

On Indian Land, Criminals Can Get Away With Almost Anything

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Violence is on the rise at a North Dakota reservation. And tribal officers are often powerless to stop it.



An oil boom at the Fort Berthold reservation has attracted thousands of newcomers—and a wave of hard-to-prosecute crime. (Sierra Crane-Murdoch)

On an early morning last June, on the Fort Berthold Indian Reservation in western North Dakota, tribal officer Nathan Sanchez was nearing the end of his shift when he noticed a frantic stirring in the cattails alongside the road. A girl emerged. Her jeans were wet, her halter-top fallen to her waist. Sanchez approached in his car to

ask what had happened. The girl, in hysterics, mumbled that she had been raped and took off running.

Sanchez caught her on foot. He saw she was white—not a member of the tribe. "Ma'am," he recalled saying, though she was only 16, "I know you're upset, but I need to get you out of here." He wrapped her in a blanket and led her to the car. Was the man who raped her Indian, he asked? She said he was.

Sanchez met Criminal Investigator Angela Cummings at the police station in New Town, a low brick building that doubles as the Civic Center, and Cummings took the girl into a private room. The victim had run away from Texas to find her father who worked in the Bakken oilfields. He had refused to let her stay with him, and in the weeks that followed, she'd lived with an acquaintance on the reservation.

The night before Sanchez found her, an oil worker at a bar in New Town had bought her drinks and taken her to his camper. She remembered only that several men and a woman were having sex. "Just do it," someone had said as a man climbed on top of her. Were any of the men Indian, Cummings asked? No, the girl said this time.

Why did it matter? If the girl's rapist was, in fact, an enrolled member of a Native American tribe, then Cummings had every right to continue the investigation. But now the girl struggled through her shock and inebriation to recall the story: The men, she believed, had been white and Latino. If true, then the right to investigate and prosecute the case belonged not to Cummings, nor to the U.S. attorney, but to the state. "I did what I could," Cummings later told me, but in the end, she called a county deputy to take the girl off the reservation.

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In 1978, the Supreme Court case *Oliphant v. Suquamish* stripped tribes of the right to arrest and prosecute non-Indians who commit crimes on Indian land. If both victim and perpetrator are non-Indian, a county or state officer must make the arrest. If the perpetrator is non-

Indian and the victim an enrolled member, only a federally certified agent has that

right. If the opposite is true, a tribal officer can make the arrest, but the case still goes to federal court.

Even if both parties are tribal members, a U.S. attorney often assumes the case, since tribal courts lack the authority to sentence defendants to more than three years in prison. The harshest enforcement tool a tribal officer can legally wield over a non-Indian is a traffic ticket.

The result has been a jurisdictional tangle that often makes prosecuting crimes committed in Indian Country prohibitively difficult. In 2011, the U.S. Justice Department did not prosecute 65 percent of rape cases reported on reservations. According to department records, one in three Native American women are raped during their lifetimes—two-and-a-half times the likelihood for an average American woman—and in 86 percent of these cases, the assailant is non-Indian.

Last April, Senate members added a provision to the Violence Against Women Act, first passed in 1994, that would allow tribal courts to prosecute non-Indians who sexually assault tribal members. But the bill has languished since House Republicans opposed the measure as a dangerous expansion of tribal independence—it is, after all, a partial reversal of the Supreme Court's 1978 decision.

Fort Berthold, like many reservations, has a long history of crimes slipping through jurisdictional cracks. Sadie Young Bird, director of the Fort Berthold Coalition Against Violence, told me that before 2010, when the Tribal Law and Order Act passed Congress, very few sexual assault cases reported on the reservation were prosecuted. The Act provided greater resources for tribal law enforcement agencies, in part by encouraging U.S. attorneys to hire special assistants to boost prosecution rates. In 2011, Assistant U.S. Attorney Rick Volk was appointed to work specifically with Fort Berthold. Between 2009 and 2011, federal case filings on North Dakota reservations rose 70 percent.

When I asked Tim Purdon, North Dakota's U.S. attorney, if the numbers had anything to do with a rise in crime, he first insisted they did not. He believed there

was a growing sense among Native American victims that the crimes they reported would be prosecuted, and this encouraged more women to come forward.

But beginning last summer, Purdon noticed a peculiar pattern emerging from Fort Berthold. Many of his filings—a surprising number of them—involved non-Indian perpetrators. "We had five or six in a month," he told me. "Why was this? We realized it's non-enrolled folks moving to the oil patch."

The Bakken oil boom hit western North Dakota in 2008, and for all the hype, there's been little said about the reservation at its center. When I first reported on Fort Berthold in April 2011, the development had barely begun. Since then, thousands of oil workers have rushed onto the reservation, the boom a salve to foreclosure, debt, and the recession's other wounds. Now Fort Berthold really is in the middle of it all, and while the tribe and its members will earn billions of dollars in taxes and royalties before the decade is out, the development, for many residents, is far from a relief.

The immediate side-effects are the obvious ones, and they come with any boom: limited jail space, an overworked police force, a glut of men with cash in their pockets. In 2012, the tribal police department reported more murders, fatal accidents, sexual assaults, domestic disputes, drug busts, gun threats, and human trafficking cases than in any year before. The surrounding counties offer similar reports.

But there is one essential difference between Fort Berthold and the rest of North Dakota: The reservation's population has more than doubled with an influx of non-Indian oil workers—over whom the tribe has little legal control.

I met Sanchez one night last July at the police station. He was 25, tall, and tattooed. He greeted me with a nod. He wasn't from the reservation but had moved there with his fiancée and son. Having worked four years as a tribal officer, he was one of the unit's most senior members. "People don't last long here," he told me. The pay was hardly enough to afford rent, the work emotionally draining.

One morning a few weeks earlier, Sanchez had just come on duty when he stopped a man for reckless driving. "Come to find out, this guy is one of those sex offenders that kills his victims after. It's like, what the freak is going on here? I don't even have my coffee yet."

We drove west out of New Town, over Lake Sakakawea and into the Four Bears campground. In the summers before the boom, families would come from Williston and Bismarck to fish on the lakeshore. Now there were hundreds of trailers hidden under trees and battened with plywood against the coming cold. A year earlier, I had stood in this camp with a mechanic from Washington, a friendly, jovial man, who marveled at the seeming lack of rules here. "Basically," he said, "you can do anything short of killing somebody."

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When I share this quote with tribal officers, none ever seems surprised. What the mechanic said was not entirely true—cases that fall outside tribal and federal jurisdiction belong to the state. But several officers insinuated that crimes committed on Fort Berthold are often a low priority for deputies and sheriffs, who are already overworked by the boom outside reservation borders.

Each county that overlaps Fort Berthold has only one or two deputies stationed there—a low number, given that at least 4,000 non-Indians live on the reservation. If an incident requires a deputy, he could take hours to arrive, due to the volume of calls he receives and the reservation's enormity. A sheriff in a county that overlaps the reservation admitted that sometimes his deputies escort non-Indian drunk drivers home rather than arrest and deliver them to county jails, which are far away and often full. If jurisdiction is ever in question—as in the girl's case last summer—then getting the right officers on scene takes even longer.

"Time is sensitive," Cummings told me. It could be the difference between finding the perpetrator and having no evidence at all.

It was as though, tribal officers said, their lack of jurisdiction had encouraged a culture of lawlessness. Every officer could recount being told by a non-Indian, "You can't do anything to me." Once, when Young Bird and Cummings went into a man camp to check on a domestic violence victim, the manager of the camp said, "Women aren't allowed here," and shut the door. "Perpetrators think they can't be touched," Young Bird told me. "They're invincible."

We drove west toward Mandaree and then north, through rows of concrete government houses, and across long, empty stretches lit by gas flares. Around 2 a.m., we idled outside Sportsmen's Bar in New Town, where a young Native American girl in a silver skirt waited by the door. "That's one of the girls you'll see tonight," Sanchez had said earlier when we spotted her on the street. He suspected she was prostituting herself. How did he know? "I work 80-some hours a week, and I sit in front of these bars every night. I know that this night she left with that guy, and last night she left with this guy, and then the night before..." But, he conceded, "That doesn't prove anything."

Sometimes, in the back of his patrol car, a woman would admit that she—or her daughter—had been prostituting herself. He saw other signs, too: the man who stuffed girls into a car when Sanchez drove near, the girls on the casino security cameras who moved in and out of hotel rooms, the strippers who came from out of town to dance at parties, the meth-addicts whom investigators suspected of trading sex for drugs in the man camps, the girls who came to school with new iPods and jewelry. On a reservation where everyone once knew everyone, noticing was easy. "I know these girls. I know their parents," Sanchez told me, "And I know for a fact that their parents cannot afford to buy them these things."

In August, a tribal member, Dustin Morsette, was convicted in federal court of sexually abusing minors and forcing them into prostitution. Five victims served as

witnesses in the case, and their testimonies have led investigators toward other trafficking incidents that sprung up with the boom. Tribal officers and victims' advocates are pleased with Purdon and Volk's diligence but say it's not enough to counter the recent flood of crimes. Officers are training for certifications that would allow them to arrest non-Indian perpetrators involved in federal crimes.

The Tribal Law and Order Act also encourages cross-deputization agreements. These certify tribal officers to act under county jurisdiction, arrest non-Indians, and follow through on cases in county court. Likewise, the tribe would grant deputies the authority to arrest tribal members. This would allow any officer who first arrives on a crime scene to make the arrest instead of waiting for someone with proper jurisdiction.

It's a precarious arrangement, however, as counties or the state can rescind the contract at any time. Sheriff Ken Halvorson, whose county overlaps the reservation, told me he thought cross-deputization was a bad idea—"Too complicated," he said.

On the June morning that Sanchez came across the girl, county officers, still unsure who had jurisdiction in the case, called in the FBI. According to the crime report, by the time the girl arrived at a hospital, she refused to be examined. She didn't want to press charges. She wanted it all to be over.

It was not the first time a woman had been picked up at a reservation bar and assaulted. A few months earlier, a young tribal member had been at another bar in New Town when three oil workers offered her a ride home. They drove, instead, to the reservation's desolate center, raped her, and left her on the road. They returned several times before morning, and each time, they raped her again.

"I don't think these are isolated incidents," Cummings told me by phone in October. Since the summer, she had seen several similar cases and had begun to suspect the rapists were repeat offenders. "They think they got away with it, but we may find there's an escalation of assaults in the same pattern. Eventually, we'll get a confession."

Sanchez drove me east out of New Town, past the Cenex station and the truckers who still lingered by the pumps, and onto a dark expanse of prairie. He wanted to show me the place where he found the girl that morning. We turned right at Trustland Oil Field Services, a large metal warehouse with trucks and trailers scattered about its perimeter, and stopped in a dirt-packed lot at the entrance to a man camp. (Author's note: Trustland Oil Field Services does not own the man camp where the rape may have occurred.)

"When the oil boom's over, what's it going to be like here?" Young Bird had asked me earlier that day. "My staff talks about this a lot because we all want to know. They're not going to take their trailers with them. It'll just be deserted, with a lot of broken people."

ABOUT THE AUTHOR

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