

Stalking in Indian Country

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DEFINITION OF STALKING

The Stalking Resource Center:

“A course of conduct directed at a specific person that would cause a reasonable person fear.”

The National Violence Against Women Office:

"A course of conduct directed at a specific person that involves repeated visual or physical proximity, nonconsensual communication, or verbal, written or implied threats, or a combination thereof, that would cause a reasonable person fear".

Acts that constitute stalking

1. Following
2. Telephoning
3. Sending letters, packages, or flowers
4. Bombarding with emails or instant messages
5. Photographing from a distance or with hidden cameras
6. Installing surveillance software on the victim's computer
7. Using global positioning systems (GPS) to track the victim's car
8. Tracking or intimidating a victim in any manner

The Problem in Indian Country

- 8% of women in a study conducted by the National Violence Against Women office stated that they had been stalked at some time in their lives. More than half of the female victims were stalked by current or former lovers.
- According to the D.O.J., stalkers kill 30% of the 4,300 women who are murdered each year.

- People who stalk their former or current intimate partners are four times more likely to commit assault than in those relationships where stalking does not occur.

- The murder rate on Arizona reservations was 29 per 100,000 people, as compared with a national rate of 5.6 per 100,000. According to the F.B.I., in referring to Arizona reservations, stated, “Ninety-five percent of the violent crime out there is directed toward family and friends.”

Impediments to a successful law enforcement response

- There may be **logistical problems** that face law enforcement. For example:
 - In rural areas there are usually a limited number of police officers to respond to calls.
 - Officers must usually travel long distances to reach women who may already be in a life threatening position.
 - Some tribal police departments do not have a 911 emergency system in place.
 - Many tribes do not have tribal jails, or lack sufficient space in their jails to keep suspects in custody pending their first court appearance.

There can be **jurisdictional issues** that complicate the law enforcement situation:

- For example, there can be confusion as to which law enforcement agency has jurisdiction over a call in checkerboard reservations.
- There may also be issues about which agency has jurisdiction over the perpetrator.

There can be **societal/cultural issues** that complicate the law enforcement situation:

- Rural women often have limited access to phones, transportation, emergency services and shelters.
- In small communities, where everyone knows everyone else, victims may hesitate to contact law enforcement, or seek other support services out of shame or for fear that her stalker will find out.
- A victim may be deterred from contacting law enforcement because her stalker is a friend or relative of a law enforcement officer or service provider.

APPLICABLE FEDERAL LAWS

18 U.S.C. Sec. 2261A Interstate Stalking

- (1) It is a federal crime to travel across state, tribal or international lines to stalk another person. The defendant must have the intent to kill, injure, harass, or intimidate the victim, or to place the victim, a family member, or a spouse or intimate partner of the victim, in fear of death or serious bodily injury. This crime is punishable by a period of incarceration from five years to life.

(2) It is a federal crime to stalk another person across state, tribal or international lines, using regular mail, e-mail, or the Internet. The defendant must have the intent to kill or injure the victim, or to place the victim, a family member, or a spouse or intimate partner of the victim in fear of death or serious bodily injury. This crime is punishable by a period of incarceration from five years to life.

18 U.S.C. 875 (c) Interstate Communications

- It is a federal crime to transmit in interstate or foreign communications, any threat to kidnap or injure another person. This crime is punishable by a period of incarceration up to five years.

47 U.S.C. 223 (a) (1) (C)

Harassing Telephone Calls in Interstate Communications

It is a federal crime to use a telephone or other telecommunications device to annoy, abuse, harass, or threaten another person at the called number. This crime is punishable by a period of incarceration up to two years.

18 U.S.C. 2265 (The Violence Against Women Act I and II)

- This civil law provides that a civil or criminal domestic protective order issued by a court in one state or Indian tribe shall be accorded full faith and credit by the court of another state or tribe, and is to be enforced as if it were the order of the court of the second state or tribe.

- This law applies to permanent, temporary and ex parte protection orders that comply with the statute's requirements. To comply, the protective order must have provided the defendant with reasonable notice and an opportunity to be heard, in a manner consistent with due process.

- Tribal Court Jurisdiction was clarified to specify that a Tribal Court shall have full civil jurisdiction over protection orders, including authority to enforce its orders through civil contempt proceedings, exclusion of violators from Indian lands, and other appropriate mechanisms in matters arising within the authority of the tribe, and in which at least one (1) of the parties is an Indian.

Stalking in Indian Country

I. Introduction

Stalking is a complex social problem that pervades all levels of American society. In Indian Country, stalking is especially pervasive, with national statistics indicating that American Indian/Alaskan Native women are stalked at a rate at least twice that of any other racial group.

The definition of stalking varies. Some are very broad, such as that set forth by the Stalking Resource Center:

“A course of conduct directed at a specific person that would cause a reasonable person fear.”

Others are more specific, such as that set forth by the National Violence Against Women Office:

"A course of conduct directed at a specific person that involves repeated visual or physical proximity, nonconsensual communication, or verbal, written or implied threats, or a combination thereof, that would cause a reasonable person fear".

In either case there are certain acts that constitute stalking. These include the following:

1. Following
2. Telephoning
3. Sending letters, packages, or flowers
4. Bombarding with emails or instant messages
5. Photographing from a distance or with hidden cameras
6. Installing surveillance software on the victim's computer
7. Using global positioning systems (GPS) to track the victim's car
8. Tracking or intimidating a victim in any manner

The Scope of the Problem

When the above acts are taken into consideration, the impact on Alaska Native/American Indian women is significant. Using the above criteria, 8% of women in a study conducted by the National Violence Against Women office stated that they had

been stalked at some time in their lives. More than half of female victims in the study were stalked by current or former lovers. According to the NVAW survey, a small majority, 55% of women victims, reported stalking to the police. When respondents were asked why they did not report stalking incidents, most thought it was not a police matter. Others feared retaliation by the stalker or thought that the police could not help. In fact, when asked why they thought stalking ended, 15% said it was because the perpetrator was warned by the police and only 9% said it was because the offender was arrested.

Stalking is a serious crime, one that should receive the full attention of tribal law enforcement and judicial resources. According to the Department of Justice, stalkers kill 30% of the 4,300 women who are murdered each year. In fact, people who stalk their former or current intimate partners are four times more likely to assault their partners as opposed to relationships where stalking does not occur. An Associated Press article, published in the Tucson Daily Star in October 2003 noted the rapidly rising murder rate on Arizona reservations. This article noted that the murder rate on Arizona reservations was 29 per 100,000 people, as compared with a national rate of 5.6 per 100,000. A representative of the F.B.I., in referring to Arizona reservations, stated, "Ninety-five percent of the violent crime out there is directed toward family and friends."

II. Stalking Behavior and its Effects

Stalking is a difficult crime to address. In general, stalking behavior presents a complex problem for victims and the criminal justice system because the behavior usually consists of a series of ongoing non-criminal acts. When these acts are taken into account together, they put the victim in a permanent state of physical and mental onslaught.

Generally, stalking does not require an actual threat to the victim as long as they experience a high level of fear. Stalking often serves to further victimize a person by restricting their access to usual activities such as maintaining a job or sending their children to school. As one author put it, "Stalking traps the victim in a sense of cyclic, repetitive time; it brings the past into her present, preventing her from moving into a self-determined future".

This cycle of control extends to poor utilization of law enforcement as well. Native and non-Native women living on rural reservations, as well as Native women living on urban reservations, face multiple challenges in stalking situations. In rural areas there are usually a limited number of police officers to respond to calls. In addition, they must usually travel long distances to reach women who may already be in a life threatening position. Some tribal police departments do not have a 911 emergency system in place. Many tribes do not have tribal jails, or lack sufficient space in their jails to keep suspects in custody pending their first court appearance.

There can be jurisdictional issues that complicate the law enforcement situation. For example, there can be confusion as to which law enforcement agency has jurisdiction over a call in checkerboard reservations. There may also be issues about which agency has jurisdiction over the perpetrator. For example if the stalker is non-Indian, a strict interpretation of *Oliphant vs. Suquamish* may require that the non-Indian stalker be prosecuted in state court, rather than in the federal or tribal system.

Rural women often have limited access to phones, transportation, emergency services and shelters. When every minute counts, these can be crucial factors affecting the safety of victims. In small communities, where everyone knows everyone else, victims may hesitate to contact law enforcement, or seek other support services out of shame or for fear that her stalker will find out. She may be deterred from contacting law enforcement because her stalker is a friend or relative of a law enforcement officer or service provider.

Tribal anti-stalking codes

Many tribes lack codes to properly address stalking. As of June 1999, only 21 tribes had passed codes that addressed stalking. Others resort to the use of harassment statutes, or simply charge stalkers under available criminal codes. While these approaches work to some extent, many stalking behaviors are not criminal in themselves. Such behaviors, for example following on a public street, or making non-threatening phone calls, may constitute a course of conduct that can put a victim into a reasonable fear for her safety. A tribal stalking or harassment statute is required to criminalize and punish such behavior in Tribal Court.

When tribal anti-stalking codes are written, great care must be taken to ensure that they cover the various methods that stalkers use to stalk their victims. For example, a

code that defines stalking as ‘physically following’ another, does not restrict a stalker from harassing the victim by phone, by mail or by e-mail. A code that requires a conscious intent to harass or harm the victim may shield the stalker from prosecution. Where the stalker mistakenly believes that they have a relationship with the victim, or where they believe that their attentions are actually welcomed by the victim, such intent to harass or harm may be difficult to prove.

A broad definition is of greater use in the prosecution of stalking. If the ordinance focuses on the effect of the stalker’s behavior on the victim, it will be more valuable in stopping this activity. Thus, tribal stalking codes that criminalize behavior that would cause a reasonable person to fear may be more effective than one that precludes specified behaviors. For example, if code language precludes “implied threats,” rather than requiring “credible threats,” there can be a major impact on prosecution. The more flexible the definition, the more room there is for the reality that in intimate violence situations, context is everything. While an indirect threat may seem benign to the casual observer, it may cause severe emotional trauma to a victim.

Yet another necessity is the expansion of the definition of stalking. In many codes there is a presumption that there has been a close relationship between the victim and the stalker. These codes are of limited use. Stalkers may be strangers. They may also be co-workers, family members, intimate partners, or persons who have had some previous relationship with their victim. Protection must be available to the victim whether or not there has been any relationship with the stalker.

The codes must also be broad when restricting access to specific sites or locations. The protective provisions must be broad enough to protect victims wherever they may be, be it at home, work, school, in public, or at any other place.

Relevant Federal Laws

In 1996 Congress made interstate stalking a felony. Congress relied on its regulatory authority under the Commerce Clause to punish domestic abusers or stalkers, who cross state lines, enter or leave Indian country, or cause a victim to do so. However, for the federal law to apply, the victim must sustain bodily injury. The punishment of the abuser increases according to the degree of the victim’s injuries, including death or life

imprisonment if the result is death of the victim. Of fundamental importance to Indian country, the statute requires every tribe and state to give full faith and credit to protective orders issued by other tribes and states.

Federal statutes give the Attorney General the discretion to make funds available to improve processes for entering stalking and domestic violence data like protective orders and offender's description into local, state and national databases like the NCIC. To be eligible, state, local or tribal governments have to enter warrants for arrest, protective orders, arrests for violating protective orders, and offender's criminal history into the database. This requires that tribal governments have, in place, court and prosecution records, and case histories, as well as the technological capacity necessary to enter and maintain the data. The program includes funds to furnish training and technical assistance for tribal and state judges dealing with stalking and domestic violence cases. Under the statute, the Attorney General must enter compiled data into the National Incident-Based Reporting System (NIBRS). The database allows ease of law enforcement in interstate and intrastate situations.

Federal laws exist under which stalkers may also be charged. It is important to note, however, that some of these laws are not particularly broad. These laws include the following:

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If you suspect that a stalker has violated any of these federal laws, contact tribal and federal law enforcement authorities.

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other appropriate mechanisms in matters arising within the authority of the tribe, and in which at least one (1) of the parties is an Indian.

Unresolved Issues

The sentencing authority of tribes is generally restricted to misdemeanor offenses by Indian perpetrators. Pursuant to Oliphant, non-Indian stalkers are not prosecutable in Tribal Courts, they may however be prosecuted under state or federal law. However, when a native victim seeks protection from a non-Native in Indian Country, there is no criminal recourse for the victim at the tribal level. As the Major Crimes Act precludes federal prosecution of misdemeanor offenses, non-Indian stalkers are rarely prosecuted.

Tribal courts now have the right to issue protection orders against non-Indians in civil 'domestic relations,' and other actions. While many tribal courts do not have the authority to impose criminal sanctions against non-Indians who commit crimes on Indian land, the Tribal police may arrest non-Indian perpetrators and transport them to state or federal authorities, and may use civil laws to impose fines against non-Indian perpetrators, or exclude them from tribal lands.

Best practices encourage the existence of an independent tribal protective order code that allows the issuance of a protective order against a non-Indian party in a tribal court.

VI. Possible Solutions

The solution to these problems is not simple. One traditional approach, that has recently been revived and appears supported by VAWA II, is the practice of banishment. A January, 2004 article in the Arizona Daily Star stated that banishment was making a comeback among tribes attempting to deal with the high incident of crime on reservations. While the article did not expressly mention crimes against women, it did note that tribes were using banishing against both Indian and non-Indian perpetrators. This approach could be of use to tribes seeking means to address stalking and other criminal behavior against Indian women and expands the assertion of tribal sovereignty.

An important assertion of tribal sovereignty is the development of tribal protocols and procedures. Tribes should establish and empower tribal court systems that are capable of making and implementing decisions in a timely manner. There should be

constitutions, charters, laws and other formal rules in place that regulate what people do, and how they do it. In this way uncertainty is reduced and stability is enhanced.

VII. Conclusion

Tribes are faced with the challenge of developing approaches to deal with constant change in the political and judicial climate. One way to begin is to assert control over their reservations within the framework of already approved forms of jurisdiction, while not limiting themselves to those areas.

Such a form of jurisdiction is The Model Anti-Stalking Code developed through the National Violence Against Women Survey. This model code was created in order to establish a framework to address the crime of stalking. The model provides important explanations for the choice of terms and definitions for those words. It can be very useful for tribes to modify this code in order to integrate local, cultural and multidisciplinary responses to stalking, without having to ‘reinvent the wheel.’

Multiple barriers may still prevent Native stalking victims in Indian Country from seeking the safety and justice they deserve. By designing, developing, and implementing culturally appropriate legal codes and protocols to address stalking crimes, tribal governments will not only be able to protect their citizens, empower victims of stalking and hold perpetrators accountable, they will also further their sovereignty. This is the tremendous task that lies before us. But the possibilities for the expansion of tribal jurisdiction are equally tremendous.