factors affected your decision to prosecute or not prosecute crimes that occurred in Indian Country?" This question helped me understand the thought process behind how the participant decided to prosecute crimes occurring in Indian Country, which is an essential part of my study. Another question that I asked the FBI agents in the section regarding sexual assault cases occurring in Indian Country was, "How do you explain the process of sexual

assault cases in Indian Country? Are there any unique challenges or concerns from a federal law enforcement perspective?" This question helped me to understand the typical process of investigating one of these cases, what makes these cases unique, and the possible reasons why it might be more difficult to investigate these sexual assault cases. The questions in both of my interview guides were aimed at obtaining information regarding the typical experiences of U.S. Attorneys and FBI agents when they are working with other criminal justice officials in handling a sexual assault case from Indian Country, as that is the focus of my research questions.

There were fourteen questions in my interview guide for the former U.S. Attorney and thirteen questions in my interview guide for the FBI agents (see Appendix B). I asked some follow-up questions throughout my three interviews; however, I should have asked more. My interview with the former U.S. Attorney lasted about 26 minutes. When I arrived at his office, he informed me that he only had about thirty minutes to participate in my interview; he seemed very rushed. This forced me to shorten my interview by changing the wording of some questions. My interviews with FBI Agent #1 and #2, individually, each lasted about 30 minutes. These interviews were not as rushed, and they seemed very willing to take some time to talk to me. Interviewees were required to sign consent forms prior to each interview, acknowledging that they understood the purpose of the study and consenting to being audio-recorded. Interviews were scheduled via telephone and email communication with participants, and were conducted at the workplaces of the interviewees. My interview with the former U.S. Attorney took place at his office on February 16, 2018, and my interviews with the FBI Agents #1 and #2 took place, individually, at their office in Flagstaff on April 2, 2018. My interview with the former U.S. Attorney was recorded using my password-protected iPhone, and was transcribed using an audio-to-text transcription application called Temi. The data was transcribed within the week

that the interview took place, and the recording was destroyed after it was transcribed. I was unable to record my interviews with FBI Agents #1 and #2 because they told me that they could not allow me to do so; however, I took extensive notes during the interviews and transcribed my notes two days later.

Data Analysis

Once the recorded data and the handwritten notes were transcribed, I read over the transcriptions many times, and made notes, in order to become fully acquainted with my data (see Appendix C for my interview transcription). This is an essential part of beginning the thematic analysis coding process (Braun and Clarke, 2006). Once I had become very familiar with my data, I began manually coding my data. I did this by highlighting each code in a different color, labeling them, and making notes within the margins of my transcriptions and notes (Braun and Clarke, 2006). I made codes out of data that I considered relevant to my research questions: (1) What are the experiences and/or perceptions of federal criminal justice professionals in northern Arizona regarding the investigation and prosecution of sexual assault cases occurring in Indian Country?, and (2) What do federal criminal justice professionals think about the possibility of giving tribal criminal justice systems more authority to investigate and prosecute all types of sexual assault cases that occur in Indian Country? I generated a list of twenty-four codes. Once these codes were created, I began to generate themes from these codes by organizing codes into different categories, which later became my themes. Themes are patterns found within the coded data (Braun and Clarke, 2006). For instance, the codes of "experiences working with other agencies," "disclosure and cooperation by victim," "cultural barriers," "timeliness and legality of evidence collection" turned into the theme of "Difficulties of Investigating Sexual Assault Cases Occurring in Indian Country." I found 7 themes within my

coded data: Perceptions of Tribal Justice Officials; Perceptions of Native American Victims of Sexual Assault; Perceptions of Other Federal Justice Officials and Agencies; Opinions on Tribal Justice Autonomy; Self-Perceptions of Interviewees; Difficulties of Prosecuting Sexual Assault Cases Occurring in Indian Country; and Difficulties of Investigating Sexual Assault Cases Occurring in Indian Country. Themes were refined, defined, and analyzed, and quotes from my notes and transcription were used in order to show the point of each theme.

Reflection on Methods: Limitations of Study

The main limitations of my study involved my sample. Gaining access to potential participants was difficult. Originally, I had intended to interview five U.S. Attorneys about how they determine whether or not to prosecute sexual assault in Indian Country; however, after speaking with the head of the U.S. Attorneys in Arizona, I learned that U.S. Attorneys must abide by certain ethics codes that prevent them from being interviewed. When this occurred, I decided to try to interview former U.S. Attorneys and change my research focus to the experiences of criminal justice officials in prosecuting and investigating sexual assault cases occurring in Indian Country. Unfortunately, I only knew of one former U.S. Attorney in the northern Arizona area, and that is why I only interviewed him. This limits my findings because he was only able to speak about the time frame in which he was a federal prosecutor, which was a few years ago.

Another limitation of my study would be the fact that I applied general literature and statistics on sexual assault involving Native American victims in Indian Country to the northern Arizona region, which may differ a lot from this general information. For example, in general, perpetrators of sexual assault against Native American women tend to be non-Native; however, on the Navajo Nation, the majority of the residents are Native American, so this statistic may be

a lot different in the northern Arizona context. I did not ask the participants information about the races of perpetrators, and instead, I focused very generally on sexual assault cases involving Native American victims occurring in Indian Country. I could have asked more specific questions about the races of perpetrators and the differences in the population demographics of the different reservations in northern Arizona. Additionally, I did not ask the participants about information regarding the differences in development and resources of the different Indian Nations. For example, the Navajo Nation, being the largest Indian Nation in America, may be more developed, and better-resourced, than the (much smaller) Havasupai Tribe. These are all specifics that should be addressed if this study were to be replicated, in order to show how the northern Arizona region compares to the general information that is available regarding the sexual assault of Native Americans in Indian Country.

Throughout my interviews, I could have asked more follow-up questions. During the first interview with the former U.S. Attorney, I was conscious of my time, so I only asked a couple follow-up questions. During the interviews with FBI Agent #1 and FBI Agent #2, I was so busy taking notes that I was not able to ask as many follow-up questions as I would have liked. Follow-up questions would have gathered more information on the subject's opinions and perceptions, that might not have been able to be gathered through the interview guide alone.

My interviews all took place at the workplaces of the participants. This limits my findings because, if the participants had anything negative to say about their agency or work, they may have felt compelled to withhold that information since they were in their workplace. In a future study, it would be better to conduct interviews at a different location, such as a coffee shop.

Another major limitation of my study was the lack of input from tribal criminal justice officials. I originally intended to interview federal AND tribal criminal justice officials, but after I learned about the processes of the Navajo and Hopi Institutional Review Boards (IRB) I decided not to include tribal justice officials in my study. Due to the disrespect and abuses that many Native American communities have endured at the hands of non-Native researchers, IRB approval is absolutely necessary for doing research in Indian Country. For the safety and privacy of tribes, it is not a step that can be overlooked. However, getting approved by the Navajo or Hopi IRBs would have taken some time, and I only had about four months to complete my thesis. In the interest of time, I decided not to go this route; however, if I had more time to complete my research, I would have incorporated the essential contributions of tribal justice officials. Additional research should be conducted, following IRB and tribal protocols, in order to learn about the experiences and perceptions of tribal criminal justice officials in terms of sexual assault cases.

An unanticipated issue that arose during my research was the inability to record my interviews with FBI Agent #1 and #2. The interviews with FBI Agent #1 and #2 were held at the workplace of the FBI Agents, and for this reason I was unable to record them. I did not realize this until I arrived at the office, and we had failed to discuss the issue of recording in our previous conversations. I was able to make up for the lack of recording by taking lots of notes throughout the interviews; however, if I was able to record their interviews, I would have been able to pull out more quotes to use in my "Findings" chapter.

This chapter discussed the way in which my sample was gathered, the type of interviews used to answer my research questions, and the limitations of my study. The following chapter will analyze the findings that I discovered within my interview data.

CHAPTER FOUR: FINDINGS

Introduction

This chapter will define and analyze the themes that were identified within my interview data that were important for answering my research questions: (1) What are the experiences and/or perceptions of federal criminal justice professionals in northern Arizona regarding the investigation and prosecution of sexual assault cases occurring in Indian Country?, and (2) What do federal criminal justice professionals think about the possibility of giving tribal criminal justice systems more authority to investigate and prosecute all types of sexual assault cases that occur in Indian Country? The themes I discovered are as follows: Perceptions of Tribal Criminal Justice Officials, Perceptions of Native American Victims of Sexual Assault, Perceptions of Other Federal Criminal Justice Officials and Agencies, Opinions on Tribal Justice Autonomy, Self-Perceptions of Interviewees, Difficulties of Prosecuting Sexual Assault Cases Occurring in Indian Country, and Difficulties of Investigating Sexual Assault Cases Occurring in Indian Country.

Perceptions of Tribal Criminal Justice Officials

This theme is defined by the way the participants described their experiences working with tribal justice officials in the prosecution or investigation of sexual assault cases that occurred in Indian Country. All participants expressed that the quality of tribal justice officials was inconsistent or tribe-dependent. Both the former U.S. Attorney and FBI Agent #2 mentioned that, in tribal court, cases are often dropped.

> [Former] U.S. Attorney: "in tribal [court], the…sometimes cases don't go forward for one reason or another, whether there's a conflict…whether there's a conflict of interest, or whether there's an inability or lack of desire to prosecute."

FBI Agent #2 also stated that there are not a lot of certified attorneys on the reservation, and so the quality of tribal prosecutions can be inconsistent. The former U.S. Attorney said that sexual assault victims who have been repeatedly victimized "…have a harder time coming in and speaking about things because it's been going on for so long and nobody's done anything." This could suggest that the lack of action on the part of tribal justice officials has made many victims believe that nothing will be done about the sexual assault or abuse that they have endured; thus, making it harder for the victim to then report the sexual assault to federal law enforcement.

All participants also talked about their experiences working with tribal law enforcement in prosecuting and investigating sexual assault in Indian Country. All expressed that the communication and response of tribal law enforcement was varied; in fact, FBI Agent #1 mentioned this as one area where improvements could be made. The former U.S. Attorney stated that he thought that the quality of work among tribal law enforcement varied due to the fact that they are either poorly trained or they are "overworked" because typically, a very small number of officers are responsible for covering a very expansive area.

> [Former] U.S. Attorney: "Some of them are really good, really good investigators, but they're overworked. It's…there's one or two of them for banker boxes full of, of reports that need attention, but there's just not enough time in the day."

According to the former U.S. Attorney, one issue with investigations conducted by tribal law enforcement is that they work to a different standard than federal law enforcement.

> [Former] U.S. Attorney: "In confessions, or when people get interviewed, there's very different standards between tribal law enforcement and federal law enforcement. Federal law enforcement almost always records those so you can listen to them and be

> able to pull out what you need. Uh, tribal [law enforcement] sometimes records, and I say sometimes as very few and far between."

He also suggested that the inconsistencies in the communication and responsiveness of tribal law enforcement could be due to a "…lack of experience of officers out there or the lack of equipment, lack of resources…," or perhaps even a lack of work ethic.

> [Former] U.S. Attorney: "…tribal law enforcement usually are harder to get them to do things and it's…some of them, maybe that's their personality, they just want to do the bare minimum."

The former U.S. Attorney discussed working with tribal victim advocates as well, describing them similarly to the way he described tribal law enforcement.

> [Former] U.S. Attorney: "Uh, victim advocates that are from tribal land—um, again, they're harder to reach. They, they're overworked. That's, that was my… some of 'em, some of 'em just weren't into it, but some of them were just overworked."

Ultimately, all participants seemed to suggest that, while some tribal justice officials did their jobs very well, others could make improvements in their communication, response, and general work ethic. The former U.S. Attorney acknowledged that some issues could be addressed at the administrative level; for instance, he mentioned a lack of proper training and resources. The FBI Agents did not mention this; however, both FBI Agents suggested that communication and building relationships with tribal justice officials is crucial to the success of sexual assault investigations and prosecutions.

Perceptions of Native American Victims of Sexual Assault

This theme encapsulated how the participants generally viewed Native American victims of sexual assault based on the remarks that they made about them. For instance, the former U.S.

Attorney talked about how common it was for Native Americans who experienced sexual assault to be repeatedly victimized. Given the research on boarding schools and the intergenerational transmission of trauma that followed in many communities (which is discussed in my literature review), this information was, unfortunately, not very surprising to me. However, I followed his remark by asking him if he found that most Native American victims of sexual assault were repeatedly victimized. He said that, although he could not quantify it accurately, a lot of victims had been repeatedly victimized.

> [Former] U.S. Attorney: "They're almost, I don't want to say conditioned for it, but it was normal. It was normal."

This quote was particularly interesting to me because it raised the question of whether this was a stereotype that the former U.S. Attorney held about Native Americans. While the intergenerational transmission of historical trauma has led to a normalization of violence in some Native American communities, it is not accurate, nor appropriate, to say that Native Americans are "conditioned" for sexual violence. To me, this sounded like a reiteration of a stereotype that is commonly applied to Native American women, and is largely a product of colonialism: Native American women as "rapable" objects (Smith, 2003, p. 73).

FBI Agent #2 mentioned that Native American adults who are sexually assaulted are typically intoxicated during the assault, which makes it more difficult for them to recall information during the investigation. During the interview, I made a note of this remark because it seemed to raised the question of another stereotype that has been applied to Native Americans: the "drunk Indian" stereotype (French and Bertoluzzi, 1975). Again, I did not follow-up this remark with a question, so I do not know exactly what was meant by this comment.

All participants mentioned how the cooperation of victims was essential to a successful prosecution and investigation of a sexual assault case, and how consistent cooperation from the victim was often hard to come by.

> FBI Agent #2: "90% of them ("them" being Native American victims of sexual assault) decide to not cooperate eventually."
>
> "They'll make the report and, and then, for whatever reason, down the line, they'll say, 'I don't want to do this anymore, don't talk to me, etc."

While all of them discussed the importance of a cooperative victim, only the former U.S. Attorney mentioned possible reasons as to why a victim might drop out of a case.

> [Former] U.S. Attorney: "…there are some people who have an inherent distrust of the federal government. You can't take that out."

This particular remark was made a few times by the former U.S. Attorney. He relayed to me that a distrust of the federal government was something that he encountered often when he worked on cases in Indian Country. Based on the literature about colonialism, boarding schools, paternalistic and/or assimilative federal legislation, and the reasons why many Native American victims choose not to report sexual assault (see Chapter 2: Review of Literature), it is not surprising to me that federal justice officials would find that many Native American communities distrusted the government; although, the former U.S. Attorney failed to mention any possible reasons behind the distrust that he so often encountered. Additionally, this distrust of the federal government suggests that perhaps it would be more appropriate for tribal courts to prosecute sexual assault cases.

Perceptions of Other Federal Criminal Justice Officials and Agencies

This theme captured the participants' impressions of, and experiences working with, other federal criminal justice officials and agencies. Compared to their perceptions of tribal criminal justice officials, their perceptions of other federal criminal justice officials were relatively positive. The former U.S. Attorney spoke very highly of the FBI.

> [Former] U.S. Attorney: "The FBI, dealing with them, very good. They're very responsive. They, they know what they're doing, how they're doing it. They have the resources to do it, the manpower to do it, um, but they don't come in on every case. They come in on certain types of cases, the ones that are basically under the violent crimes or under VAWA, or the violence against women act, or under certain type of drug crimes. And if it didn't fit into a certain category, they're not going to come into it because they're not going to use their resources for that. But generally speaking, the FBI was pretty good."

This suggests that perhaps the FBI does not "come in" on certain sexual assault cases because they have limited resources to devote to these cases; however, I did not follow-up with an additional question regarding this remark. The former U.S. Attorney also talked about his experience working with federal victim advocates, in which he also discussed some of the difficulties faced by victim advocates when working with Native American victims of sexual assault.

> [Former] U.S. Attorney: "Um, victim advocates. Um, we have…when I was at the US Attorney's office, we had one who was in-house, so it was easier to work with — you saw her every day and said, I need this done, this done. The problem that THEY had…was trying to get in touch with victims and get, get the communication and the trust"

Additionally, in terms of federal law enforcement officers, the former U.S. Attorney mentioned that there were "…some officers who were less than professional" when he was describing some issues concerning the legality of evidence collection.

When I asked FBI Agent #2 about how well he thought the issue of sexual assault was being addressed by federal criminal justice officials, he talked a little bit about the incompetency of the Bureau of Indian Affairs (BIA) in Havasupai, AZ. He said that sometimes the BIA officers in Supai do not immediately notify them of a crime, which can impact the speed with which the FBI is able to address the matter.

FBI Agent #2: "Yeah, sometimes the BIA can 'sit on' a case for a bit."

According to Washburn (2006), there may be many reasons why it may appear that the BIA is "sitting on" a case. There may be very few BIA officers who are tasked with covering a large area of land, which may require them to travel long distances. Their appearance of "sitting on" a case may simply be a result of them being understaffed and overworked (Washburn, 2006).

Opinions on Tribal Justice Autonomy

This theme represented the thoughts and opinions of the participants regarding the ability of tribal justice systems to handle sexual assault cases independently from the federal government. This information was pertinent to answering my second research question: What do federal criminal justice professionals think about the possibility of giving tribal criminal justice systems more authority to investigate and prosecute all types of sexual assault cases that occur in Indian Country? When asked about the pros and cons of tribal justice autonomy, participants responded overwhelmingly negatively. In fact, FBI Agent #2 even stated, "There aren't a lot of pros." There were two positive remarks made regarding tribal justice autonomy throughout the three interviews.

> [Former] U.S. Attorney: "If they have the proper training and experience and resources, it's not a bad idea."

The former U.S. Attorney suggested that, with more training and resources, tribal justice systems have the potential to be good for Indian Nations in dealing with sexual assault. FBI Agent #1 stated that one positive aspect to having tribal justice systems be solely responsible for handling sexual assault cases would be that communities would be "proactive" in addressing this issue. This suggests that FBI Agent #1 perhaps felt that the reason the federal government is involved in the criminal justice affairs of Indian Country is because tribal justice systems are not being proactive in addressing crime. As discussed in my literature review, tribal courts have been severely limited in their ability to prosecute most major felonies due to the implementation of various pieces of federal legislation. It was interesting to me that he suggested a lack of proactivity on the part of tribal justice systems, rather than discussing how the federal legislation that limits their abilities, because it demonstrated that he might not be aware of the history of paternalistic federal legislation that has imposed certain limitations onto tribal courts. Since I did not ask a follow-up question regarding his remark, it is unclear what he meant by this. Along the same lines, the former U.S. Attorney seemed to iterate a similar point regarding the limits of tribal courts.

> [Former] U.S. Attorney: "The constraints of THEIR legislature, of what THEY have, THEIR requirements. So I don't know if you can say, "well, if you have a prosecutor there to be able to do that, it would solve it." It can't be hindered by, uh, I don't want to use a glass ceiling, but he's going to be hindered by a cap…I don't know if that's the pound of flesh that the justice system is designed to do."

Again, this seems to imply that the issues lie with tribal justice systems themselves, rather than on the federal legislation that limits the abilities of tribal justice systems. The former U.S. Attorney seems to be implying that the limits on tribal justice systems exist because they have placed these limits on themselves, and, based on the research displayed in my literature review, this is incorrect. At other points during all of the interviews, all participants referenced the limitations on tribal justice systems. All participants inferred that the limitations on tribal justice systems prevent tribal courts from keeping people in prison for as long as the federal criminal justice system is able to imprison people, and that this creates issues for them; however, none of them suggested altering the legislation.

All participants expressed that the way to address these limitations would be with more federal involvement, rather than implementing new legislation that would change the current limitations. When asked about a hypothetical situation in which tribal justice systems did not have as many limitations placed on them, FBI Agent #1 stated that without the limitations, tribal justice systems have the potential to be able to address sexual assault, but not without the oversight of the federal government. He argued that federal oversight of tribal justice affairs would be the "responsible thing to do." This particular quote was important to me because it perfectly encapsulated the paternalistic way in which the federal government views and treats Indian Nations (see Chapter 2: Review of Literature). FBI Agent #1 also stated that it would be good to maintain federal criminal justice involvement in sexual assault cases in Indian Country because U.S. Attorneys and the FBI operate in a "neutral" way, so they are "better able to prosecute and investigate" these crimes. It was interesting that he suggested that federal criminal justice officials operated neutrally in Indian Country, considering the historically oppressive relationship between the federal government and Indian Nations, which I discussed in more

detail in Chapter 2. FBI Agent #2 iterated a similar viewpoint, stating that the federal government should continue to be involved in the prosecution and investigation of sexual assault cases in Indian Country due to the limits of tribal justice systems and the lack of qualified criminal justice officials in Indian Country. FBI Agent #2 also felt that there are not enough certified attorneys in Indian Country, and so the quality of prosecutions varies. Tribal criminal justice systems are severely underfunded compared to federal criminal justice systems, and this may be one reason why the participants felt that the quality and amount of criminal justice professionals in Indian Country varied.

With regards to tribal justice autonomy and the obstacles created by the limits placed on tribal courts, all participants expressed the importance of having significant punishments, and holding facilities, in tribal justice systems. The points made by the participants regarding the lack of consistent criminal justice officials in Indian Country and their lack of holding facilities could be due to the lack of funding and resources that are available to criminal justice systems in Indian Country, but this was not mentioned by the participants. Since the federal criminal justice system primarily relies on punishment as a deterrent to committing crime, it makes sense that the participants in my study would see punishment as an essential part of a tribal justice system. Although, again, this is a concept that the participants are IMPOSING on tribal justice systems; tribal justice autonomy implies that tribes would be able to create their own justice systems, without interference from the federal government.

Self-Perceptions of Interviewees

This theme summarized the participants' views of their own agencies, in terms of how well their agency addressed sexual assault in Indian Country. During my interview with the former U.S. Attorney, I asked him how well he thought federal criminal justice officials were

addressing the issue of sexual assault in Indian Country. He relayed to me that it was very hard to judge that because he and other federal justice officials tend to not be readily accepted by Indian Nations, and this affects how well they are able to prosecute and investigate these cases.

> [Former] U.S. Attorney: " in some cases I was part, I was part monk and I was part hitman. That was my job, right? My job is to be able to listen and get people to talk to me. The other part was to be able to prosecute and put people in prison for crimes that I could prove that they did to protect the community. So how well law enforcement or, or um, those in the feds were able to relay that to people — hard, incredibly difficult to judge. And I don't know how well you could say, I don't know if you can quantify that. Simply because I am a white male coming into a Native American community. I'm not readily, readily accepted. They know I'm there for a reason, and if they believe me that I'm there to help them, then they might open up. But if not, then it's, it's a wall. And I don't know if that necessarily is just because I'm Caucasian. I think the — at least the responses that I got with some people, not all — um, there are, there is, there are some people who have an inherent distrust of the federal government. You can't take that out."

As I mentioned previously, FBI Agent #1 suggested to me that the FBI was "neutral;" they are "just trying to get the facts." For this reason, he claimed that the FBI is the best agency to handle these crimes. Specifically, he expressed to me that the Arizona district of the FBI is "doing it the best;" he said that his district is "a flagship operation." He said that the FBI takes sexual assault very seriously, and that there are lots of resources dedicated to handling these crimes. FBI Agent #2 felt the same way, despite appearing very uncomfortable when I asked him how well he thought the federal criminal justice system was addressing sexual assault, saying that the FBI "…addresses sexual assault very effectively" and that they are "the best agency set up for this."

Both FBI Agents were very confident in the abilities of their organization; however, at the end of my interview with FBI Agent #1, when I asked him if there was anything else I should know about the role of the FBI and federal law in sexual assault on reservation land, he told me that sometimes I might come across things on the Internet about the FBI and U.S. Attorney's Office (USAO) declining a lot of these cases. He said that there are always going to be declinations, but despite this, the FBI and USAO prosecute and investigate a large number of cases. He directed me to the Uniform Crime Report (UCR) and the Annual Indian Country Crime Report for evidence of their work. This was interesting to me because the high number of declinations by the USAO of sexual assault cases occurring in Indian Country was something that I referenced in my literature review in Chapter 2. It seemed like both FBI Agents were aware of the negative press their agency (and the USAO) had incurred for these declinations. This may have been the reason why FBI Agent #2 appeared uncomfortable when I asked him how well he thought federal criminal justice officials were addressing sexual assault in Indian Country.

Difficulties of Investigating Sexual Assault Cases Occurring in Indian Country

This theme represented the participants' perceptions of the difficulties of investigating sexual assault cases occurring in Indian Country. All participants said that the collection of evidence in a timely and legal manner presented obstacles to successfully investigating these cases. The former U.S. Attorney stated that sometimes evidence is tampered with, or lost, by law enforcement, creating issues for the prosecution.

> [Former] U.S. Attorney: "…when law enforcement has or has in its possession or obtains or somehow acquires evidence, and then loses that evidence or destroys that evidence or tampers with that evidence, then you can have the judge give instructions to the jury

> saying, this is what happened with that evidence. And you can presume that that evidence benefited the defendant."

All participants talked about how the collection of DNA evidence is essential to a successful sexual assault prosecution (see Chapter 2: Review of Literature); however, all participants also mentioned that the DNA evidence needs to be collected very quickly in these cases, as it tends to disappear very quickly. Both FBI Agents told me that this is difficult to do because of delayed disclosures. Delayed disclosures are where the victim does not report the sexual assault as soon as it happens, so there is less of a chance of collecting physical evidence, especially DNA. There are many reasons why a victim of sexual assault might not immediately report the case, and some of the most common reasons are discussed in Chapter 2. Although some of these reasons may also be relevant to the delayed disclosures of Native American victims of sexual assault, my interviews revealed that perhaps Native American victims face unique circumstances when deciding whether or not to report a sexual assault. For instance, FBI Agent #1 stated that if the perpetrator was a family member, then if the victim chooses to report it often drives a wedge in the family because the family typically does not believe the victim. As I discussed earlier, the former U.S. Attorney said that victims who have been repeatedly victimized may be more reluctant to report a sexual assault.

> [Former] U.S. Attorney: "…victims who have been repeatedly victimized. They have a harder time coming in and speaking about things because it's been going on for so long and nobody's done anything."

This means that many victims may believe that nothing will happen if they are to report a sexual assault, so they choose not to report it. Additionally, reporting a case typically means that the victim will have to talk about the details of the case many times, which can potentially re-

traumatize the victim and stigmatize the offender, according to FBI Agent #1. FBI Agent #2 said that when a Native American victim of sexual assault reports an assault, they often drop out of the investigation later on. He went on to say that the FBI is able to continue the investigation regardless of the victim's input; however, it is more difficult to investigate without a cooperative victim and so the FBI will sometimes drop the case at this point.

All participants suggested that the fact that there is often very little DNA or other physical evidence both presents issues for the USAO and the FBI, and also makes victim statements very important. Since there is a lot of interviewing involved in the investigations of sexual assaults, the quality of interview evidence seems to be very important in these cases. FBI Agent #2 said that Native American victims of sexual assault are often intoxicated when they are assaulted, and this means that it is often harder for them to recall details of the assault; thus, impacting the quality of their statements. FBI Agent #1 said that the varying education levels found in Indian Country, various "cultural barriers," and the fact that victims are often very far away make it difficult to collect good statements from the victim and build a case.

Difficulties of Prosecuting Sexual Assault Cases Occurring in Indian Country

This theme captured the participants' perceptions of why sexual assault cases in Indian Country can be difficult to prosecute. All participants indicated that these cases are difficult to prosecute for various reasons. As mentioned previously, the former U.S. Attorney stressed that the distrust of the government that is found in some Native American communities makes the job of U.S. Attorneys very difficult.

> [Former] U.S. Attorney: "One of the challenges that you have, as being from the federal government coming into that, is trying to convince people who already have a distrust for law enforcement to trust you, to be able to move forward with cases."

The former U.S. Attorney also mentioned that the way in which evidence is collected, as well as what kind of evidence is collected, affects how well the USAO is able to prosecute sexual assault cases occurring in Indian Country. FBI Agent #1 and #2 told me that there is rarely any physical evidence in a sexual assault case; they are often cases of "he said/she said," which can be very difficult to prove in court. The former U.S. Attorney said that if there was evidence but it was not collected in a timely and legal manner, then the evidence is no longer admissible in court, making the case very difficult to prosecute successfully. All participants also mentioned that proving that a sexual assault occurred, and that no consent was given, can be very hard to prove, especially if there were not any witnesses to the assault, as is usually the case according to FBI Agent #2.

CHAPTER FIVE: DISCUSSION AND CONCLUSION

This chapter will discuss my findings as they relate to what is already known, and what was already discussed, in my literature review in Chapter 2. I will also discuss how my findings have added to the literature on sexual assault in Indian Country, and what further research on this topic could be conducted. Finally, I will conclude my thesis.

The results discussed in the previous chapter detail some important findings regarding the experiences and perceptions of the participants in the prosecution and investigation of sexual assault cases occurring in Indian Country. From these findings, it was clear that these cases are particularly difficult to prosecute and investigate for a number of reasons. It was also evident that the participants expressed more confidence in the abilities of federal criminal justice officials, and less confidence in the abilities of tribal criminal justice officials. In addition to this, the participants were not particularly keen on the idea of Indian Nations exercising and managing their own justice systems.

In general, sexual assault is a notoriously difficult crime to prosecute and investigate as it is very common for it to go unreported (Campbell et al., 2009). Victims of sexual assault choose not to report for a variety of reasons; however, as demonstrated by my findings, these reasons become compounded for Native American victims of sexual assault. Since, due to the 2013 re-authorization of VAWA, some tribal courts (those who have chosen to comply with VAWA) are only able to prosecute sexual assault perpetrated by non-Native people when it occurs within the context of dating or domestic violence, and they are limited in their ability to prosecute and sentence Native American perpetrators of sexual assault, Native American victims often rely on the federal criminal justice system to provide justice. Due to the historically oppressive relationship between Native Americans and the federal government, many victims may not trust

federal prosecutors and investigators to provide justice for them and their communities, as was revealed in my interviews (Krakoff, 2004; Washburn, 2006). This lack of trust in the system was something that the former U.S. Attorney reiterated a couple of times throughout our interview; however, he never discussed the possible (and well-documented) reasons that could have led to this lack of trust in the system.

Previous research has shown that placing more power to investigate and prosecute crimes occurring in Indian Country in the hands of federal criminal justice officials can be problematic due to the fact that federal criminal justice officials are often unfamiliar with the cultures of tribes and are often unaware of the needs and concerns of the communities which they serve (*Indian Country Investigations and Prosecutions*, 2014; Washburn, 2006). I would argue that the findings of my study support this notion. Not only did the participants appear to be generally unaware of the different cultures and needs within the communities they served, but they also never mentioned colonialism, boarding schools, or the way in which federal legislation has been used to oppress Indian Nations and disempower tribal courts. This was surprising to me. The historical trauma endured by Native Americans makes them a uniquely marginalized population, and this may require a criminal justice approach that is sensitive to their unique traumas. I expected this idea of cultural sensitivity to come up in the interviews, but it never did. In fact, FBI Agent #1 mentioned "cultural barriers" as one reason why it is difficult to investigate sexual assault in Indian Country, but he did not elaborate on what he meant by "cultural barriers." This suggests a possible need for federal criminal justice officials who work in Native American communities to undergo some sort of cultural awareness program, in which they are taught about colonialism and its impact on Indian Nations, and the different cultures of the communities that they serve.

It is important to note that tribal justice systems vary depending on the amount of funding and resources available to the tribe which then determines how developed their justice systems are and how many personnel they are able to employ. They also vary depending on the different laws of each tribe. For instance, some tribal justice systems may have sexual assault defined within their tribal codes and some may not, and this would impact how a tribal court is able to respond to sexual assault. Nonetheless, all of the participants I interviewed did not speak very highly of the possibility of empowering tribal courts to have more authority within their own court systems. They all cited the limitations on tribal courts as the main reason why they did not see tribal justice autonomy as a good thing. When they referenced these limitations, however, they did not talk about the role the federal government played in creating these limitations through the enactment of various pieces of federal legislation, as discussed in the section of my literature review entitled "Paternalistic Federal Legislation and its Neglect to Protect Native Americans." The way the participants talked about these limitations indicated that they saw the limitations as either a lack of proactivity on the part of tribal courts, or simply as issues created by tribal governments. As discussed in the previous chapter, all the participants seemed to argue that the only way to combat these limitations was by maintaining federal involvement in the criminal justice affairs of Indian Country. This seems to suggest that the participants perhaps needed to be made more aware of the federal legislation that largely dictates the abilities of tribal courts. This also suggests that perhaps more education could be relayed to federal criminal justice professionals of changing federal statutes in order to give tribal courts more authority to prosecute Native and non-Native perpetrators of sexual assault.

The key finding of this study is that paternalism is still evident in the way that the participants spoke of Indian Nations and their justice systems. The participants in my study

advocated for federal supremacy over tribal sovereignty in the way that they talked about tribal justice systems. This was evident in the way that FBI Agent #1 described federal oversight of any potential Native American justice system as the "responsible thing to do." This statement is a perfect representation of the guardian-ward relationship between the federal government and Indian Nations, respectively, that was famously declared by Chief Justice John Marshall (Prucha, 1996). In addition to this, all participants seemed to assume that, if Indian Nations were to create and maintain their own justice systems, they would be similar to, if not based on, the federal criminal justice system. This is a Western concept that is being imposed onto Indian Nations, who may have their own mechanisms for social control that may not resemble this Western model. Despite the fact that Indian Nations are supposed to be sovereign nations, all participants felt that the federal criminal justice system was better suited and designed to deliver justice to Native American communities.

Recommendations for Further Research

My current research adds to the body of literature on federal involvement in the criminal justice affairs of Indian Country, but, due to the fact that I included a FORMER U.S. Attorney who was only able to provide dated information and the lack of tribal justice officials' input, my findings are very limited. In a future study, it would be beneficial to have a larger sample size, made up of the input of both current federal and current tribal criminal justice officials; to gather more information about the different demographics and developments on the reservations in the northern Arizona region, in order to see how they compare to the general information; to interview participants at a more neutral location, such as a coffee shop; and to expand my study so that I incorporate participants from all districts of Arizona, in order to compare the findings.

The findings of this study support the notion that, when handling sexual assault cases that occur in Indian Country, the participants in this study need to be more aware of the unique traumas faced by Native Americans. The participants in my study were very adamant about the positive role of the federal government in sexual assault cases occurring in Indian Country, despite the fact that federal involvement seems to have had very little impact on the high rates of sexual assault that continue to exist in many places throughout Indian Country. The participants exhibited unease when asked about the possibility of Indian Nations, as sovereign entities, utilizing their own criminal justice systems. In addition to this, one participant seemed to hold a dangerously negative stereotype regarding Native Americans and sexual assault. These findings suggest a need for cultural and educational training to be required of federal criminal justice personnel who will be working in Indian Country, and they also question the necessity of federal criminal justice involvement in sexual assault cases occurring in Indian Country. If federal statutes were to be altered, tribal courts might be more empowered to handle sexual assault cases occurring within their Nation, and they might be more appropriately suited to handle this issue than federal investigators and prosecutors. The findings of this study, along with the lasting impact of historical trauma, the high rates of sexual assault in Native American communities, and the paternalistic implications of the federal legislation that has been imposed on Indian Nations present the need for a different approach to addressing sexual assault in Indian Country, which could be found to exist within the communities themselves.

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APPENDIX A

Interview Guide for Interview with Former U.S. Attorney

Introduction

1. How long did you work as a U.S. Attorney? What year did you start working as an Attorney and what year did you stop?

2. What office(s) did you work at?

3. On average, how many cases would you handle per month?

4. About how many cases were referred to you from Indian Country per month, and what types of crimes were the most common ones that were referred to you for prosecution?

5. Which reservations did you work with?

Experience Prosecuting Crimes Occurring in Indian Country in General

6. When were crimes that occurred in Indian Country referred to you for prosecution? Who would refer them to you?

7. What were some unique challenges to prosecuting crimes that occurred in Indian country?

8. Can you describe your experience working with other law enforcement agencies when prosecuting a crime that occurred in Indian Country, such as tribal law enforcement, the FBI, or victim advocates?

9. What kinds of factors affected your decision to prosecute or not prosecute crimes that occurred in Indian Country?

Experience Prosecuting Sexual Assault Occurring in Indian Country

10. What were some challenges you encountered when sexual assault cases from Indian country were referred to you for prosecution?

11. What other criminal justice officials would you have to work with when you were prosecuting a sexual assault case that occurred in Indian Country? Describe any difficulties you encountered when you worked with other government agencies, such as the FBI and tribal law enforcement.

12. What factors influence your decision to prosecute or not prosecute cases of sexual assault occurring in Indian Country?

13. How well do you think the issue of sexual assault in Indian Country is being addressed by federal criminal justice officials?

14. What do you think about the idea of tribal criminal justice officials being solely responsible for prosecuting sexual assault cases occurring in Indian Country?

APPENDIX B

Interview Guide for FBI Agent #1 and FBI Agent #2

Introduction

1. How long have you worked as an FBI agent? What offices have you worked at and what positions have you held?

2. Can you describe about how many cases your office handles a week, and how does that break down per agent?

3. Can you describe the northern Arizona region and this office and what is considered FBI jurisdiction in terms of geographic boundaries?

4. What about in terms of legal jurisdiction—what defines the kinds of cases the FBI will see or not? How do cases typically come to your office—can you describe how they are referred or the process of receiving a call to investigate?

Experience Investigating Crimes in Indian Country

5. Can you describe which justice officials or agencies in northern Arizona you regularly work with and in what way? How might you describe your experience and relationship working with other justice officials when investigating crimes occurring in Indian Country, such as tribal law enforcement, U.S. attorneys, etc?

6. How do you explain the process of sexual assault cases in Indian Country? Are there any unique challenges or concerns from a federal law enforcement perspective? For these victims? cultural considerations? Can you explain to me the typical process and at what point you work with US attorneys or other prosecutors (or other agencies)?

7. How would you describe the legal or statute definitions, or the boundaries of the legal definitions/your duties?

8. In cases involving sexual assault, does the process by which you get called change? Does this relate to the kind of sexual assault, or the location, or the disclosure of the victim?

9. Can you talk about times in which you (in your role as federal law enforcement) have experienced jurisdictional dilemmas or challenges with a sexual assault case? Can you give an example of a case that was like that?

10. Are sexual assault cases different from other cases in terms of investigation/law enforcement? What about in terms of prosecution—do sexual assault cases create different concerns or challenges for prosecution? For jurisdictional issues?

Conclusion

11. How well do you think the issue of sexual assault in Indian Country is being addressed by federal criminal justice officials? What might assist the FBI in better addressing this crime or these victims?

12. What do you think about the idea of tribal criminal justice officials being solely responsible for prosecuting sexual assault cases occurring in Indian Country? What are the possible pros and cons of this from your perspective? What might be the reason for maintaining FBI/US Attorney and US law involvement in Indian Country crimes like this one?

13. Is there anything else you think I should know about the role of the FBI and federal law in sexual assault on reservation land?

APPENDIX C

Informed Consent Form

Title of Study: The Experiences of Criminal Justice Professionals in Sexual Assault Cases in Indian Country

Principal Investigator: Jamie McNair

This is a consent form for research participation. It contains important information about this study and what to expect if you decide to participate. Please consider the information carefully. Feel free to discuss the study with your friends and family and to ask questions before making your decision whether or not to participate.

Why is this study being done?
The purpose of this research is to learn more about the experiences of criminal justice professionals when they deal with a case of sexual assault occurring in Indian Country. My research question is: What is the experience of criminal justice professionals in investigating and prosecuting sexual assault cases occurring in Indian Country?

How many subjects will participate and how long will the study take?
One former U.S. attorney and two FBI agents in the northern Arizona area will be individually interviewed. The study will take about 4 months.

What will happen if I take part in this study?
Subjects will be interviewed once, individually, at their workplace (or on-campus at NAU, if they would prefer that) regarding their experience investigating and/or prosecuting cases of sexual assault occurring in Indian Country. Interviews will be audio-recorded and transcribed.

Will there be any cost to you to take part in this study?
The only cost to interviewees would be the time it will take to conduct the interview. Each interview will last 45 minutes to an hour.

Will you be paid to take part in this study?
You will not be paid for your participation in this research study.

Can I stop being in the study?
The subject's participation is voluntary. Refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

Your participation is voluntary. You may refuse to participate in this study. If you decide to take part in the study, you may leave the study at any time. No matter what decision you

make, there will be no penalty to you and you will not lose any of your usual benefits. Your decision will not affect your future relationship with Northern Arizona University. If you are a student or employee at Northern Arizona University, your decision will not affect your grades or employment status.

What are the risks and/or discomforts you might experience if you take part in this study?
There will be no more than minimal risk to participating in this study.

Are there any benefits for you (or for others) if you choose to take part in this research study?
The subject may or may not benefit if they choose to take part in this research. The society at large may benefit from this study as it will contribute to the greater body of literature regarding the experiences of federal criminal justice professionals, specifically in cases of sexual assault occurring in Indian Country.

What other choices do I have if I do not take part in the study?
You may choose not to participate in this study without penalty or loss of benefits to which you are otherwise entitled.

Will my study-related information be kept confidential?
The records of this study will be kept private. In any sort of report made public, it will not include any information that will make it possible to identify interviewees. Research records will be kept confidential, through the use of pseudonyms, in a locked file; only the researchers will have access to the records. Interviews will be recorded; however, the Principal Investigator will destroy the recording after it has been transcribed, which is anticipated to be within two months of its taping.

Efforts will be made to keep your study-related information confidential. However, there may be circumstances where this information must be released. For example, personal information regarding your participation in this study may be disclosed if required by state law.

Also, your records may be reviewed by the following groups:

- Office for Human Research Protections or other federal, state, or international regulatory agencies
- Northern Arizona University Institutional Review Board

Who can you call if you have any questions?
If you have any questions about taking part in this study or if you feel you may have suffered a research related injury, you can call the Principal Investigator at: (602) 469-7030

For questions about your rights as a participant in this study or to discuss other study-related concerns or complaints with someone who is not part of the research team, you may contact the Human Subjects Research Protection Program at 928-523-9551 or online at http://nau.edu/Research/Compliance/Human-Research/Welcome/.

If you are injured as a result of participating in this study or for questions about a study-related injury, you may contact _____.

An Institutional Review Board responsible for human subjects research at Northern Arizona University reviewed this research project and found it to be acceptable, according to applicable state and federal regulations and University policies designed to protect the rights and welfare of participants in research.

AGREEMENT TO PARTICIPATE

I have read (or someone has read to me) this form, and I am aware that I am being asked to participate in a research study. I have had the opportunity to ask questions and have had them answered to my satisfaction. I voluntarily agree to participate in this study.

I am not giving up any legal rights by signing this form. I will be given a copy of this form**.**

Subject Name:_____

Subject Signature:_____ Date:_____

AGREEMENT TO BE AUDIORECORDED

Subject Signature:_____ Date:_____

Signature of Investigator/Individual Obtaining Consent:

To the best of my ability, I have explained and discussed the full contents of the study including all of the information contained in this consent form. All questions of the research subject and those of his/her parent or legal guardian have been accurately answered.

Investigator/Person Obtaining Consent:_____

Signature:_____ Date: _____