

JUSTICE FOR NATIVES?: SEXUAL ASSAULT AND DOMESTIC VIOLENCE IN INDIAN COUNTRY

Elizabeth Ann Kronk Warner

Associate Dean of Academic Affairs, Professor of Law, Director, Tribal Law and Government Center

University of Kansas School of Law

September 12, 2018

PRESENTATION OVERVIEW

- The Problem
- Tribal Sovereignty
- Criminal Laws Applicable to Indian Country
- Steps Toward a Solution
- Current Case Study: Man Camps

THE PROBLEM

- “In the United States, violence against indigenous women has reached unprecedented levels on tribal lands and in Alaska Native villages. More than 4 in 5 American Indian and Alaska Native women have experienced violence, and more than 1 in 2 have experienced sexual violence. Alaska Native women continue to suffer the highest rate of forcible sexual assault and have reported rates of domestic violence up to 10 times higher than in the rest of the United States. Though available data is limited, the number of missing and murdered American Indian and Alaska Native women and the lack of a diligent and adequate federal response is extremely alarming to indigenous women, tribal governments, and communities. On some reservations, indigenous women are murdered at more than ten times the national average.” – Indian Law Resource Center, <http://indianlaw.org/issue/ending-violence-against-native-women>

TRIBAL SOVEREIGNTY

- Tribes pre-existed the formation of the United States
- Founding Fathers treated tribes as separate sovereigns
- That status persisted to the mid-19th Century
- Reaffirmed during Indian Reorganization Era
- Currently in the Tribal Self-Determination Era
- Prior to President Trump, every President starting with President Nixon affirmed tribal sovereignty and right to self-determination
- U.S. Congress continues to recognize tribal sovereignty
- U.S. Supreme Court recognizes tribal sovereignty

CRIMINAL LAWS APPLICABLE TO INDIAN COUNTRY

- Despite recognition of tribal sovereignty, various criminal laws have eroded the ability of tribes to effectively respond to crime within their boundaries.
 - Indian Country Crimes Act
 - Major Crimes Act
 - *United States v. Kagama*
 - Indian Civil Rights Act
 - *Oliphant v. Suquamish Indian Tribe*
- As a result, crime may not be effectively addressed within Indian country, and, in some cases, criminals are known to exploit legal “loopholes.”

STEPS TOWARD A SOLUTION

- In recognition of the problem, the U.S. Congress has taken some steps to try to address the problem:
 - Tribal Law and Order Act of 2010
 - Violence Against Women Act of 2013

MODERN CASE STUDY: MAN CAMPS

- Energy companies seeking to engage in natural resource extraction in or near tribal nations must attract large numbers of temporary workers. Typically, this large transient work force is made up almost exclusively of non-Indian men. Life in these “man camps” is often centered around “sexism, hypermasculinity, and a disconnection from the local community.”
- Natural resource extraction tends to lead to increased crime. In the last 15 years there has been significant natural resource extraction in and near Indian country.
- Since the onset of the Bakken oil boom, the number of assault cases in North Dakota increased by over 82%.
- While there is no comprehensive data collection system that allows us to quantify the increased rates of violence associated with man camps, there is ample anecdotal evidence to establish a significant problem. Anecdotal reports (often collected by investigative journalists) suggest that Native women experience a marked change in their comfort-level in public places.

- Advocates for Native women and children have seen a marked increase in the rates of sexual assault in their communities since the arrival of hundreds of non-Native men. Anecdotal stories from law enforcement officers describe brutal conditions, with victims being bought and sold within camps. In one interview, a tribal police officer describes some of the child victims:

One of the things we ran into while working up there was a 15 year old boy had gone missing. He was found in one of the Man Camps with one of the oil workers. They were passing him around from trailer to trailer. He went there looking for a job and was hired by individuals within the Man Camp to do light cleaning in and around their personal areas. The young teenager was forced into sex slavery. ... We [also] found a crying, naked, four year old girl running down one of the roads right outside of the Man Camp. She had been sexually assaulted..."

- Damon Buckley, *Firsthand Account of Man Camp in North Dakota From Local Tribal Cop*, LAKOTA COUNTRY TIMES, May 22, 2014, http://www.lakotacountrytimes.com/news/2014-05-22/Front_Page/Firsthand_Account_Of_Man_Camp_In_North_Dakota_From.html.

- Moreover, Native women and children are already at high risk for becoming victims of human trafficking. Add in the dynamics of man camps, and the risk factors increase substantially.
- Horror stories involving women and children being bought and sold in man camps have begun to emerge in recent years.
- Prostitution is often understood to be part and parcel of the man camp experience, where local women (including Native women) turn to selling sex because of poverty, addiction, and/or homelessness.
- Local authorities have seen the rates of prostitution significantly increase over prior years. The higher rates of prostitution can be linked directly to the boomtown expansion. One reported discovered that “for the past 10 years...there were almost no prostitution or sex trafficking-related cases in far western North Dakota until 2011, when there were a dozen.”
- Women and children being used in prostitution are also at high risk for kidnapping and homicide. The emerging Missing, Murdered and Indigenous Women (MMIW) crisis can be traced, in part, to linkages between human trafficking in the fracking regions and missing women. Prostitution can be a lethal experience, since prostitutes are much higher risk for homicide.

- The federal government itself has acknowledged the danger presented by these man camps. In 2013, the Department of Justice acknowledged the relationship between energy extraction in the Bakken and high rates of crime targeting Native women and children:
 - Because of recent oil development, the [Bakken] region faces a massive influx of itinerant workers[,] and [consequently,] local law enforcement and victim advocates report a sharp increase in sexual assaults, domestic violence, sexual trafficking, drug use, theft, and other crimes, coupled with difficulty in providing law enforcement and emergency services in the many remote and sometimes unmapped “man camps” of workers.
- United States Attorneys, federal prosecutors that are co-responsible for crime control on most reservations in the lower 48, have also noted this phenomenon: “In the course of approximately the last five years, [extractive industries have] cause[d] a social eruption – in population, jobs, and money. It has exposed, predictably, the seedy and underbelly of these promising advances: resource shortages, young men with money to burn, and a veritable buffet of vices to spend it on.”

- Tribal law enforcement agencies, in particular, have struggled to protect Native women and children from crime associated with the extractive industries due to jurisdictional limitations.
- Most of the transient workers in these camps are non-Indians. As noted earlier, tribal governments are forbidden from prosecuting non-Indians pursuant to the *Oliphant* case. When non-Indians commit crimes in Indian country, the tribal government must depend upon state or federal officials to work the case.
- Moreover, many of the man camps are not located in Indian country, but rather neighboring off-reservation jurisdictions. To the extent that crime is happening within these off-reservation camps, tribal authority typically will not be able to investigate those crimes since they fall outside of Indian country.
- Without a federal crime, the responsibility for investigating off-reservation crimes falls under the auspices of the state. However, some advocates for Native women in extraction regions report that local law enforcement agencies often do not prioritize the trafficking and disappearances of Native women. Such lax enforcement often serves to embolden sex offenders.

ADDITIONAL RESOURCES

- National Sexual Violence Resource Center: <https://www.nsvrc.org/publications/nsvrc-publications/sexual-assault-indian-country-confronting-sexual-violence>
- Tribal Court Clearinghouse: <https://www.tribal-institute.org/lists/assault.htm>
- Mending the Sacred Hoop: <https://mshoop.org/resources/manuals/>
- Tribal Law and Policy Institute: <http://www.tribal-institute.org/download/NativeVictimsSexualAssault.pdf>
- National Congress of American Indians: <http://www.ncai.org/policy-issues/tribal-governance/public-safety-and-justice/violence-against-women>

QUESTIONS?

Elizabeth Kronk Warner

Associate Dean of Academic Affairs, Professor of Law, and Director, Tribal Law and
Government Center

University of Kansas School of Law

(785) 864-1139

elizabeth.kronk@ku.edu