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Rape in Alaska

Caitlin Williams

ABSTRACT

The National Crime Victimization Survey shows that Alaska has the highest number of sexual assaults of all U.S. states. Rape is a paramount problem in Alaska, for Alaska triples the national average of reported rapes (at 27 per 100,000). In addition, according to the 2014 Council on Domestic Violence and Sexual Assault's Dashboard, only 33.5 percent of reported forcible rapes resulted in an arrest. Data indicates that Alaska has a high population of Alaska Native (or ANs) women that are assaulted by both AN men and non-AN men. This research examines the core reasons behind the high incidence of AN women's rapes, including remote geography and darkness, the history and culture of Alaska Native communities, alcohol abuse, and gender roles in Alaskan communities. The impunity of the offenders is also explored.

Alaska has the highest rates of rape in the United States and AN women are the primary victims. There are four key points addressed by scholars studying rape in Alaska. First, there are many studies all concluding that AN women are the primary targets for rape in Alaska. Second, differing from other rape demographics, AN women are mostly victimized by non-AN men. Third, the reasons for the high amounts of rape include: remote geography and darkness, the history and culture of AN communities, alcohol abuse, and gender roles in Alaskan communities. Finally, the last point most often discussed by scholars is that there is a large amount of impunity for Alaskan rape offenders.

There is a staggering amount of AN women who are victims of sexual violence. According to Bachman, Zaykowski, Lanier, Poteyeva, and Kallmyer (2010), the National Violence Against Women Survey (NVAWS) and the National Crime Victimization Survey (NCVS) show that AN and American Indian women have higher sexual assault rates compared to women of other races/ethnic backgrounds (p. 2). Some research groups AN with American Indians in their studies (AIAN) because the rape rates and reasons tend to be similar for those two groups. Alaska has the highest population of AIANs in the United States with 19 percent of the population identifying partially or completely as AIAN (Bachman et al., 2010, p. 3). The high percentage of natives in Alaska which corresponds with the high prevalence of rape there is why there is a need to focus on reasons for victimization and impunity of offenders specifically regarding AIANs. Bachman et al. use the NCVS for annual rape rates which says that sexual assaults occur twice as often for AIAN women as for white and African American women. The NVAWS, which measured lifetime occurrence rates, found that 34 percent of AIAN women had experienced a completed or attempted rate in their life compared to 18 percent of white women, 19 percent of African American women, and 7 percent of Asian and Pacific Islander women (p. 6). Evans-Campbell, Lindhorst, Huang, and Walters (2006) found that 41 percent of urban AIAN women in their study had multiple sexual victimizations. It is important to focus on

victimizations in urban areas as well as rural, because according to Evans-Campbell et al., 60% of AIAN identifiers live in cities now (p. 1418). It is hard to know if the rates for AN women are accurate due to the general lack of reporting. Unfortunately, 74 percent of completed and attempted sexual assaults are not reported to police (as cited in Bubar, 2010, p. 3). Specifically, AIAN victims may not want to report their assault if they live on a small rural reservation (as cited in Bachman et al., 2010, p. 9). In a small community, the word may spread quickly and the victim may be embarrassed, ashamed, or fearful of reproach.

Alaska Native women also experience more injury in their sexual assaults. Bachman (2010) uses the NCVS aggregate data from 1992 through 2005 to show that AIAN women report more violence in their attacks than African American and white women do. Twenty-five percent of offenders against AN women had a weapon compared to 9 percent of offenders in African American and white women attacks. Ninety-one percent of AIAN victims were hit compared to 78 percent of African American victims and 71 percent of white victims. Also, 47 percent of AIAN victims required medical care compared to 35 percent of African American victims and 33 percent of white victims (p. 13). While AIAN women are most in need of medical attention after their attacks, if they live in a tribal community, they will most likely not have proper care. There are less than five rape crisis centers treating sexual assault victims in tribal communities in the U.S. (Bubar, 2010, p. 8). According to Bubar (2010):

In most tribal communities there are not many affordable health care alternatives to the local HIS clinic, and in many communities in Alaska there are no professional medical providers within Alaska Native villages. When sexual assault occurs in such a community, professional sexual assault exams and medical treatment are unavailable and oftentimes remain a plane ride away. (p. 5)

Alaska Native women are sexually assaulted by men of different racial makeups than African American and white women are. Cardick (2012) effectively summarizes these differences. Generally, 16.7 percent of women are raped by a stranger, but that number jumps to 29 percent for the AIAN population. On top of that, more AIAN women are raped by an (former) intimate partner than other populations- 20.2 percent of rapes of women in the general population compared to 38 percent of rapes of AIAN women. Fifty-eight and eight tenths percent of women are raped by an acquaintance in the general population compared to 38 percent of AIAN assaults. Cardick (2012) also points out that, "American Indian women are raped 57% of the time by a white man and 10% of the time by an African American man. In contrast, white women are raped 76% of the time by a white man and black women are raped 88% of the time by an African American man (n.p.) The interracial trend of rape for AIAN victims may lead the women to feel like they are victimized based on the racist viewpoints of their attacker.

History may be part of the reason that AIAN women are raped at such a higher rate than other demographics. Some scholars, Owens (2012) included, believe that the rape of AIAN women is a form of continued discrimination and racism since colonization of America by the Europeans. Every other race in the United States is most likely to be raped by the same race. As mentioned previously, an AIAN woman is most likely to be raped by a non-native. The brutality

and violent differences of AIAN rape may also be attributable to the history of maltreatment and rape of tribal women that began with colonization. Rape is already a form of control and power and physical injury added to the already violent act of rape can be a continuation of the domination of natives by the first settlers (Owens, 2012, p. 450).

Cardick (2012) is a proponent of the belief that the high rate of rape of AIAN women is partly due to the historical culture of domination of the natives. He claimed that when the Europeans came to settle the Americas, they saw the land as theirs and wanted to dominate and control everything in it. The control included civilizing the Indians that were already living peacefully in America. From the beginning, the Europeans massacred, relocated, raped, pillaged the lands, and brought disease to the natives. Before the European settlers came, the native women were generally treated with respect, some women had power positions in the tribe, and violence of all types were rare occurrences. But, unfortunately, as Europeans dominated the natives and forced their ideas onto them, women lost status in the tribes. Europeans treated the native women as objects to be pillaged and used, and they attacked them sexually and physically. Cardick (2012) goes on to say that the 1968 Federal Appellate Court ruling (which created the Indian Civil Rights Act; more on this later) put a lower penalty on an Indian man that raped an Indian woman than a woman of another race. In his words, he argued “This historical legacy of abuse and degradation has continued into the present day and created a dehumanized vision of the American Indian woman that has helped create the high rate of sexual assault these women face” (Cardick, 2012, n.p.).

There is also tribal culture and a mentality that discourages rape victims from reporting. According to Deer (2003) in Crossland, Palmer, and Brooks (2013), victims in AN villages may be afraid that family or friends will gossip, especially because gossip spreads fast in small communities and because council members that need to alert police officers may be friends or family members of the attackers or the victims (and/or her family). She may feel the need to remain quiet in order to maintain her family’s dignity and respect in the community. She may fear the attacker. As previously mentioned, the attacker and his family or friends may be in (or know members of) the council and have power. She may fear that the violence will continue if she “tattles” because the perpetrator will not be punished or restrained. Also, there is a tribe mentality that “you do not turn in your own.” She may rightly be wary of revictimization through lack of support from her family and friends and the legal system (sometimes stemming from racism). She may also be afraid of being arrested herself. Finally, other reasons for not reporting the sexual assault may be feelings of fear of blame, embarrassment, shame, isolation due to the rural location of her community, knowing there are not many (or any) social services near her to help, as well as other, individual reasons (as cited in Crossland et al., 2013).

Alaska in particular has a remote geography that makes it hard for police to respond to calls, which discourages reporting. According to Jaeger (2004) in Crossland et al. (2013), almost half of all federally recognized tribes are located in Alaska. The people in these tribes and villages are separated both physically and politically from state police. To explain, Alaska State Troopers currently have jurisdiction over AN villages, but due to their remoteness, the villages

have their own power structures that are ill prepared to respond to rape victims' calls. First responders may choose not to respond correctly because of political connections to leaders in the tribes who may not want the rape to be addressed. The "paraprofessional police officers" consist of the Village Public Safety Officers (VPSOs), Village Police Officers (VPOs), and/or Tribal Police Officers (TPOs). Some villages have none of those police officers and depend on a council to respond to a call and report it to the closest officer. As of 2005, the Alaska Department of Public Safety reported that 82 percent of Alaska Native Villages have a VPSO position, but one third of the position seats were not filled. On top of that, the police who fill the spots often do not stay at the job for long or do not take their job seriously. Officers are alone, do not have a gun, may not have a road to travel to a crime scene, are on call at all times, and do not get paid the same as police officers in non-AN village areas (as cited in Crossland, 2013). It is horrifying that Alaska has the lowest quality policing in the United States when they have the highest rape and violent rape incidents in the country.

There are three main policies and a Supreme Court ruling that have lessened the tribal governments' power in the legal process regarding the crimes against tribe members. The first legislation is the Major Crimes Act of 1885. This gave the federal government jurisdiction over crimes considered "major" which included: murder, kidnapping, assault, felony child abuse or neglect, arson, burglary, robbery, manslaughter, and rape, but only when committed by an AIAN against another AIAN or his/her property. This was a confusing and tricky piece of legislation because it was not clear if the federal government had complete jurisdiction over the major crimes or if it was shared/concurrent jurisdiction with the tribal courts. The other problem was that the tribe and federal government may have conflicting definitions of what constitutes the definitions of the major crimes (i.e. the federal government may consider an event assault, while the tribe does not define the event as assault). There are varying cases of exclusive federally handled court cases of Indian on Indian crime, cases where someone was acquitted at federal court but was also tried at tribal court, and some where the tribal court handled the prosecution exclusively (though this is rare). There are also problems concerning the definitions of the crimes included in the Act. There was confusion if the Act included statutory rape in rape (which it did not), and confusion regarding the definition of assault, federal drug crimes, and attempted crimes (Owens, 2012, p. 520).

There were too many cases at federal courts of crimes committed by Indians to be handled, so many cases of crimes committed in Indian country were dismissed or failed to be prosecuted. As a result, there was an increase in crime in Indian country because the perpetrators thought they could get away with the crime. In response to the disarray, the United States Congress passed Public Law 280 in 1953 (Cardick, 2012). This gave Indian-on-Indian major crimes that took place in Indian country to state court jurisdiction (which were previously to be taken care of by federal courts) in six states: California, Wisconsin, Minnesota, Nebraska, Oregon, and Alaska when it gained statehood in 1959. Ironically, in trying to combat the disarray the new law only created more tension. Both the tribes and the states included did not agree to abide by the new law, the tribes believing they had no power and the states having more cases to

handle without receiving additional funding (Owens, 2012, p. 510). According to Cardick (2012), even President Eisenhower had reservations about signing in the law. So with the states now handling more and more cases, it was even more lawlessness and disarray for the tribes as well as lessening tribal court power.

The Indian Civil Rights Act of 1968 (ICRA) is another piece of legislation which curbed tribal jurisdiction. It required that all tribes protected tribal members' rights under the U.S. Bill of Rights. This included fair trial processes such as trial by jury, representation, and due process. At the ICRA's last amendment in 1986, it only allowed tribal courts to punish criminals up to a year in prison, impose a maximum \$5,000 fine, or both. It suffices to say that the tribe members were not happy with their sovereignty taken away. According to Amnesty International quoted in Owens (2012), "the message sent by this law is that in practice, tribal justice systems are only equipped to handle less serious crimes. As a result of this limitation on their custodial sentencing powers, some tribal courts are less likely to prosecute serious crimes, such as sexual violence" (p. 508).

Furthermore, the Supreme Court ruling in *Oliphant v. Suquamish* took away tribal courts' power to prosecute crimes taking place in Indian country against an Indian, if the accused was non-Indian. The Suquamish Reservation in Washington convicted Oliphant of assaulting a tribe officer, but the Supreme Court sided with Oliphant that as a non-Indian he should not be tried by tribal court (Owens, 2012).

The confusion of the laws combined with poor law enforcement provides serious barriers to AIAN women seeking justice for the sexual crimes committed against them. Alaska has 146 AN villages. Most of these villages are small enough that they do not have their own certified police forces. In fact, only 23 of the 146 villages have certified police officers. Sixty-seven villages have some sort of noncertified paraprofessional officers, but since they are not certified under the Alaska Police Standards Council, they have limited authority in their ability to respond. In Alaska, investigation of serious crimes is the job of the Alaska State Troopers, and because the tribes can be so isolated their response time may be very slow, this can hinder the Troopers ability to collect and examine evidence and to interview witnesses of the sexual assault. Tribe members have time to convince the victim and/or witnesses to not cooperate with the Troopers. Lastly, 56 villages had no safety staff at all and are under jurisdiction of the State Troopers. One fourth of Alaska communities are not connected to the Alaska highway. And four fifths of the isolated communities are made up of Alaskan Natives. Where response times to emergency calls in other states are around three minutes, Alaska State Trooper response times can be hours or days in hazardous weather. Time to get there is also an issue regarding follow-ups on cases. It can be expensive to travel back and forth and phone call interviews are discouraged due to the sensitive nature of these cases. So with the lack of follow-up, victims may experience revictimization from lack of support from the Troopers and may not be as willing to testify in court and work with the prosecution.

Not only is it hard to respond to and investigate sexual assault cases in the 146 tribes in Alaska, it is also difficult to have a sexual assault case end in conviction. Response time is

critical to case outcomes. Studies show that prosecutors are more likely to take a case when there are witnesses willing to cooperate, when the victims are willing to testify, when the time between the assault and reporting is short, and when there is a visible injury (Owens, 2012, p. 511). According to Owens (2012), 65 percent of rape cases from Indian Country are not prosecuted. A victim's credibility and compliance with gender norms also helps the likelihood of a conviction because it appeals to both the prosecutor and the jury. Risk taking behaviors (victim-blaming) and non-moral behavior by the victim lessen the chance of a conviction. According to the NCVS data from Bachman et al. (2010) and Cardick (2012), only 13 percent of reported rapes of AIAN women result in an arrest and a conviction compared to 33 percent of non-AIAN women. Since only 49 percent of AIAN rapes are reported, that means that a mere 6 percent of rapes committed against AIAN women result in an arrest and a conviction.

Congress realized that AIAN women were suffering from sexual assaults and so in June, 2010, the Senate and the House unanimously passed the Tribal Law and Order Act and President Barack Obama signed it into law on July 29, 2010 (Owens, 2012, p. 510). There are seven subtitles in the act, each making a distinct change to the previous legislation. Subtitle A requires there to be specific prosecutors assigned to federal crimes committed in Indian Country. It requires there to be at least one Assistant United States Attorney to be a liaison for the districts with Indian Country to help with cooperation with the tribal governments and the federal governments. Subtitle A created the Department of Tribal Justice to promote cooperation. Finally, it created the position of the Native American Issues Coordinator in the Department of Justice to organize prosecutions in Indian Country. Subtitle B allows for concurrent jurisdiction for federal and state courts over Indian Counties' major crimes and allows tribes to apply for three-way jurisdiction that includes their own government. Subtitle C addresses the problem of law enforcement in villages and tribal communities by creating federal programs to train tribal police officers to make them federal law enforcement officers. Subtitle D gave additional money to the federal budget for programs for alcohol abuse, mental health services, and Indian education programs, legal representation in tribal courts, building or improving tribal jails, and positions for probation officers. Subtitle E created a better criminal recording system for the tribes. Subtitle E is arguably the most important part of the Act regarding sexual assaults. It created procedures for release from jail back into the tribal community, created programs to train tribe police to investigate domestic abuse and sexual violence, and established a sexual assault protocol. It also required that the Comptroller General of the United States study the capability of Indian Health Service facilities in remote communities and all AN villages. Lastly, Subtitle G established the Indian Law Enforcement Foundation with \$500,000 for a budget to fund it. It amended the ICRA by allowing tribal courts to sentence up to three years versus one year and a fine up to \$15,000 versus \$5,000, or both (Owens, 2012, p. 512).

Under the Act, the prevention, policing, and prosecution changes will affect AIAN women not by drastically improving the conviction rates but by promoting thorough investigations of sexual assaults and providing more access and better mental and physical care for victims. The Act actually creates more of a jurisdictional maze because of the potential of

three parties (federal, state, and tribal) to act on each case. It is too soon to see if the creation of more positions and personnel and more organizations will create positive change or simply more bureaucracy and confusion for local law enforcement trying to help a victim accurately and quickly. The Act also does not require prosecutors to take up AIAN rape cases and so even with training and more funding the number of convictions may remain the same (Owens, 2012 and Cardick, 2012).

In conclusion, rape is a paramount problem in Alaska and in order for it to be properly addressed, it needs to be looked at through the lens of an AN woman. Three times more AN women are raped than the women in the general public, and much more violently. A jurisdictional maze as well as remote geography and history and culture of rape in tribes complicates justice for AN rape victims and may even cause rape by not giving enough power to the victims and allowing perpetrators impunity. New legislation under the Tribal Law and Order Act of 2010 makes some improvement in training of officers and giving some power to tribal courts but overall continues to perpetuate the jurisdictional maze and does not address the low prosecution of AIAN sexual assault cases.

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