

Addressing stalking in Indian Country



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It is widely believed in Indian country that, prior to colonization, stalking and domestic violence were not a common problem. ⁽¹⁾ The exploitation of power that characteristically accompanies a totally male-dominated and hierarchical social and legal structure was missing from most, if not all, Native communities in North America. ⁽²⁾ There were many customs and laws in effect that either avoided family violence in the first place, or that addressed it effectively in the rare instances when it did happen.

For instance, in traditional Cheyenne society, wife abuse was grounds for immediate divorce, and the woman would return to her family (bringing any children with her). ⁽³⁾ There was also a strong possibility of retribution from the woman's brothers and uncles. ⁽⁴⁾

In many tribes, membership is determined matrilineally ⁽⁵⁾, indicating an official recognition of the importance of women. Many tribes give and gave women property rights, recognize female deities, and honor women with ceremonies ⁽⁶⁾. In some tribes, there was no traditional pressure to stay in an unhappy union? if two people wanted to, they moved in together; if it stopped working out, they stopped living together ⁽⁷⁾ The issue of how to take care of any children who were affected by the separation was generally resolved by the fact that children were the responsibility of the whole tribe, not just the two biological parents. ⁽⁸⁾ Also, for some tribes custody of children automatically went to the mother almost no matter what ⁽⁹⁾ --- using children was not a weapon available to batterers and stalkers. The place of children in traditional Native societies was another way to avoid violence against women before it happened.

And if the unthinkable---an act of family violence--- *did* happen, the community intervened to fix it - not just for the welfare of the individual, but for the benefit of the entire society. ⁽¹⁰⁾ Traditionally, any violence against a tribal member, be it family violence or otherwise, was seen as a threat to the harmony of the whole community. It was with the introduction of a value system that attaches more importance to the masculinity of individual men than to the welfare of all individuals as an integral element of a healthy society, that domestic violence, and with it stalking, became a major problem.

1 Debruyne, Lemyra; Beverly Wilkins, and Karen Artichoker, "It's Not Cultural: Violence Against Native American Women," paper prepared for the 89th American Anthropological Meeting, New Orleans, Louisiana, 1990, page 144.

2 Murray, Virginia H., "Traditional" Legal Perspective: A Comparative Study of the Historic Civil, Common, and American Indian Tribal Law Responses to Domestic Violence, Oklahoma City University, Oklahoma City University Law Review, 23 Okla. City U.L. Rev. 433, page #13.

3 Id., page 16.

4 Id., page 17.

5 Id., page 20.

6 Id., page 21

7 Id., pages 19 and 25; and traditional knowledge passed down to me from my family (Anishinabe).

8 Id.

9 Supra note 2, page 19

10 Sacred Circle Role of Shelter and Advocacy Ending Violence Against Native Women, Rapid city, South dakota, undated, training institute manual, page 8.

"The influence of traditional non-Indian patriarchal views had a profound effect on many Indian people---United States government programs such as allotment, which divided Indian land into 160-acre plots given to a male head of the household, educational programs that taught men to be farmers and women to be housewives, governmental demands for a single "headman" to make decisions with the United States on behalf of a tribe, which centralized power in one individual ? nearly always a man, and Indian inheritance and property laws that skewed traditional Indian notions. All of these were not only confusing to many Indian people, but reversed the traditional roles of men and women in many Indian communities."

Murray, Virginia H., "Traditional" Legal Perspective: A Comparative Study of the Historic Civil, Common, and American Indian Tribal Law Responses to Domestic Violence, Oklahoma City University, Oklahoma City University Law Review, 23 Okla. City U.L. Rev. 433, page 14

Stalking is generally defined as harassing or threatening behavior that an individual engages in repeatedly,⁽¹¹⁾ but legal definitions and public perceptions of what it is vary widely. Thus, creating new statutes and enforcing the old becomes vague and ambitious.

Stalking is generally defined as harassing or threatening behavior that an individual engages in repeatedly, such as following a person, appearing at a person's home or business, making harassing phone calls, leaving written messages or objects, or vandalizing a person's property. These actions may or may not be accompanied by credible threats of serious harm, and they may or may not be precursors to an assault or murder.

In mainstream American society, the very idea of stalking as a crime is relatively new. The first anti-stalking law in the United States was passed in California in 1990; by 1993 all fifty states and the District of Columbia had passed some form of anti-stalking law.⁽¹²⁾ In 1996, Congress made it a felony to cross state lines to stalk or harass an individual; it also became a federal felony to stalk or harass on military or US territorial lands, including Indian country.⁽¹³⁾ It is unclear just how many tribal anti-stalking codes exist in the United States, but in June of 1999, Mending the Sacred Hoop STOP Violence Against Indian Women Technical Assistance Project (MSH-TA) sent a survey regarding tribal codes to approximately 150 tribes. Of the forty-eight responses, only twenty-one have passed codes that address stalking.⁽¹⁴⁾ So while the need

11 Stalking and Domestic Violence: The Third annual Report to Congress Under the violence Against Women Act, Washington, DC: US Department of Justice, Office of Justice Programs, Violence Against Women Grants Office (VAWGO) July 1998, NCJ-172204, page 5.

12 [National Crime Victims Center \(NVC\)](http://www.ncvc.org) (<http://www.ncvc.org>) and search "stalking law"

13 "Stalking - It's a Crime" brochure (USAO, 1997). US Attorney's Office, District of Maine.

14 Tribes that have stalking codes with citations to their codes include:
Apache Tribe of Oklahoma Domestic Violence Protection Code, Section 2
Bay Mills Indian Community

for anti-stalking laws has been fundamentally addressed in the rest of the United States, the problem is still being officially ignored in most of Indian country.

My boyfriend would park in my driveway and honk his horn, most times he would do this sometime after midnight.

I never considered this stalking. I felt that this was just him wanting to kiss and make up. I'd be living in a rural area without a phone, my fear was not wanting to upset him or make him angry, so I would let him in or talk to him through the door.

Today, I know it was a blatant form of stalking, and that law enforcement, court system should view this as such. Also battered women and advocates should know this.

Beryl, Domestic Violence and Stalking survivor

The importance of having statutes specific to stalking lies in the fact that separate offense statutes are not able to address some of the basic components of stalking, such as it's repetitive nature. ⁽¹⁵⁾ Even most harassment statutes, which are better than other offense statutes in regards to stalking, are insufficient, since they generally fail to address the act of following, which is a very common part of stalking behavior. ⁽¹⁶⁾ Stalking is different from many other types of criminal behavior because it involves a series of behaviors which, when seen individually, might appear benign. The patterns of a stalker's behavior can be obscure and complex enough to hide their lethality from the uninformed judge, jury, prosecutor, police officer, and sometimes even the victim

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- Cheyenne - Arapaho Domestic abuse and Family Violence code, Section 102, enacted 1997
 - Cheyenne River Sioux
 - Chippewa Cree Domestic Violence Code, Chapter 2, section 213
 - Confederated Tribes of Siletz Indians Domestic and Family violence Ordinance, Part 5, adopted 1999, resolution #99-218
 - Fort McDowell Indian Community
 - Ordinance No. 50, Hopi Family Relations Ordinance of the Hopi Tribe, Subchapter 1, 5.01
 - Kickapoo Tribe in Kansas Domestic Violence Code, Chapter 2
 - Lac du Flambeau Band of Lake Superior Chippewa
 - Lower Elwha Klallam Tribe Domestic Violence Code, section 9.26.1, (2)(o), (EJC 9.5.13)
 - Navajo Nation
 - Northern Cheyenne, Offense Against the Family, Chapter 5, Title VII, #7-5-11
 - Oglala Sioux Tribe
 - Poarch Band of Creek Indians, The Domestic Violence Code, 8A-2-5, enacted 1997
 - Quapaw Tribe of Oklahoma
 - Quileute Tribe, Resolution of the Quileute Tribal Council No. 98-A-64, 1.13, enacted 1998
 - Sac and Fox Nation
 - Saginaw Chippewa Indian Tribe
 - Seneca Nation of Indians
 - Turtle Mountain Band of Chippewa
 - Two Feathers ICWP Consortium

15 Bradfield, Jennifer L, Note: Anti-Stalking Laws: Do They Adequately Protect Stalking Victims?, Harvard Women's Law Journal, 21 Harv. Women's L.J. 229, 1998, page 12.

16 Id.

In fact, stalking is a very dangerous crime. According to the Justice Department, "husbands or partners who stalk their partners are four times more likely than husbands or partners in the general population to physically assault their partners, and they are six times more likely than husbands and partners in the general population to sexually assault their partners" ⁽¹⁷⁾ ; stalkers kill 30% of the 4,300 women who are murdered each year ⁽¹⁸⁾ ; seventeen percent of Native American/Alaskan women have been stalked. ⁽¹⁹⁾ It's an obvious conclusion: Native women in this country are in constant and severe danger.

Rural women living on reservations face unique challenges when dealing with stalking. Not only are there generally a limited number of police officers to respond to calls that cover vast distances ⁽²⁰⁾ , but on tribal lands there are often unresolved jurisdictional issues about who will respond to the calls. Many tribes do not have jails, so there is very little they can do to enforce laws. In addition to these complicated jurisdictional barriers, many Native women have limited access to telephones, transportation, emergency services or accessible roads, especially in in climate weather. ⁽²¹⁾ Stalking can be hard to prove on a small reservation, since there aren't many places a person can go (there may be only one road in and one road out). ⁽²²⁾ Any one or all of these barriers make it nearly impossible for anyone else to respond with assistance.

Many stalking survivors believe that the stalking stopped because they (the stalking survivor) moved away. ⁽²³⁾ To many Native women, this self-imposed exile means that they must leave a highly developed support system made up of their extended families and community. ⁽²⁴⁾ Being forced to move away is tantamount to being banished, which, for many Native people is the ultimate punishment.

"Stalking cases that emerge from domestic violence situations constitute the most common and potentially lethal class of stalking cases. Domestic violence victims who leave an abusive relationship run a 75% higher risk of being murdered by their intimate partners."

---National Crime Victims Center

17 Supra note 11, page 15

18 Lemon, Nancy K. D., Domestic Violence and Stalking: A Comment on the Model Anti-Stalking Code Proposed by the National Institute of Justice, Minneapolis, MN: Battered Women's Justice Project, December 1994, page 1.

19 Compared with 8.1 percent of women in the general population, and two percent of men. Supra note 11, page 8.

20 Shilling, Susan, and Jane Stuehling, Stalking and Domestic Violence Manual, Reading, PA: Pennsylvania Coalition Against Domestic Violence, 1995, page 95.

21 Id.

22 Phone interview with Paul Siewell, 9/13/99.

23 Supra note 11, page 21.

24 American Indian Women Against Domestic Violence, St. Paul, MN: Women of Nations.

Many people see stalking as a more gender-neutral offense than, for instance, sexual assault or domestic violence. Indeed, some statistics indicate that "only" eighty percent of stalking victims are women ⁽²⁵⁾, versus women being the victims in ninety percent of sexual assault ⁽²⁶⁾ or domestic violence ⁽²⁷⁾ cases. But even acknowledging that stalking might be more gender neutral than domestic violence and sexual assault, the fact is that men tend to be stalked by strangers and acquaintances ⁽²⁸⁾, while an intimate partner stalks the majority of female victims (meaning that these cases are part of the larger domestic violence scenario). ⁽²⁹⁾ In fact, the overwhelming majority of stalking cases ⁽³⁰⁾ are domestic violence cases, ⁽³¹⁾ and the level of violence in domestic violence stalking cases is higher than in other stalking cases. ⁽³²⁾ Thus, women are generally in greater physical danger than men when they are being stalked, and stalking is hardly gender-neutral.

"We want none of your laws or customs that we have not willingly adopted for ourselves. We have adopted many. You have adopted some of ours---votes for women for instance---we are as well behaved as you and you would think so if you knew us better."

Valencia-Weber, G., and C. P. Zuni, Domestic Violence and Tribal Protection of Indigenous Women in the United States, St. John's Law Review, Vol. 69:69 (1995), page 125

Developing and implementing domestic violence codes in Indian country is still relatively new; developing and implementing tribal anti-stalking codes is something that is barely into its infancy. It's an exciting time to be involved in code-writing in Indian country---while many tribal governments are superficially similar to US federal government, sovereignty and tribal values are continuously infusing themselves into the laws and procedures of tribes. ⁽³³⁾

When writing anti-stalking codes, it becomes exceptionally important to keep in mind that stalking is very complex, and using even a single word that might seem fairly unimportant can end up affecting the long-term safety of stalking victims. For example, using the term "implied threats"

25 Supra note 11, page 10.

26 Rape Abuse & Incest National Network web site <http://www.rainn.org/statistics.html>

27 Greenfield, Lawrence A., Michael R. Rand, Diane Craven, Patsy A. Klaus, Craig A. Perkins, Cheryl Ringel, Greg Warchol, Cathy Maston, and James Alan Fox, Bureau of Justice Statistics Factbook: Violence by Intimates: Analysis on Crimes by Current or Former Spouses, Boyfriends, and Girlfriends, Washington, DC, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, March 1998, NCJ-167237, page v.

28 Men stalk 90 percent of men who are stalked. Supra note 11, page 11.

29 Supra note 11, page 10.

30 (70-80%) Supra note 18, page 7.

31 Id., page 7.

32 Id., page 3.

33 Valencia-Weber, G., and C. P. Zuni, Domestic Violence and Tribal Protection of Indigenous Women in the United States, St. John's Law Review, Vol. 69:69 (1995), page 76.

as opposed to "credible threats" ⁽³⁴⁾ allows for the reality that some of the most chilling threats from stalkers are not directly stated, and they might not seem all that frightening to someone without a knowledge of the history between the stalker and the victim.

One requirement that some anti-stalking codes contain is that the stalker *intended* to inspire fear in the victim; in fact, some stalkers truly believe that the victim either loves him back or will learn to if he is persistent enough, and he has no intention of scaring her. ⁽³⁵⁾ Instead, taking into account that the victim felt fear and that the stalking affected her life should be enough. Some of the effects of stalking include "depression, generalized anxiety, obsessive-compulsive disorders---[and] Post-Traumatic Stress Disorder. A number of victims lose time from work, while some never return to work." ⁽³⁶⁾

Nationally, eighty percent of protective orders are violated by stalkers ⁽³⁷⁾ , and stalking is a behavior that typically escalates. ⁽³⁸⁾ Thus, it seems imperative that violations of protective orders or repeated stalking should have a continuum of charges, including felony status.

Other things to consider including when developing tribal anti-stalking codes:

- incarceration in addition to fines ⁽³⁹⁾ ;
- stay-away orders ⁽⁴⁰⁾ ;
- victim notification before release of perpetrator ⁽⁴¹⁾ ;
- not including release on one's own recognizance ⁽⁴²⁾ ;
- including as stalking behavior threats not just to the immediate family of the victim, but also to the extended family ⁽⁴³⁾ , as well as to individuals in an intimate or romantic relationship to the victim ⁽⁴⁴⁾ ;
- addressing visitation issues when there are children involved ⁽⁴⁵⁾ ;

34 Supra note 18, page 9.

35 Supra note 15, page 14.

36 Id., page 4.

37 Id., page 9.

38 Id., page 7.

39 Supra note 18

40 Id.

41 Id.

42 Id., page 10

43 Id., page 11.

44 Supra note 15, page 24.

45 Supra note 18, page 13.

- addressing non-verbal threats and the victim's subjective understanding of the threats ⁽⁴⁶⁾ ;
- addressing the issue of sexual assault in threat requirements ⁽⁴⁷⁾ ;
- pre-trial detention of stalkers ⁽⁴⁸⁾ ;
- inclusion of culturally appropriate means for dealing with the problem ⁽⁴⁹⁾ ;
- providing that the stalker know (or *should* know) that his actions cause fear or distress, not that they be "willful" or "intentional" ⁽⁵⁰⁾ .

Some tribal anti-stalking codes already passed contain many of these considerations. For instance, in the anti-stalking code for the Confederated Tribes of Siletz Indians in Washington ⁽⁵¹⁾ , the definition for "family" includes all household members as well as former or current sexual partners. It also addresses in the definition of stalking that "it is objectively reasonable for a person in the situation to be alarmed or coerced."

The Hopi have included in their Family Relations Ordinance a definition of harassment that includes following, as well as unwelcome sexual propositioning. ⁽⁵²⁾ They have also included in their ordinance language (in Hopi) that refers to how traditional values do not allow for family violence, and why. It appears that the initial penalty for harassment is a protection order, but if the protection order is violated the perpetrator can be criminally prosecuted for contempt of court.

The Quileute Tribe in Washington makes stalking a felony the second time it occurs. ⁽⁵³⁾ It also states in their code that a lack of intent to "frighten, intimidate, or harass" the person being stalked is not a defense to the crime. Nor is it a defense that the stalker was not given notice that the person being stalked did not want to be stalked. In fact, the Quileute anti-stalking code is one of the most thorough tribal anti-stalking codes to come through the MSH-TA office. It is interesting to note that the anti-stalking code is part of the harassment ordinance for the Quileutes. According to a tribal prosecutor there, it was easier to get the anti-stalking code passed by slipping it into the harassment ordinance: the tribal council saw stalking and harassment as

46 Supra note 15, page 23.

47 Id., page 25; "Most anti-stalking statutes require that a stalker's threat cause reasonable fear of death or bodily injury, but do not expressly allow fear of sexual assault to satisfy the threat element of stalking---Yet one only needs to look at the efforts to reform rape statutes to see that sexual assault can occur without physical injury. Moreover, a stalker's threats may communicate the desire for sexual contact without alluding to violent contact."

48 Supra note 15, page 27

49 Supra note 33, page 95.

50 Supra note 15, page 26

51 Supra note 14, Confederated Tribes of Siletz Indians Domestic and Family Violence Ordinance, Part 5, adopted 1999, resolution #99-218.

52 Supra note 14, Ordinance No. 50, Hopi Family Relations Ordinance of the Hopi Tribe, Subchapter 1, ?5.01

53 Supra note 14, Resolution of the Quileute Tribal Council No. 98-A-64, ?1.13, enacted 1998

issues that could affect them personally (tribal council members often get harassed), and so they passed them without much discussion. ⁽⁵⁴⁾

Many of the anti-stalking ordinances that were collected by MSH-TA include stalking as part of the definition for domestic violence, rather than making stalking its own separate crime. And in the tribes that do make stalking its own separate crime, the severity of how the crime is treated varies widely. ⁽⁵⁵⁾

Unfortunately, even a well-written anti-stalking code will do nothing to protect stalking victims if there is no intervention and involvement from the justice system after it has been passed. ⁽⁵⁶⁾

Of the people that were interviewed about their tribal anti-stalking codes ⁽⁵⁷⁾, the only advocate who had seen it used even once said that it had not gone particularly well; the court refused to see the issue as a problem, since the victim kept returning to the perpetrator. When I spoke with the same person about a half year later, she said that stalking had come up one more time, but she didn't know what the outcome had been, as the woman being stalked had left the area (for a variety of reasons, not just the stalking). ⁽⁵⁸⁾

Good work has been started to address stalking in Indian country, but there is still much left to be done. As we continue to work toward violence-free communities where women are sacred, it is of utmost importance that we keep the issue of stalking in the front of our minds.

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54 Phone interview with Paul Siewell, 9/13/99.

55 Supra note 14.

56 Supra note 15, page 32

57 Phone interviews with: Nicole Miani with the Confederated Tribes of Siletz Indians, 9/14/99; Teresa Cooney with the Quileute Tribe, 9/8/99; Andrea Myers of the Lac du Flambeau Band of Ojibwe, 9/13/99; Kim Crampton of the Saginaw Chippewa, 10/11/99; Bill Bigheart with the Miami Tribe of Oklahoma, 9/13/99; and Barbara Bear with the Fort Mojave Indian Tribe, 9/9/99

58 Phone interview with Barbara Bear, now Barbara Riggs, with the Fort Mojave Indian Tribe 9/9/99; personal discussion 4/7/00.

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