

# TINY LITTLE LAWS

A plague of sexual violence in Indian country

By *Kathy Dobie*



**M**y second day on the Standing Rock Sioux Reservation in the Dakotas, an official from the Bureau of Indian Affairs sent a memo to all its law-enforcement employees forbidding them to talk to me. One of those officers working the jail at Fort Yates, North Dakota, walked into a tribal

*Kathy Dobie's last article for Harper's Magazine, "Crimes Against Nature," appeared in the July 2008 issue. She is a reporting fellow with the Investigative Fund at The Nation Institute.*

judge's office, and throwing the memo down, said, "Can you believe this shit?" Since I was on the reservation to write about crime—sexual assault and rape, in particular, and how often these crimes go unreported when they take place on tribal land—I had naturally hoped to speak to the police. But after politely declining to be interviewed, Standing Rock's police chief, Michael Hayes, referred me to Elmer Four Dance, who, as the BIA's special agent in charge of District 1—which

serves fifty-two tribes in the states of South Dakota, North Dakota, Minnesota, Michigan, Wisconsin, Nebraska, and Iowa—was the man who had issued the memo from his office in Aberdeen, South Dakota, 150 miles away.

"Who gave you permission to come here and talk to people without getting permission?" Four Dance asked me when I reached him by phone. He said I had to make a formal request in writing, which I emailed to him immediately. He



promised to get back to me shortly. “Don’t call me, I’ll call you,” he said.

And that was the last I heard from him.

“Just keep digging, keep asking questions,” a former police officer I’ll call Tom,\* who lives on Standing Rock, urged me a few days later. In his forties, with short dark hair, a long tapered mustache, and watchful eyes, he had been born and raised on the reservation, and as a young teenager he had watched a group of older guys rape a drunken, unconscious woman at a house party in Fort Yates. After which, he stumbled outside to the yard and vomited on the lawn. “People are just aching to tell somebody, anybody,” he said. “Even the people who aren’t supposed to tell.” And then he told me that he, too, had been sexually assaulted, when he was a young boy. “People are tired of this.”

For decades the people of Standing Rock have been plagued by sexual vio-

*\* The names and some identifying details of victims have been changed to protect their privacy.*

lence, inadequate police protection, and an ineffectual legal system that allows rapists and child molesters to go unpunished, free to commit the same crimes again and again. Complain as they might—and many women’s advocates, social workers, and ordinary citizens have complained—no one listened until Amnesty International (“that white group,” is how one embittered Sioux activist described them) published a report in 2007 titled “Maze of Injustice: the failure to protect Indigenous women from sexual violence in the USA.” The report was issued after two years of research in Oklahoma, Alaska, and on the Standing Rock Reservation. According to the U.S. Department of Justice, almost two thirds of Native American and native Alaskan women have been physically assaulted, most often by an intimate partner. They are nearly three times more likely to be raped or sexually assaulted than other American women, and the assaults are more violent, more likely to require medical care.

On many reservations, women have given up on the idea of justice and have come to consider sexual assault as just

another part of their rough lot. When I asked the head of a women’s shelter on the Pine Ridge Sioux Reservation in South Dakota for the prior year’s figures on reported rapes, she said there hadn’t been any, and then laughed gruffly. “We used to have thirty to forty reported rapes a month,” she told me. “Now we get one.” Since no other crime statistic was going down and the reservation was, in fact, getting more lawless every year—her shelter kept filling up with bruised and beaten women who, if you asked gently, would almost always reveal that yes, they had been sexually assaulted at this or that time in their lives—one official report of rape a month could only mean that rape victims had stopped going to the police.

Last July, three years after Amnesty International issued its report, President Obama signed the Tribal Law and Order Act of 2010, widely hailed as an important step toward fixing the ineffectual tribal courts and indifferent federal apparatus that administer justice on Indian lands. “It looks good on paper, very good,” says Tinnekkia Williams, a mother of four and



a women's advocate who worked closely with Amnesty International when they were studying Standing Rock. "But actually implementing it is a whole different story." The act is explicitly aimed at reducing "epidemic" rates of sexual assault and domestic violence against Native American women by improving the legal and medical response to such violence. Its provisions extend the authority of tribal law and facilitate coordination with federal investigations. But the act's effectiveness depends on the will of those enforcing it, and on whether there will be funding for its various provisions. Otherwise it will become yet another broken promise. "Our women are tired," Tinnekkia says. "They're tired of getting raped, they're tired of getting beaten. They're tired of getting their hopes stepped on any time they try to do something about it."

"You're in the middle of nowhere," the young receptionist at Standing Rock's Prairie Knights Casino and Resort told me when I arrived

on the reservation, sounding like any bored teenager living in a small town. It was a moonless night, and the forty-five-minute drive from the reservation's northern boundary near Mandan, North Dakota, to the glittering casino on top of a hill revealed nothing but empty blacktop bordered by a whirling darkness. The hotel lobby was deserted but the casino hummed. Taped to the front desk was a notice: ATTENTION HUNTERS DO NOT CLEAN YOUR BIRDS IN THE LODGE ROOMS OR IN THE BATHTUBS. Pheasant season had just begun; young white hunters and older white gamblers, most of them retirees from North Dakota, had booked the rooms, but in the casino a mix of whites and Native Americans worked the slot machines.

When morning came, I was surprised to find a treeless, undulating grassland stretching for miles under a bright blue sky. Huge bales of hay sat on the camel-colored hills and herds of cattle, horses, and heavy-shouldered buffalo grazed the land on either side of the main road that crosses the reservation from north to

south. The Missouri River was up and running again after eight years of drought, and it wound along the eastern edge of the reservation with a lazy luxury, the lacy tops of trees that had sprouted up during the long dry spell just visible in the center of the wide river, waving as they drowned.

The reservation straddles the North and South Dakota state line, spans two time zones (Central and Mountain), and is the size of Connecticut. Five thousand members of the Sioux tribe live here, Lakotas and Dakotas, as well as a few thousand non-Sioux people. Half of the population is under twenty-five years of age. The life expectancy of a Native American living in the Dakotas is eleven years less than that of an average American. You can travel around the reservation for days and never see an old man.

The smaller communities on Standing Rock—Little Eagle, Bullhead, Solen, and Porcupine—are basically clusters of trailer homes and pastel-colored one-story houses assembled on streets—some paved, most not—and set down in the middle of this swelling



sea of grass. Fort Yates, situated on the banks of the Missouri, is the seat of tribal government and headquarters of the tribal council, the courts, the police department, the jail, Sitting Bull College, the only hospital on the reservation (which is run by the Indian Health Service), and one of the reservation's two supermarkets, the White Buffalo. The town was named after Captain George Yates, who was killed in the great Sioux victory at the Battle of the Little Bighorn, in 1876.

When Sitting Bull and two hundred of his followers surrendered to the U.S. Army in 1881 they were transported to Fort Yates from Fort Buford on a Missouri River steamboat. Nine years later, Sitting Bull was killed by Lakota policemen during an arrest ordered by Indian Service Agent James McLaughlin, the supervisor of Standing Rock. McLaughlin was determined to put an end to the Ghost Dance religion with its belief that one day all the dead Sioux would be resurrected, as well as the vanquished buffalo and the wild, unbroken prairie, first by awarding provisions only to the "better disposed Indians" while starving the others (such as Sitting Bull and his followers),

and then by arresting the fifty-nine-year-old chief.

McLaughlin died at the age of eighty-one and was buried on the South Dakota side of the reservation in a town that bears his name. Today the main street of McLaughlin, South Dakota, features a gas station set alongside railroad tracks, a Boys & Girls Club, an Indian Health Service clinic, one bar with a pool table, and, tucked down a side street, a shelter for abused women named after Pretty Bird Woman, who was raped and then beaten to death by a fifteen-year-old boy in 2001.

One afternoon when a cold film of rain veiled the hills, I visited the police station at Fort Yates to meet the police chief who couldn't talk to me. Across the hall from the chief's office, an FBI agent was holed up in a room with a BIA criminal investigator, documents spread on the desk between them. The agent looked fit and relaxed. The BIA investigator was older, his eyes hard as rocks, a man I'd heard spoken of with respect—as a good officer in a broken

system. He stared coldly at me while his chief complained about the press.

This meeting between the BIA investigator and an FBI agent was business as usual on the reservation. Since the Major Crimes Act was passed in 1885, the federal government has been responsible for prosecuting virtually all serious crimes committed in Indian country, including murder, manslaughter, rape, assault with intent to kill, arson, burglary, and incest. So in a rape case, as in every other major criminal case, the FBI investigates and the U.S. Attorney's Office prosecutes.

Tribes also can prosecute major crimes (they have concurrent jurisdiction with no double jeopardy attached) but their sentencing is limited. Before the Tribal Law and Order Act was passed last summer, they could only impose sentences of up to one year; now they can sentence up to three years—as long as indigent defendants are provided with a licensed attorney, which many tribes cannot afford. (Besides the difficulty of hiring defense attorneys, many tribal jails are already at or over capacity.) These sentencing caps apply even in cases of murder, which means that the tribe is dependent on the federal govern-

ment for the kind of justice that is actually just. “We only get to do so much and then we have to hand them over to mom and dad, who can do the big work,” is how one Sioux woman put it. “We’re treated like children with our own tiny little laws.”

Yet federal prosecutors have declined to pursue the majority of reservation cases presented to them by FBI and BIA investigators. According to a 2007 investigation by *The Denver Post*, between 1997 and 2006, U.S. attorneys rejected nearly two thirds of such cases, more than twice the rejection rate for all federal cases. Adding to the ineffectiveness of the tribal courts, only the feds can prosecute a non-Indian who commits a crime against an Indian on tribal land. The tribal courts can prosecute only Indian offenders. And if both the defendant and the victim are non-Indian, the state—not the federal government, not the tribe—steps in. One can well imagine how the investigative delays multiply while the authorities attempt to figure out the race of both the victim and the alleged perpetrator.

**O**n Standing Rock, almost any major-crime investigation begins with the local BIA police, usually in the form of a patrol officer who arrives at the scene. Then one of Standing Rock’s BIA criminal investigators takes over the case, just as a detective would take over from a patrol or beat officer in a city precinct. Then, some unspecified length of time after the initial report, FBI agents will be brought in, but the front-line troops in any criminal investigation are the BIA police officers operating out of Fort Yates. They are where the problem begins, but hardly where it ends.

“Tell me why I have a victim, someone was breaking into her home at midnight, and when she called dispatch nobody answered?” said Joyce Benson, of the Bismarck-based Abused Adult Resource Center. “Or I have a victim who’s told, ‘The police are in McLaughlin and they’ll get there when they get there.’ She could be dead for days before anybody would make it out there! Her body could be rotting!” Benson met with me at Sitting Bull College in an

office rented by the AARC, which established an outreach branch on the reservation four years ago. The large, sunlit room held a desk, two chairs, some shelves of clothes for women and children on the run, and boxes of donated cosmetics.

Although she has family on Standing Rock, Joyce lives off the reservation; she and her assistant, Anna Scala, traveled down to Fort Yates four days a week. Joyce described herself as an Indian who dresses and talks white, which meant that her Sioux clients were comfortable with her but she could also negotiate the white world when she needed to, which was often. Because she didn’t want to risk having her relatives on the reservation attacked by the husbands or boyfriends of the women she helped, Joyce rarely used her last name in her work as a victims’ advocate.

In the summer of 2009, when there were thirteen officers patrolling Standing Rock, South Dakota Senator John Thune urged the BIA to increase the force to twenty-five, reminding them that the lack of law enforcement had contributed to a crime rate that was “six times higher than the national average.” By October, the force had, instead, been reduced to eleven officers responsible for the protection of almost 9,000 people. In the winter of 1890, when Sitting Bull was arrested and killed, nearly forty officers patrolled Standing Rock; since that time, decade by decade, the numbers have dwindled. The BIA academy, which is located in Artesia, New Mexico, has a dropout rate that sometimes is as high as 60 percent, most of it apparently due to homesickness (recruits undergo a four-month training period), and the academy cannot turn out enough officers to staff the nation’s reservations, even when a reservation has enough money to hire them. In an attempt to address this problem, the Tribal Law and Order Act will allow BIA police to receive training at state police academies and local colleges that meet federal law-enforcement training standards.

When only one or two officers patrol the reservation, it can take hours, even days, for them to respond to a call, if they respond at all. Getting the police dispatcher to even notify the patrol officers was a challenge for many of Joyce’s clients. The dispatcher

often argued with the women when they called for help.

Joyce related one such exchange: “Don’t you guys do this every weekend, get in fights while you’re drinking?” the dispatcher asked.

“He beat me up!”

“Well, hit him back!”

Joyce often had to call dispatch herself to demand that they send the police to this or that woman’s house before she got smacked around some more or even killed. She pressured the courts to get orders of protection issued and then the police to get the orders enforced. She ferried women and children to hospitals and shelters, and met with FBI agents and tribal prosecutors on behalf of victims, trying to get someone, somewhere, to take the crimes seriously.

With such an understaffed police force, even committed officers find themselves stymied. Last winter, when a woman was raped in her house by her husband, Joyce and Jolana Thompson, who ran the Sexual Assault Program for Pretty Bird Woman House at the time, photographed the crime scene because the police officer there was busy booking the husband and no other officers were available. The room where the attack took place was covered in blood and feces. It’s unlikely this photographic evidence will hold up in court, because it was taken by a victim’s advocate, but, Jolana told me, “It’s better than having no photos at all.”

So on Standing Rock, the beginning of a major-crime investigation doesn’t follow procedure so much as get passed from one contingency to another. A victim calls the police—or doesn’t. She may not have a phone, or cell reception (it’s spotty on the reservation), or she may not trust the police (there’s currently a civil suit against one of Standing Rock’s officers for unlawful arrests and physical abuse), or she may be afraid of her assailant or ashamed or convinced her report will come to nothing.

If she calls the police, the phone is answered—or it isn’t.

If the phone is answered, the dispatcher notifies the officers on duty—or he doesn’t.

If the dispatcher notifies the officers on duty, they arrive shortly after the crime is committed—or they don’t. If the officers are on another call in, say, McLaughlin, South Dakota, and the

victim lives in, say, Solen, North Dakota, they will get to her but it may take a few hours. Or if the weather's bad and the victim lives at the end of an unplowed dirt road, the police can't get to her until the weather and roads clear.

At one time, the Indian Health Service hospital at Fort Yates administered rape kits, and then for a few years they didn't, and last summer they began again. Amnesty International found a lack of specially trained nurses—known as sexual assault nurse examiners (SANEs)—on many of the reservations they surveyed, and although Fort Yates had the kits and the trained personnel ready as long ago as the summer of 2009, they didn't begin administering the kits until a year later. (Five calls and two emails to the director of the hospital produced no reply.) For the past few years rape victims had to be taken to one of two hospitals in Bismarck that have rooms set aside for administering rape kits. The sexual assault nurse examiner interviews the victim; collects physical evidence from her (or his) body in the form of semen, hairs, and saliva; then takes photographs of any bruises, scratches, hand prints, ligature marks.

It's a one-hour ride to Bismarck, and victims are transported either by the police or by ambulance, though there's only one ambulance available on weekends and only two during the week. In February 2009, in the midst of a snowstorm that left large parts of the reservation without electricity, a young woman who was raped couldn't get to Bismarck because the roads were impassable. If rape kits had been available at the Fort Yates hospital and she had been able to make it there, there would have been some chance of getting her attacker convicted.

Even in good weather, a victim often wound up waiting for hours in the Fort Yates hospital's emergency room before an officer or an ambulance became available to transport her to Bismarck. Joyce describes what could happen during that wait. "Family members come and go, law enforcement comes and goes, professionals, doctors, and pretty soon you get the family of the guy who raped her coming in and she's talked out of it. And she leaves. You've just lost your victim. Now she's out there getting no services, traumatized, no kit, and how do we get justice for this victim?"

A woman who was raped by her nephew and one of his friends three years ago found herself in that exact situation. The men had been drinking when they attacked her, and after the assault they made her drive them somewhere to get more alcohol. She was stopped by the police, arrested for DUI, and thrown in the drunk tank. While there, other women tried to tell the jailers that she needed to go to the hospital because she was complaining that her abdomen felt like it was on fire. But the woman stayed locked up until the next day when one of the jailers just coming on shift saw that she needed medical attention and took her to the hospital, where she arrived with her clothes on backward. There, she was interviewed by a police officer, who told her: You know what? You were drunk, it's a day later, nothing's gonna go forward on this. I don't even know why you're sitting here, waiting to get this exam done. The woman was too distraught and too ashamed to insist on getting the rape exam, and agreed with the officer that she should be returned to jail. When a social worker from AARC called the police to follow up on the woman's case, the station had no record of the rape, only of the DUI.

Since the attack, the woman has not gone out. She has been harassed and threatened by members of her family who have taken the nephew's side. They blame her, and they want to keep her in line. Joyce went to see her recently. "The poor thing was traumatized—nightmares, suicidal a lot of the time, scared to death to be outside her house."

At some point during a major-crime investigation the FBI begins its work—that is, if the FBI is actually notified of the crime. If the BIA police think no crime has been committed, they can decide not to alert the FBI. This can be a sound decision made by a professional officer with good judgment, or, as in the case of the woman raped by her nephew and his friend, it can be motivated by callousness or laziness or some bias against the victim or in favor of the accused. "Tribal police do nothing," says Beth Melancon, a social worker at AARC's Bismarck shelter. "So many times, it stops at the tribal level and it is forgotten

about. They keep it under wraps. I would say the majority [of cases], seventy-five percent, stop at the tribal police."

**I**n spite of its vastness, Standing Rock is basically a small town—there is only one hospital on the reservation, two supermarkets, a handful of gas stations and churches and bars—and victims live side by side with their attackers and often run into them as they go about their daily business. Tom, the former police officer who was molested as a child, told me, "I see him every day, every day. You know when it's hard to quit hating somebody? Some days I still want to go and just kick him, but what good would it do?"

Even the most casual conversations I had on the reservation revealed the effects of such lawlessness. A handsome, long-haired man who fixed flat tires in Fort Yates told me he had just heard that a friend's niece was raped. He was waiting to find out whether the story was true. If it was, he, the girl's uncle, and some other men were going to beat up the rapist because they didn't expect the law to do anything about it. This is often the way crimes are punished on Standing Rock—posse-style—and the victim of the beating never runs to the police afterward.

I heard a story about a woman who had put her baby into the bathtub and the baby drowned while she was in the next room drinking. Since that incident, the woman had become fair game for a certain group of guys. Whenever they wanted to have sex and no one was available, whenever they wanted to do it all together in the spirit of a party game, a group activity, they would pick her up from her boyfriend's house (he was always drunk, so he didn't care; she was always drunk, too, of course, since the night she killed her baby) and take her somewhere. And what did it matter to her? The sooner they finished destroying her, the better.

"I lived in many different places in my life, and on several different reservations, and I've never seen the shit that goes on here at Standing Rock," Tinnekkia said one day while she and I were drinking coffee at her home on the campus of Sitting Bull College. Then she told me about a man who had been accused of molesting several of his niec-



es. When the mother of one of the girls called the police, the dispatcher promised to send a patrol car. The mother then watched as the police car swung down her street, drove toward her house, and went right on past it and out of the neighborhood. She was hysterical when she arrived at Tinnekkia's house. When Tinnekkia called the dispatcher, she was told, "An officer was down at that residence and no one was there."

"You're full of shit," Tinnekkia said to the dispatcher. "You tell him to turn around and come back here, and if you don't I'm calling New Mexico myself so they know our officers here aren't doing their job."

Late one afternoon, Tom and I decided to check out a rumor that a young girl had hanged herself in an abandoned granary in Solen, leaving a note that said she'd been molested by a male relative all her life and no one had ever helped her or even believed her. The long road into Solen cut through blond fields that glittered in late-day light. After parking on a dirt road, we made our way across a deserted industrial lot and ducked in through the granary's low doorway.

Birds fluttered in the gloom overhead. The air was still and dank. Placed directly under a low rafter was a classroom chair. "Do you think ... ?" I asked. He nodded. "No one would choose to just sit here," he said, pointing his chin at the pigeon droppings plastered over the seat.

**W**hen I met twenty-nine-year-old Tanya, she, her husband, and their three children were staying with a friend—four adults and five children living in a two-bedroom apartment. Tanya and her family tried to stay out of the way, spending the evenings together in the back bedroom, coloring pictures and playing board games. Like many of the rape victims I spoke to, Tanya had first been molested as a child. "It made me feel like everywhere I go I have this big sign on me: RAPE ME. MOLEST ME."

Tanya was dressed in baggy sweats and a man-size T-shirt; her brown hair hung to her waist. As we sat at the kitchen table, a wild autumn wind whistled at the back door. She hadn't spoken about these experiences in

seventeen years. Tanya was twelve when her uncle first raped her. For two months, he climbed into her bed almost every night. Finally, she told her grandmother. Her uncle denied it, and her aunt accused Tanya of seducing him. When Tanya's mother took her to the police station to report the crime, an officer wrote down the information, but nothing happened after that. The aunt and uncle moved off the reservation, and the police told Tanya's mother they couldn't find him.

When she was thirteen, Tanya fled Standing Rock, too. For the next six or seven years she moved between friends' houses in New Mexico and Colorado, rarely coming back to visit her mother and grandmother because she often heard her uncle was around, visiting other family members. She was sexually assaulted twice after that, at fourteen and then again at fifteen, by older male relatives of her friends.

Recently, Tanya was in the Tribal Offices building, a majestic, sand-colored edifice facing the Missouri River, when she ran into her uncle. "I started shaking," she said. "I wanted to attack him, but I just kept on walking. It

brought back the things he did, the things he was saying to me. I just wanted to kill him because nobody did anything, law enforcement didn't do anything. It still hurts. I just don't understand how they can get away with it." Tanya told her oldest daughter, who is eight, "If anyone touches you in a bad way, you need to tell me right away so we can get something done about it."

Her daughter asked, "Oh, Mom, what if the cops don't do anything?"

"Then Mommy will do it herself."

On Standing Rock, family loyalty and family vengeance can affect the course of justice. Large families and people who have relatives on the tribal council or in the police department or the courts have power on the reservation. And as in any small town, everybody knows everybody else. So who can you confide in, who can you trust? Women are reluctant even to seek counseling at the IHS hospital because they're afraid people will find out. Victims of childhood molestation often live for decades in silence.

In place of truth there is rumor, often slanderous rumor. In the five weeks I spent on the reservation I was told that one government official killed someone while he was drinking and driving, that a former tribal council official was passing himself off as Sioux when he was "not even an Indian!" and that a prominent medicine man beat his wife. Whether any of these rumors were true wasn't important. Wild speculation was both a symptom of and a safeguard against an ineffective legal system, for if no one is ever locked up for a serious crime, or even sees the inside of a courtroom, what dangers is one unaware of? How would you know if the person standing in front of you isn't a rapist or a wife beater or a child molester? The rumors breed widespread mistrust, mistrust for everyone but your own, and that mistrust, sad and small-minded as it is,

might just keep you  
and your children safe.

**W**hen Kim walked into the Prairie Knights Casino and Resort lobby, she was defying the expectations of the people who said she wouldn't talk about her rape. She only wanted to forget, I was told. She was twenty-four,

petite, her brown hair pulled into a small pony tail. She seemed wounded and wary. Her boyfriend had come along, as well as her two children, a small boy and a smaller girl wearing puffy coats and serious expressions. They seemed to hang in the carpeted lobby like grounded balloons waiting for some breeze to pluck at them. The boyfriend took the kids to the children's game room, and then she and I went upstairs to my room.

Refusing the chair, Kim perched on the corner of my bed. Without preamble or niceties, she began: "I was drinking all night . . ." There was a neighborhood house party, and Kim went there with a male friend. "When I'm drinking I get talkative," she said. "I had a whole crowd of people around me, a group of girls, and that's where I was being all, like, crazy." Next to them was a circle of men, also drinking. Later on, the girls drifted off one by one, and Kim found herself drinking with the group of guys. They kept passing booze to her, she kept talking excitedly, but even she could hear her words beginning to slide together. By the time she left the party, with four of the guys, Mike, Rob, Carl, and Delroy, she was very drunk.

"I was out of it," she remembered. "They had to carry me, and I didn't even know where we were going." Kim knew all four men; they were about ten years older than she, but she had grown up with them. Mike, the largest of the four, and the natural leader, was her uncle's best friend and her aunt's boyfriend. She called him her brother. "I really, really trusted him," she said. They ended up in the basement of Rob's house, where there was a couch and a bed. "All of a sudden they were all nodding at each other, and I didn't get it, you know? I just couldn't think right, and I kept telling Mike, 'Bro, I'm passing out, I'm too drunk, I need to go home, could you take me home?'"

She passed out leaning against Mike, and when she woke Carl was on top of her. "They were holding my arms. My clothes were still on at first, and I was trying to pull away, and I was biting them and I was scratching, trying to do everything I could just to get them off me, and then they flipped me over and they started taking turns, my pants were ripped in the butt part, and it was

horrible, it was the worst thing that could ever happen, because he was my brother and I trusted him!"

When Kim finally tore herself away from them, she ran for the stairs. "I was screaming at the top of my lungs." First she ran to the house of a neighbor, a woman she knew, and banged on the door, begging for help. The woman stood in the doorway and wouldn't let her in. "I can't do anything for you," she said. Everyone knew Mike, and people were afraid of him.

Kim started running again, cutting across small, scrubby yards to the empty main street, the only sound the huffing of her breath and her feet slapping the pavement. She ran half a mile to her cousin's house, but no one was home. So she started running again, this time back in the direction she had come because she remembered the friend who had gone with her to the party. As soon as her friend answered the door, Kim screamed, "Where did you go?"

"Oh God, what happened to your clothes? What happened to you?"

The ambulance took her to the Fort Yates hospital. "When I finally looked at myself I had, like, marks all over my mouth, my eyes were all poofy, some of my hair was torn out, I had bruises and scratches on my arms. It was horrible!"

They kept her in the hospital for three days, on sedatives most of the time. A police officer questioned her and took photos. Then they sent her to AARC's shelter in Bismarck, because she didn't know where else to go.

Kim reported the rape, and Mike was arrested and jailed. As soon as she returned to the reservation, his family began threatening her, calling her a liar and a bitch. Whenever they saw her on the street, they told her they would beat her up and make sure her son was taken away from her if she didn't drop the charges. Kim believed they could do it, since some of Mike's family members worked in the tribal court. "I was getting threats right and left, and I wasn't scared. I was going to go through with it—they had him in jail, and it was all going to work out. But then they let him out," Kim said. "Nobody would do anything. He just walked around town."

Her uncle blamed her. "He said that I put myself in that situation and I should've known better." Her aunt told

her she was a liar—Mike had moved in with her. The only family member to stick by her was her grandmother. When she and her grandmother were shopping at the White Buffalo supermarket one day, Mike appeared in the aisle. “All of a sudden he started walking toward us to intimidate us, and I just dropped my groceries and took off for the car.” (The grandmother told me later that though she herself doesn’t scare easily, she was shaking that day, and that Kim was so hysterical she had to take her to the hospital for some sedatives.)

The FBI never interviewed Kim, though she heard they were involved in the case and had the results of her rape kit. When she went to see the police officer who took her report at the hospital, he looked up from his cluttered desk with a frown and said, “Honestly, this is probably the worst time . . .”

“But it’s the only time I can get hold of you,” Kim told him. When she began to talk about her case, he told her he wasn’t the officer in the hospital, though Kim and her grandmother both believe he was.

The tribe, not the federal attorneys, decided to prosecute, but the night before the trial was to begin, the defendant’s family threatened Kim and she didn’t show up in court, instead fleeing to her grandmother’s house, with its plywood floors and leaking pipes and frogs and snakes swimming in pools beneath it all summer. There, Kim moved into a small back room. Then she just stopped. Even her son went into limbo, ceasing to speak, as if he’d never learned to use words.

When she found out she was pregnant, she didn’t know whether the baby was conceived during the rape. “I totally just let myself go downhill, like really bad,” she said quietly, staring down at the carpet of the hotel room.

Then she met the tribal court’s public defender, James Cerney, who told her he believed her and spoke to her earnestly about seeking justice. Kim decided she *would* press charges, she would try again, not with the FBI and the U.S. Attorney’s Office but with the tribal courts. She went to talk to the (now former) tribal prosecutor and said she was ready. He told her it was too late. “I tried! I tried so hard and I was

so honest,” she said, her voice rising. “When I went to talk to the prosecutor he was like, ‘You don’t even really remember and you were drunk.’ Those were his exact words. He said there was nothing they could do because it was so long after everything happened and because I kept trying to drop the charges. But I told him why! I told him that I was being threatened and I was scared for my family, scared for my son. They ruined my life! He just said there was nothing they could do.

“I really believed that something could happen,” Kim said. “But nothing did! Nothing came of it! I just got pushed aside and thrown away!” And she sat there and sobbed.

**I**n the white cinder-block hallway outside Standing Rock’s courtroom, a woman tugged her son toward the clerk’s window. “Where’s my daa-aad?” the child complained. “You can’t see your dad,” the mother said. “We’re gonna try to get him out.”

In a small hearing room, Judge William Zuger, a tall, gangly man with thinning blond hair, listened as the tribal attorney outlined a case involving a white rancher’s cattle grazing on an Indian family’s land. The family wanted to confiscate the cattle, whose upkeep had cost them a lot of money over several months. Zuger wasn’t going to give them what they wanted, and he scolded the tribal attorney for encouraging the family to believe the court would act without the rancher in attendance. When the family and the lawyer left the room, they were whispering angrily.

“The fact is, our criminal court is the equal of the federal criminal court right now,” Zuger said when I interviewed him in his office along with Public Defender Cerney. “Our prosecutor was the state’s attorney for Walworth County, South Dakota, for five years, and we basically hired him away, and he’s a hell of a good prosecutor, and I’ll stack Jim here up against any public defender in the state of North Dakota.” Cerney didn’t react to the compliment. It was as if the judge’s estimation of him were irrelevant. During this and every subsequent meeting, I would find the same flickering, sharp expression on Cerney’s face. “What

can I do for you?” was his customary greeting, and it was a real question.

Cerney has filed two civil lawsuits against the BIA. The first suit was filed on behalf of a female pretrial detainee who, while being held at the Standing Rock jail, was forcibly strip-searched by a male officer as his male supervisor watched. The second one was filed against the BIA and a Standing Rock police officer who allegedly has entered homes without a search warrant, arrested citizens without cause, slammed innocent people against walls, and pepper-sprayed and kicked handcuffed defendants. Cerney has also filed a federal lawsuit on behalf of a twelve-year-old boy who allegedly was branded with a hot nail and then sodomized by a seventeen-year-old inmate while the boy was in custody at the Cheyenne River Reservation jail, across the border in South Dakota. It is notoriously hard to get the BIA to fire a bad law-enforcement officer. If there are enough complaints, the officer is simply transferred to another reservation.

That morning, the rate at which the feds decline to prosecute Indian-country crimes was the focus of our conversation. The U.S. Attorney’s Office has repeatedly refused to provide their declination statistics to either the tribes or the U.S. Senate Committee on Indian Affairs. Through FOIA requests, Syracuse University has gathered information showing that between 2004 and 2007, the federal government declined to prosecute 50 percent of murder/mauslaughter cases in Indian country, 76.5 percent of adult sex-crime cases, and 72 percent of child sex-crime cases. Starting next year, the feds will be required to keep data on their declination rates and turn that information over to the Senate, but it is unclear whether that will lead to more prosecutions of sexual assault.

There is considerable debate over why so many cases get dropped. Some have said that a lack of reservation resources leads to sloppy or incomplete investigations that cannot be prosecuted successfully; others argue that the feds aren’t interested in crimes on the reservations, especially gritty rape and incest cases, that they would much prefer hunting down and prosecuting terrorists, drug cartels, and white-collar

criminals. "The feds believe that if they have a strong enough case, they're going to prosecute it, and a strong enough case means a slam-dunk," Cerney explained. "If it's a marginal call or if they believe they have a chance of losing, they will not prosecute." Unfortunately, finding a "slam-dunk" rape case is rare.

**S**ome legal experts suggest that federal law-enforcement agencies are simply not designed to pursue what are basically street crimes. The FBI and the U.S. Attorney's Office work slowly and methodically to investigate and prosecute complex interstate crimes, but crimes like rape, child molestation, and domestic violence require a swift response. The police need to be there on the ground; the investigation needs to move quickly into the courts so that orders of protection can be issued if needed, the custody and protection of children can be provided for, and the defendant can be remanded if the court deems he or she will be a danger to the community while awaiting trial.

Of course, the tribe still can prosecute, but the feds won't release the results of an investigation or any physical evidence to the tribe. "The FBI is a black hole," Zuger said. "The BIA police get the evidence and they submit it to the FBI lab and we never see it again. We had a homicide, it was a hit-and-run where the front bumper of the car was in an FBI laboratory and eighteen months had gone by and they still hadn't returned it, nor had they prosecuted. We've had DUIs where the toxicology report has been gone over a year. And it never comes back."

"Most significantly, the rape kits never come back," Cerney added. "They will not prosecute, yet they won't send the information down so the tribe can prosecute. We never, ever see the results of a rape kit."

In the four years that Cerney has been public defender on Standing Rock, the tribal court has never prosecuted a sexual-assault case. Two cases were pled out because both defendants were facing federal prosecution. "But as far as any convictions we've been able to have as opposed to the U.S. Attorney's Office, there have been none. None." Not a single prosecution

of a sexual assault, and though the new law directs the feds to share evidence, there is no specific time frame in which they must share it; as of November, nothing had changed—no rape-kit results had been sent to the tribal justice authorities, and they were still waiting for evidence to be returned in other abuse cases.

As the months tick by in a federal investigation, witnesses disappear, evidence grows cold, police transfer to other reservations; intimidated victims change their minds about pressing charges and refuse to cooperate. "It's a big thing on a reservation," I was told over and over again. "You accuse someone of something? The whole family comes after you." And federal prosecutors don't inform the tribe about their investigation. Both the victim and the accused are left in limbo, for weeks, months, a year, or more, never knowing what is happening, or indeed whether anything is happening. Cerney can think of only one person who was notified about her case, but in this instance the victim's mother had kept on top of the federal prosecutors, frequently calling them to get progress reports. Cerney showed me the piece of paper the victim finally received. It was a one-page form letter from the Crime Victims Compensation Board; a check mark had been put next to the line saying her application for compensation had been denied. And then the reason: "THE FBI WAS UNABLE TO SUBSTANTIATE THAT A CRIME HAD BEEN COMMITTED."

When I met the mother and daughter, they were still confused. They had gleaned nothing from that letter. It wasn't only a sense of justice that was left unsatisfied; sense itself was wanting. The daughter had taken the rape-kit exam. What did it show? What of the bruises on her thighs? "I don't trust those FBI agents," the mother told me, and she came from a family of law-enforcement officers and had always trusted them before. "They come from Bismarck, these are white people, they've got that little book and they write a few things in it and decide, Oh, it's not a crime..."

Even when the feds decide to prosecute Indian country crime, trials are held in federal courthouses

far away from the scene of the crime and the affected community, held without Indian spectators or Indian jurors. Often the victim must travel more than a hundred miles to appear in court. The justice system is invisible, unable to deter or heal.

**I**n December 2009, a government employee who hadn't been given permission to talk to me met with me anyway. He wouldn't let me tape the interview, and though what he had to say was more heartfelt than revelatory, he eyed my notepad warily. He remembered Kim coming into the hospital the night she was raped and that she kept crying, "He was supposed to be my brother!"

"I think a lot of our people on Standing Rock are grieving," the man told me. "Grieving because of being sexually abused, physically abused. The people think there's no justice. They feel hopeless. They're in pain, and you can't tell the bigwigs that."

The psychological and social effects of justice deferred can be seen and felt everywhere on Standing Rock, in a mother's insistence that no one babysit her kids because there's no one she trusts; in the acts of violent retribution against accused rapists and molesters carried out by victims' families because that will be the only justice they receive; in the wild rumors that serve as a warning to be always on guard; in the taunts thrown at rape victims—"liar! bitch! whore!"; in the depression and anger of adults who were molested as children and find themselves just as helpless as adults; in the soaring crime rates and in the drinking and drugging that work to quiet the nightmares of victims and dampen the guilt of perpetrators; in the way children marshal themselves to protect their mothers—the stiffened, worried faces of little boys who play man of the house, and in the teenage suicides (according to *The Bismarck Tribune*, an average of fifty attempts each year). Justice deferred can be heard in the silence that has lasted for generations, and, most stunningly, in the voices of those people "just aching to tell somebody, anybody," victims like Kim, who will never receive justice in a courtroom but still find a way to testify. ■