

# Domestic Violence Fatality Review in Indian Country

By Matthew Dale

As the process of reviewing intimate partner homicide (IPH) has grown and matured, it has become clear the previously underrepresented groups deserve "a seat at the table." These groups include survivors and/or family members, clergy and members of child death review teams, among others. Members of local ethnic and cultural minorities, referred to in federal parlance as "undeserved populations," are also now seen as essential participants in the death review process.

In Montana, Native Americans are the state's largest minority, comprising approximately seven percent of the population. Of those 66,000 individuals, roughly 57% reside on one of the state's seven Reservations. These communities vary tremendously in acreage and appear across the state (<http://indiannations.visitmt.com/>). Populations also fluctuate, ranging from fewer than 3,000 residents on the Rocky Boy's Reservation to more than 8,000 on the Blackfeet (<http://gain.mt.gov/docs/mbq4-041.pdf>).

Montana's statewide Fatality Review Commission (also referred to as a team) is keenly interested in the needs of these citizens because Native Americans, both on and off the Reservation are disproportionately represented in intimate partner deaths in our state. According to the list of statewide IPH homicides maintained by the team, Native victims account for 17% of deaths since 2000. Montana's experience is similar to national statistics, which indicate that Native women suffer far higher rates of domestic and sexual violence than white women (<http://www.ncjrs.gov/pdffiles1/nij/grants/223691.pdf>).

The Commission's focus on high rates of American Indian violence is mirrored in both our state legislature and the U.S. Congress. Last year, for instance, the Montana legislature passed Senate Joint Resolution 26, which calls upon residents to help, "Honor Montana's American Indian Women By Stopping The Violence Against Them" (<http://data.opi.mt.gov/bills/2009/billpdf/SJ0026.pdf>). The resolution resulted in a one-day symposium on the scope of the problem and potential solutions. The team's history and previous legislative testimony resulted in an invitation to participate in that event. Doing so provided an opportunity to disseminate the team's findings to more than 100 attendees, including representatives of all Montana tribes.

Nationally, Senator Byron Dorgan introduced the Tribal Law and Order Act in the 2007-2008 Session and plans to do so again in 2009-2010. The Act is motivated by a desire to reduce extraordinary levels of violence on many Reservations, and would have far-reaching effects in tribal courts ([http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:s797is.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s797is.txt.pdf)). Additionally, President Obama and Attorney General Eric Holder have made Indian Country crime reduction a centerpiece of this administration.

Undertaking fatality review in Indian Country where each federally recognized tribe is a sovereign nation, is complex. Many of the protocols teams have developed in the areas of membership, record retrieval, report writing and inclusion of local members, are different in tribal and federal environments. It is perhaps preferable that only teams with extensive experience and well established practices take one these reviews. Otherwise, there is a danger that the long history of misunderstandings between Native and white communities will be replicated. A sincerely undertaken but poorly executed review runs the risk of setting cooperative tribal and non-tribal reviews back for some time.

At times there has been concern raised nationally regarding death review among some Native cultures, out of fear that tribes may have a taboo against speaking of the dead. That has not been Montana's experience. In fact, our tribal representative is not aware of a tribe for whom this is a concern. It may be that our understanding will be enlarged through this article and ongoing discussions of our work but at this point it seems reasonable for teams to continue in their outreach for tribal death review participants.

Once Montana's Commission decided to focus on Indian Country reviews, we needed to re-examine our membership. It was essential that we add a tribal member and a federal law enforcement representative. As happens frequently in fatality review, we sought to fill multiple needs with a single person. This was accomplished with Phoebe Blount, FBI victim services staff and an enrolled member of the Fort Peck Reservation, joined us. Phoebe's ability to serve as a liaison between tribes and the team has been invaluable.

It can't be reiterated too strongly just how necessary it is that a federal law enforcement or criminal justice employee be a team member for those undertaking Indian Country reviews. Statutes that were helpful in procuring state and local reports mean little in a federal environment and almost every relevant report- law enforcement, probation, medical, etc.- must come from a federal source. Involved agencies might include the FBI,

Bureau of Indian Affairs (BIA), Bureau of Alcohol, Tobacco, Firearms and Explosives (BATF), U.S. Attorney's Office (USAO), federal Victim Services and/or the Office of Federal Probation.

While we have found individual agents and supervisors to be extremely helpful, they work within large bureaucracies with myriad laws, rules and protocols. No matter how well intentioned any one employee may be, many layers must be navigated and this takes a great deal of time. At a minimum, teams should expect their standard preparation time to double when undertaking a tribal review. Montana's team completes two reviews per year, and generally two to three months is adequate to accumulate all the available information. In contrast, we have learned that Native American review preparation requires nearly the entire six month period available.

Another key consideration when considering a Reservation-based review is the extreme isolation of some of these communities. Montana's team decided early on to review deaths across the state, and to travel to the location of the death. In our most recent Indian Country review, that meant one-way distances of more than 400 miles for some attendees. Not only is this a significant financial consideration, the amount of time necessary to conduct the review is also extreme. Distances of this magnitude turn an average 16 hour per review commitment into nearly twice that [including travel]. Given that Commission members receive no remuneration and must take time away from their day jobs to participate, this can be a significant concern.

That commitment to travel, however, to be physically present, pays some of the largest dividends, we have found. Reservation communities are well aware of their distance from most state services and they recognize the unusual nature of the team's visit. State and local, in this case tribal, participants understand the importance of coming together, and individuals from all backgrounds make extraordinary efforts to collaborate. Attendance by local professionals, both Native and non-Native has improved with each review.

Our process for reviewing Native deaths began slowly and has become more sophisticated over the past five years. Our first review included a Native victim and perpetrator but the death itself took place off either Reservation. The second was a Reservation-based death but the review itself took place in a different city nearby. Our third review, and the primary basis for this article, was in one of the most remote communities in the state. We heard repeatedly that the team's willingness to travel to the community was appreciated and was essential to the review's success.

We have found this spirit of commitment leads to reviews of great depth. Team members have wide varie-

ties of experience working with Native Americans. Tribal participants have been patient and forthcoming in explaining their positions and experiences both as tribal employees and Native American family members. Commission members have been humbled by the levels of trust and disclosure that tribal hosts have offered. This sharing adds considerably to our knowledge of the victim and the environment in which his or her life and death took place. In our experience, such nuance and candor does not occur without actually experiencing the culture firsthand.

These reviews also call for heightened levels of diligence once the event ends. As acknowledged above, United States history has innumerable examples of broken promises between the state and Native Americans. Fatality review teams have a responsibility to be sensitive participants but to not stop there. Tribal communities have experienced any number of "listening tours" that have failed to result in concrete outcomes. If during the review process teams commit to take action or implement recommendations, timely follow through is a must.

Montana's team has learned that tribal participants have a great deal to offer, even if their experience reviewing IPH deaths is limited. One of the most far-reaching, concrete results of fatality review in our state has been dissemination of the Hope Card. The Card, a portable, laminated distillation of the key elements of an Order of Protection, began as a tribal initiative. Created by BIA agent John Oliviera while working on the Crow Reservation, the Card was offered originally as part of the tribe's Purple Feather Campaign. With the assistance of the Office on Violence Against Women and the Montana Attorney General's Office, the Card is now on the cusp of being available across the state, to all holders of permanent [non-temporary] Orders. If not for active engagement with tribal nations, the brilliance of the Hope Card might be limited to a fraction of Montana's vulnerable population.

A team's report to the community can be an excellent vehicle for publicizing both the challenges and successes of work with tribes. As mentioned earlier, the efforts of Montana's team, highlighted in the 2009 Report to the Legislature [<http://www.doj.mt.gov/victims/statisticsreports/biennialreport/2009.pdf>], led to its inclusion in the state's Honoring Native Women event. The appendix of that same report describes the Hope Card and the "Indian Country Federal Crime Case Tracker," an initiative of the U.S. Attorney's Office in Montana.

The Tracker was created in response to tremendous Native American frustration with the federal criminal justice system. For some time, tribes have felt that prosecutions for many Reservation-based crimes have languished, or never even occurred, in some cases. In an effort to increase transparency and accountability, then-

U.S. Attorney Bill Mercer directed that a simple, easily understood spreadsheet be used to follow all crimes, regardless of the reporting entity, from the moment contact is made with USAO.

The form was accompanied by a Memo to a wide variety of professionals, both tribal and nontribal, asking them to use the form, effective immediately. Montana's team was impressed by the instrument, and Mr. Mercer's response to Native concerns, and wanted to distribute it to an audience far larger than the original recipients. Mr. Mercer readily agreed, and through its inclusion in the report, the Case Tracker is now available statewide, and, in fact, nationwide should another USAO choose to implement it. In very public ways, the work of fatality review teams can both spur change and draw attention to positive responses in a way that few other groups can.

Domestic violence fatality review work in Indian Country can be frustrating and difficult. Teams are called upon to learn whole new ways of executing even their most basic tasks. Every aspect of their work- membership, meeting locations and times, document accumulation, interviews, report writing- needs to be re-examined in light of the special challenges of operating in tribal, that is sovereign, and federal environments. That said, the work is immensely rewarding and creates opportunities that simply do not exist when working solely in local, county or state systems. A decision to move in this direction must be thoughtful and collaborative, and team members should be fully committed before the review begins. Done well, fatality reviews of Reservation-based deaths can re-energize a team and remind members why they volunteered to serve in the first place.

To summarize, key considerations when reviewing Indian Country IPH deaths include:

1. It is essential that at least one Native American sit on the fatality review team. That member serves as an ambassador to the tribal community, opening doors and reducing suspicion. They also serve as an intermediary for contacts with Reservation residents, particularly family members. In most reviews a liaison is not necessary; in Indian Country it is essential.
2. A federal law enforcement or criminal justice representative on the team makes navigating the federal system and procuring documents considerably easier.
3. Consider travelling to the Reservation community or, at a minimum, providing funding for tribal representatives to travel to the review site.
4. The team should have a sense of history as it prepares- learn from others who have worked with the community in the past. Participants must enter the process as eager to learn as they are to teach. As in all reviews, "do no harm" is tantamount.
5. Go beyond a "listening tour." Make a commitment early on to work diligently to implement concrete

responses to at least some of what is learned during the review.

6. Take advantage of the efforts of all interested parties- local, state, federal, tribal- to reduce domestic violence deaths on Reservations. Use your report to highlight best practices, regardless of their source, so that other communities and agencies can benefit from their creation and implementation.

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