

Expanding Tribal Court Sentencing Authority and BIA Arrest Authority

The Department strongly opposes the concept of permitting tribal courts to direct offenders convicted by tribal courts to serve their sentences in federal prisons. The Bureau of Prisons (BOP) is responsible for the incarceration of inmates who have been sentenced to imprisonment for federal crimes. Based on continuing federal law enforcement efforts and limited resources for construction of new institutions, federal prisons continue to be very crowded. System-wide, BOP is operating at 37 percent above its capacity, and it does not expect crowding to decrease substantially in the next few years. Crowding is especially significant at high-security institutions (operating at 50 percent above capacity) and medium-security institutions (operating at 47 percent above capacity), where the majority of violent offenders are confined.

For purposes of maintaining family ties and to effect an optimal reentry back into the community after release, the Department believes that the incarceration of tribal court offenders is best handled by local jurisdictions and BIA. The BOP attempts to designate an inmate to the appropriate security level institution that is within 500 miles of his or her release residence. Nevertheless, due to the location of BOP institutions and population pressures, this is not always possible; and many inmates are much further than 500 miles from their homes and families. BOP policy requires that inmates remain at an institution for at least 18 months with clear conduct before consideration of a transfer closer to their release residence. In all likelihood, if transferred to BOP facilities, tribal court offenders with short sentences would remain at their designated BOP institution for their entire sentence. Visits by family and friends to these tribal offenders would be severely restricted due to the great distance between the BOP institution and their home, and these tribal offenders would not be afforded the opportunity to participate in tribal reentry programs currently operating near the reservation out of the tribal jails.

The proposals to expand tribal court sentencing authority to up to three years of imprisonment and to permit BIA law enforcement officers to make arrests for any misdemeanor crimes are significant changes in the current legal and law enforcement framework. While recognizing the purpose behind these proposals, as a former defense attorney, I am concerned about the impact of these provisions on defendants' constitutional rights and legal protections. It would be quite unusual, for example, for law enforcement officers to have blanket arrest authority for misdemeanors not committed in the officer's presence. The Department has had insufficient time to evaluate these proposals, but we will thoroughly and carefully examine them.

Conclusion

Mr. Chairman, Madame Vice Chair, this concludes my statement. While the Department does not comment on proposed legislation, I will be happy to attempt to answer any questions you may have.

The CHAIRMAN. Thank you very much, Ms. Shappert. We appreciate your being here.

Next we will hear from Kelly Stoner, and Ms. Stoner, thank you very much for being with us as well.

STATEMENT OF KELLY GAINES STONER, DIRECTOR, NATIVE AMERICAN LEGAL RESOURCE CENTER AND CLINICAL PROGRAMS, OKLAHOMA CITY UNIVERSITY SCHOOL OF LAW

Ms. STONER. Good morning, Mr. Chairman, Madam Vice Chair and members of the Committee. I am Kelly Stoner, and I would like to thank the Committee for inviting me to participate in today's hearing.

It is an honor to work with you all on this important issue. The Committee should be congratulated on their work regarding the proposed legislation and for taking the time and making the effort to seek meaningful input from tribal nations who, after all, have the ultimate interest in this issue.

As the Director of the Native American Legal Resource Center and Clinical Programs at Oklahoma City University School of Law, I have gained experience working with tribes in Oklahoma and

throughout the region on criminal and civil jurisdictional issues in Indian Country. Prior to joining the faculty at Oklahoma City University, I served as the tribal prosecutor for the Spirit Lake Nation in Fort Totten, North Dakota, for over eight years. In all, I have been practicing law in Indian Country for nearly 20 years. I teach classes and lecture nationally on these topics.

Successful implementation of this proposal will depend upon three key issues which directly are tied to a showing of respect for the sovereign rights of tribal governments. First, a government to government approach must be utilized when dealing with Indian nations. A government to government approach ensures the proper deference for both sovereigns and maintains a focus on the thread of commonality that is important to both sovereignties, here, victim safety and criminal accountability.

Second, continued consultation with tribal leaders, tribal officials and tribal communities is critical. Engaging in meaningful tribal consultation and obtaining tribal input during the process will facilitate the implementation of these proposed measures.

Third, and not least by any means is funding. Funding should be included in each section of the proposal. As this Committee is well aware, each tribe is unique with respect to custom and tradition, as well as tribal resources that are available.

The topic I would like to focus on today for my oral presentation is Federal accountability. As I stated earlier, I was a prosecutor at Spirit Lake for several years. I referred personally some severe child abuse and child sexual abuse to the United States Attorney. Many times I didn't know what happened to those referrals. Sometimes, a year or so later, I would get a denial letter. In that year's time, evidence grew cold, witnesses moved out of the jurisdiction and there was a high rate of turnover in tribal law enforcement. I prosecuted some of these cases in tribal court, but IGRA severely limited the sentencing power of the tribal court.

Federal investigators and prosecutors need to be held accountable through an annual reporting process as set forth in this proposal. If the Department of Justice feels that reporting is too cumbersome or violates certain confidentiality statutes, perhaps a government to government consultation with tribes in the way of a scorecard or, if you will, a report card, that allows tribes to give meaningful input with respect to the tribes' opinion as to the effectiveness of the United States Attorneys' efforts in their areas. In my opinion, in Indian Country, there is an extremely high Federal declination rate, with no explanation provided to tribes. I never received a file with any information when I received a declination letter. And there is no accountability.

In the case of Federal declinations involving a Native American victim and a non-Indian accused, no other population in the United States is told that no criminal justice consequences will be imposed on the non-Indian rapist, child molesters and murderers. These perpetrators continue to walk free in tribal communities. And these non-Indian perpetrators are free to re-offend and actually do re-offend, because they know that nothing will happen to them.

Tribes have the right to know why or how these declination decisions were made. I agree with the Chairman from Standing Rock,

the tribes have the right and should receive the entire file when a declination is made.

I just recently facilitated two national roundtables funded by the Office of Violence Against Women. The topic that was of focus was domestic violence in Indian Country. These roundtables came about because Native people have to find some way to hold non-Indian abusers accountable for their actions in Indian Country.

I would like to thank you for inviting me to testify, and I am happy to answer any questions the Committee might have.

[The prepared statement of Ms. Stoner follows:]

PREPARED STATEMENT OF KELLY GAINES STONER, DIRECTOR, NATIVE AMERICAN LEGAL RESOURCE CENTER AND CLINICAL PROGRAMS, OKLAHOMA CITY UNIVERSITY SCHOOL OF LAW

Introduction

Good morning, Mr. Chairman, Madam Vice Chair, and members of the Committee. I am Kelly Stoner, and I'd like to first thank the Committee for inviting me to provide testimony for today's hearing. It is an honor to work with all of you on this important issue. The Committee should be congratulated on its work for the proposed legislation and for taking the time and making the effort to seek meaningful input from tribal nations who have the ultimate interest in securing their nations. Conducting listening sessions with tribal leaders, tribal officials, and professionals who work in Indian Country takes a necessary first step towards meaningful change and adequate deterrence of crime in Indian Country, and I thank the Committee for its thoughtful work.

As the Director of the Native American Legal Resource Center and Clinical Programs at Oklahoma City University School of Law, I've gained experience working with tribes in Oklahoma and throughout the region on criminal and civil jurisdictional issues in Indian Country. Prior to joining the faculty at Oklahoma City University, I served as the tribal prosecutor for the Spirit Lake Dakotah Nation. I have been practicing law in Indian Country for nearly 20 years, and have unique academic, clinical and tribal government experience with crimes and Domestic Violence issues in Indian Country. Additionally, I am a national lecturer for both the Office on Violence Against Women of the United States Department of Justice and the American Bar Association's Commission on Domestic Violence, serving as a speaker for training sessions nationwide, and as a member of several national roundtables focused on addressing crime and Domestic Violence in Indian Country.

The Native American Legal Resource Center (NALRC) at the Oklahoma City University School of Law serves as the academic law and policy center for students interested in Indian law and policy. Additionally, the NALRC provides a variety of services to tribal governments across the nation, including tribal court planning and development assistance, self-governance assistance in developing tribal codes and constitutions, and domestic violence services for tribal courts, tribal justice systems and tribal judges, as well as individual Native American victims of domestic violence, including representation and victim advocacy services. Our projects are funded by public and private grants.

The Mission of the Native American Legal Resource Center is:

The Native American Legal Resource Center provides capacity building services to tribal communities and creates opportunities for students, faculty, staff and the broader University Community to utilize knowledge and resources to serve the needs of Indian Country in a culturally appropriate and efficient manner for a maximum positive impact.

Key Concepts for Success

Historically, tribes were sovereign nations exercising plenary powers over any individual who came within tribal boundaries. Today, tribes maintain their status as sovereign nations, although some formidable limitations have been placed upon the exercise of tribal sovereign powers by federal law. While comprehensive tribal sovereign powers to assert criminal and civil jurisdiction over all individuals located in Indian Country should once again be recognized by the states and the Federal Government, the current status of the law and the government-to-government relationships between the Federal Government, state governments and tribal governments frustrates meeting that ultimate goal.

The proposed legislation goes far to identify and address many of the overlapping issues in the relevant federal case law and federal statutes. By infusing the implementation process with the following principles, the Committee can increase the likelihood of the success of the operation of the proposed legislation.

First, a government-to-government approach should be included in the preamble of the proposed statute. As sovereign nations, tribal governments have the ultimate interest in executing sovereign responsibilities and ensuring the safety of anyone who comes within tribal boundaries. A government-to-government approach ensures the proper deference for both sovereigns and maintains focus on the thread of commonality each must address, which is the safety of victims and criminal accountability issues.

Second, continued consultation with tribal leaders, tribal officials and tribal communities is critical. Engaging in meaningful tribal consultation throughout the process will ensure the success of the operation of the proposed legislation. Gathering tribal input strengthens new programs, reduces unneeded bureaucratic barriers in the system, and facilitates transition of new ideas in the implementation of new initiatives.

Third, funding should be included in each section of the proposal. Because of critical under funding of tribal programs, additional federal mandates without funding to carry them out present insurmountable burdens on tribes that may suffer from chronically limited funding.

Federal Accountability and Coordination Issues

Holding federal investigators and federal prosecutors accountable in tribally referred cases is a key concern of tribes across the nation, as the lack of accountability of the current system frustrates maintaining law and order. For instance, when I was a tribal prosecutor for the Spirit Lake Dakota Nation in Fort Totten, North Dakota, I would make referrals to the federal prosecutor regarding child abuse and sexual assault cases. Many times, I would never know what happened to those referrals. I might prosecute the case in tribal court but the sentencing provisions set out in the Indian Civil Rights Act, and the lack of adequate tribal detention facilities made the convictions toothless. In some cases, I would receive a declination letter from the federal prosecutor a year or so after the referral, but in the span of that one year, evidence grew cold, key witnesses moved outside the tribal jurisdiction and could not be located. Adding to those challenges was the exasperatingly high rate of turn-over in tribal law enforcement. In my discussions with others at various trainings and conferences throughout the United States, I've found that my experience mirrors that of tribal prosecutors and law enforcement across the country. This is an area that needs Congress' attention for a solution.

Federal investigators and federal prosecutors need to be held accountable through an annual reporting process. Tribal leaders and the appropriate federal agencies should be given an update on the number of cases referred for investigation and prosecution, the number of declinations with details regarding the decision to decline to prosecute the case. Federal prosecutors should make the decision whether to prosecute quickly enough so that tribal prosecutors can continue with tribal court prosecution.

The proposal suggests that qualified tribal prosecutors be appointed to act as federal prosecutors for the purpose of prosecuting cases in Indian Country. The qualifications for a tribal prosecutor to engage in federal prosecution should equal but not exceed that of other federal prosecutors. This arrangement is currently in practice in some states with much success. For purposes of implementation of this legislation, tribal governments should be consulted, government-to-government, to have meaningful input on issues of hiring, salaries, office sharing and other common issues of both sovereigns sharing one position.

The proposed legislation requires each jurisdiction to appoint not less than one Assistant United States Attorney to serve as a tribal liaison between the federal prosecutor's office and the tribal governments in each district. Should there be resistance by tribes in working with the new appointee, thoughtful implementation and ensuring the liaison is educated with respect to the cultures, norms and practices of the tribal communities in the district will address those concerns. Tribal communities and tribal leaders should be consulted and kept informed as to the issues being addressed by the tribal liaison.

Tribal Access to National Criminal Information Databases

Tribes must be able to access and input data into the National Crime Information Center (NCIC) and other federal criminal information databases. The denial of access to these databases denies tribes access to critical criminal history on perpetrators. Precluding tribes from access to enter data into these databases sends a mes-

sage that tribes are somehow not responsible enough or capable of being properly trained to enter data into these systems. That message is incredulous and exacerbates the intention of the legislation to provide government-to-government forums for the comprehensive efforts of reducing crime in Indian Country. Further, all appropriate grants to provide funding to tribal governments for the building of infrastructure for implementation of these information systems should be authorized by the legislation.

Tribal Court Sentencing Authority

Tribes have struggled to keep tribal members and citizens safe in the wake of alarming crime statistics. This proposal addresses the issue of one federal limitation on tribal prosecution, the Indian Civil Rights Act.¹

The Indian Civil Rights Act limits the criminal sentencing power of a tribe to one-year imprisonment or a fine of up to \$5,000 or both. The proposed legislation increases those limitations to up to 3 years of imprisonment or a fine of up to \$15,000 or both. This increase in prosecutorial and sentencing authority is a positive step towards arresting crime in Indian Country, but the new requirement for tribal governments to provide criminal defense counsel places additional mandates on tribal systems that may not have the resources to comply. The legislation should address funding concerns in all new mandates for tribal governments.

Another approach might be to engage government-to-government with tribes, giving each individual tribe the option of either operating under the current limitations of ICRA or under the proposed and expanded levels of ICRA. If a tribe elected to utilize the expanded sentencing parameters of the ICRA, funding should be made available for those tribes to use in employing public defenders, or tribes should be given access to resources funded by the federal agency for meeting the requirement of providing defense counsel.

Indian Country Crime Data—Tracking of Crimes Committed in Indian Country—Tribal Data Collection Systems

Without accurate data regarding criminal activity in Indian Country, it is hard to know the depth and scope of the problem in Indian Country. Even with the sobering statistics gathered by the Bureau of Justice and the Amnesty International Report,² the severity of the issue may be grossly underestimated. Without accurate data, all involved sovereigns may be unable to directly address the particular issues faced within each tribe's borders. Furthermore, federal agencies must have access to accurate data in order to provide tribes with necessary services and personnel to meet the challenges. The successful implementation of comprehensive tribal data gathering will depend in large part on a government-to-government approach to the issue, continued consultation with tribal leaders, tribal officials and tribal communities and an adequate source of funding to carry out this task.

Domestic Violence and Sexual Assault Prosecution and Prevention

National studies have consistently demonstrated that Native Americans are victimized at a rate 2.5 times higher than any other group.³ A recent report established that at least 86 percent of the violators in sexual assault cases involving Native American women were non-Indian.⁴ Pursuant to United States Supreme Court case law, tribes have no criminal jurisdiction over non-Indians.⁵

The Committee is proposing to establish a Federal felony for violations of tribal protection orders that meet due process standards. Given historical events among tribes, states and the Federal Government, and the declination rates of many federal offenses committed in Indian Country, the key to the successful outcome of this section of the proposal is tribal communication and federal accountability.

The Violence Against Women Act sets forth that full faith and credit should be given to all protection orders that meet certain requirements. Those requirements are:

1. The order was issued by a court that had subject matter jurisdiction over the matter;
2. The issuing court had personal jurisdiction over the parties pursuant to the issuing court's jurisdiction; and

¹ 25 U.S.C. Section 1301.

² www.amnestyusa.org/women/maze/report.pdf last visited January 11, 2008.

³ www.ojp.osdoj.gov/bjs/intimate/ipv.htm last visited on January 11, 2008.

⁴ www.amnestyusa.org/women/maze/report.pdf last visited January 11, 2008.

⁵ *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

3. The issuing court gave reasonable notice and an opportunity to be heard to the person against whom the order is sought.⁶

According to the Act, all orders, including tribal court orders that meet these criteria, are entitled to full faith and credit.

If the current proposal's intent is to make violation of a protective order a federal felony, but only in cases where the accused was provided defense counsel, the legislation should set forth clear language directing states that this measure in no way affects Section 106 of the Violence Against Women Act. Should tribes be concerned that the states may hesitate or refuse to give full faith and credit to tribal protection orders where defense counsel was not provided, then clarifying language will allay those concerns. The language should also set forth that tribes maintain tribal sovereign powers to prosecute Indian violators of tribal protection orders that occur in Indian Country. Additionally, funding should be tied to the proposed legislation to increase the effectiveness of this section.

Domestic Violence and Sexual Violent Offense Training

Oklahoma has a jurisdictional patchwork of tribal and non-tribal lands. It is not uncommon for a victim to call 911 for assistance only to be told that she lives on tribal land and must call the BIA. When the victim calls the BIA law enforcement, the victim is told that the act was committed on state land and she must call state law enforcement for assistance. Many Oklahoma tribes are moving towards cross-deputization agreements for tribal and local law enforcement to address these issues, but the complexities of the jurisdictional queries remain.

Alaska Natives are subject to confusing jurisdictional issues as well, and because of the remote nature of many Alaska Native villages, victims must wait many hours or even days before law enforcement arrives to conduct investigations. The result is a void that leaves many victims without protection.

Despite the fact that one out every three American Indian/Alaska Native women will be raped in her lifetime, many law enforcement officers working in Indian Country lack knowledge on properly gathering and preserving evidence in sexual assault cases, including both investigative techniques and directing the victim to medical or other facilities for proper sexual assault examination.

Law enforcement officers should be trained to work closely with tribal and/or local victim services agencies. Law enforcement officers should receive training to address complex jurisdictional issues, cultural norms and practices. Additionally, law enforcement officers must be trained to investigate offenses including sexual assault. Comprehensive training will increase conviction rates for domestic violence and sexual assault crime and may lead to prevention of those crimes. Funding for training law enforcement officers in Indian Country should be provided in the proposed statute.

Trainings need to be provided on a regional level to accommodate tribes with limited financial and human resources. Some tribes may need training and technical assistance tailored to their specific needs, so a technical assistance provider should be made readily available for tribes to contact for assistance. Trainings should be designed and delivered by individuals or agencies that have extensive experience working in Indian Country.

Thank you again for the opportunity to testify on this important issue. I am happy to answer any questions the Committee may have.

The CHAIRMAN. Ms. Stoner, thank you very much. I should have, as I did at the start of this hearing, indicated that you are the Director of the Native American Legal Resource Center and Clinical Programs at the Oklahoma City University School of Law. Thank you very much for being with us.

Mr. Walt Lamar is President and CEO of Lamar Associates in Washington, D.C., Mr. Lamar, you may proceed.

STATEMENT OF WALTER E. LAMAR, PRESIDENT/CEO, LAMAR ASSOCIATES

Mr. LAMAR. Mr. Chairman, Madam Vice Chair, Senator Thune, good morning.

⁶Violence Against Women Act, 18 U.S.C.A. § §2261–2266.

I very much appreciate the opportunity to offer my remarks regarding the draft Indian Law and Order Bill. By way of introduction, I am Walter Lamar, and enrolled member of the Blackfeet Nation of Montana and a descendant of the Wichita Tribe of Oklahoma. I am a former FBI special agent and the past deputy director of the Bureau of Indian Affairs Office of Law Enforcement Services.

At the risk of concentrating on the negative, I would like to set the context that puts us in this hearing today. It seems every two or three years there is a scathing report decrying the state of Indian Country public safety. Over and over, the symptoms of a broken system are reiterated; yet we remain where we were yesterday.

In a 1975 BIA law enforcement publication detailing history of Indian Country law enforcement can be found the following words: "Civilization has loosened, in some places broken the bonds which regulate and hold together Indian society and has failed to give people law and officers of justice in their place. Women are beaten and outraged, men are murdered in cold blood. The Indians are intimidated and preyed upon by the evil disposed; children are molested on their way to school, but there is no redress. It is a disgrace to our land. It should make every man who sits in the national halls of legislation blush. The effect of civil agents, teachers and missionaries are like the struggle of drowning men weighted with lead, as long as by the absence of law, Indian society is left without base." Bishop William Hobart Hare, quoted in an Indian Commission report dated 1877.

In the late 1930s, a BIA official reported to Congress that many characteristics of the Indian criminal justice system remained as they were at the turn of the century. Jails were so inadequate that judges rarely committed anyone.

Budget cuts for Indian Country law enforcement were so severe in the 1940s that by 1950, Senator J. Chandler Gurney, South Dakota, stated "They cannot have a dance at night because there is nobody to control the peace of the community." Indian Commissioner John R. Nicholls told the Senator that the situation in his State existed throughout Indian Country. "This is the lowest point in the history of law and order," Nicholls said.

Amazing how this all sounds so very familiar. Was it indeed the lowest point?

The Senate Committee on Indian Affairs is to be applauded for taking this affirmative step forward to ensure protection of Indian Country's citizens, visitors and residents. While this draft bill is a positive step, it is but a first step in addressing a very complex issue.

Section 2 of the draft bill entitled Findings; Purposes clearly encapsulates the devastating issues facing Indian Country that have been documented in report after report. A former tribal prosecutor and judge commented to me that this draft bill potentially represents a dream come true.

When dealing with a poorly-performing employee, a good manager will prepare a performance improvement report. I very much liken this draft bill to a performance improvement report for the Department of Justice and the Bureau of Indian Affairs, the Department of Interior. Public safety remains in a state of crisis. Most

of the tools outlined in the provisions of the draft bill are already in the hands of the Government agencies, so we must then ask, why are they not being used to their fullest potential? Is it for lack of will, understanding of the issues or simply a lack of concern? I know there exist examples for all three, but typically it boils down to the issue of funding and resources.

As an example, when I was the deputy director at BIA law enforcement over four years ago, we could count our headquarters staff on two hands. Little has changed since then. How can they possibly be expected to perform the monumental task at hand with less staff than it takes to run a fast food restaurant? Without attendant funding, the provisions of the draft bill will go simply unaddressed.

The draft bill serves to establish the necessary lines of communication and defines areas of required accountability to bring true public safety to Indian Country. I will offer a number of comments which will be submitted in my written testimony. However, I will state with regard to the BIA Office of Justice Services, considering the tremendous importance of law enforcement, the draft bill should address the need to elevate the Office of Justice Services to the Bureau of Justice Services and properly re-delegate the current Deputy Director position to a Director position.

Further, the Indian Law and Order Commission is potentially the strongest provision of the draft bill, and offers an opportunity to bring together top Indian Country experts to address the complex matters facing our tribal justice programs. However, the provision should encourage the consideration of Indian preference in commission selection.

Section 2, Findings; Purposes, reiterate the United States holds distinct legal, treaty and trust obligations to provide for the safety of Indian Country. The trust responsibility obligation is negated by Federal performance-based funding requirements of GPRA and PART. How can trust responsibility be effectively carried out when tribes are not provided sufficient funding to perform effectively and then are penalized and not provided additional funding? Only through needs-based funding initiatives can tribal law enforcement ever reach parity with their State and local counterparts.

Indian Country has the capacity to provide effective law enforcement which is demonstrated by the tribes that have financial resources to fund their public safety programs. So it is not a matter of if we can, it is a matter of the Federal Government meeting its obligation to provide the required funding and resources. It is my hope, my sincere hope that this intended legislation will give us that opportunity.

I wonder, I wonder how many lives were needlessly lost or harmed in Indian Country in the time that it takes to hold this hearing? Thank you very much.

[The prepared statement of Mr. Lamar follows:]

PREPARED STATEMENT OF WALTER E. LAMAR, PRESIDENT/CEO, LAMAR ASSOCIATES

Honorable Chairman and members of the Committee, good morning. I very much appreciate this opportunity to offer my remarks regarding the Draft Indian Law and Order bill. By way of introduction, I am Walter Lamar, an enrolled member of the Blackfeet Nation of Montana and a descendant of the Wichita Tribe of Oklahoma,

am a former FBI Special Agent and the past Deputy Director of the Bureau of Indian Affairs (BIA) law enforcement program.

It seems every two or three years there is a scathing report decrying the state of Indian country public safety. Over and over the symptoms of a broken system are reiterated, yet we remain where we were yesterday.

In a 1975 BIA law enforcement publication detailing the history of Indian country law enforcement are the following words:

“Civilization has loosened, in some places broken, the bonds which regulate and hold together Indian society . . . and has failed to give people law and officers of justice in their place. . . . Women are beaten and outraged; men are murdered in cold blood; the Indians . . . are intimidated and preyed upon by the evil disposed; children are molested on their way to school . . . ; but there is no redress It is a disgrace to our land. It should make every man who sits in the national halls of legislation blush the effect of civil agents, teachers and missionaries are like the struggle of drowning men weighted with lead, as long as by the absence of law Indian society is left without base.” (Bishop William Hobart Hare quoted in an Indian Commission Report dated, 1877)

In the late 1930's a BIA official reported to congress that many characteristics of the Indian criminal justice system remained as they were at the turn of the century. Jails were so inadequate that judges rarely committed anyone.

Budget cuts for Indian country law enforcement were so severe in the late 1940s that by 1950, Senator J. Chandler Gurney, South Dakota, stated, “They cannot have a dance at night because there is nobody to control the peace of the community Indian Commissioner John R. Nichols told the Senator that the situation in his state existed throughout Indian country. “This is the lowest point in the history of law and order,” Nichols said.

Amazing how this sounds so very familiar. Was it, indeed, the lowest point?

The Senate Committee on Indian Affairs is to be applauded for taking this affirmative step forward to ensure the protection of Indian country citizens, visitors and residents. While this draft bill is a commendable and positive step, it is but a first step in addressing a very complex issue. Section 2 of the draft bill, entitled, “Findings; Purposes” clearly encapsulates the devastating issues facing Indian country that have been documented in report after report. A former tribal prosecutor and judge commented to me that this draft bill potentially represents “a dream come true.”

As this honorable committee strives to protect Indian Country lives, we must examine the reasons Indian county public safety remains in a state of crisis. Most of the tools outlined in the provisions of the draft bill are already in the hands of the government agencies. So we must then ask why they are not being used to their fullest potential. Is it for lack of will, understanding of the issues or simply a lack of concern? I know there exist examples for all three, but typically it boils down to the issue of funding and resources.

As an example, when I was Deputy Director at BIA law enforcement over four years ago, we could count our headquarters staff on two hands. Little has changed since then. How can they possibly be expected to perform the monumental task at hand with less staff than it takes to run a fast food restaurant? Without attendant funding the provisions of the draft bill will go unanswered.

The draft bill serves to establish the necessary lines of communication and defines areas of required accountability to bring true public safety to Indian country. I will offer a number of comments which will be submitted in my written testimony; however, I will state with regard to the BIA Office of Justice Services; considering the tremendous importance of law enforcement the draft bill should address the need to elevate the Office of Justice Services to the Bureau of Justice Services and properly re-delegate the current Deputy Director position to Director. Further, the Indian Law and Order Commission, is potentially the strongest provision of the draft bill and offers an opportunity to bring together top Indian Country experts to address the complex matters facing our tribal justice programs; however, the provision should encourage the consideration of Indian preference in commission selection.

Section 2., Findings: Purposes., reiterate that the United States holds distinct legal, treaty and trust obligations to provide for the public safety of Indian country. The trust responsibility obligation is negated by the Federal performance based funding requirements of GPRA and PART. How can trust responsibility be effectively carried out when tribes are not provided sufficient funding to perform effectively and are then penalized for the lack of performance? Only through needs based funding initiatives can tribal law enforcement ever reach parity with their state and local counterparts.

Indian country has the capacity to provide effective law enforcement which is demonstrated by tribes that have the financial resources to fund their public safety programs. So it is not a matter if we can—it is a matter of the Federal government meeting its obligation to provide the required funding and resources. It is my hope that this intended legislation will give us that opportunity.

I wonder how many Indian country lives were needlessly lost or harmed just in the time it takes to hold this hearing.

Under Section 2, Findings; Purposes, mention should be made regarding the need for prisoner transport services. With the number of jail closures police officers are taken out of service for extended periods to transport prisoners hundreds of miles to and from jail facilities.

Under Title I, Section 103, it should be noted that the responsibility for background investigations for Special Prosecutors will rest with the DOJ so as not to place undue burden on tribes.

The requirement for the tribal liaisons to provide training sessions and seminars for Special Law Enforcement Commissions is a positive step toward minimizing the backlog of officers requiring the requisite training for SLEC certification.

The elevation of the Office of Tribal Justice to a division and establishment of the Office of Indian Country Crime, overseen by a Deputy Assistant Attorney General at the DOJ will serve to place the rightful priority on Indian country. The DOJ must also move to create specific Indian country prosecutive guidelines that ensure aggressive prosecution, particularly when the crimes relate to drug trafficking.

Title II, Section 202 (d), suggests that the financial resources of each entity to be taken into consideration of the grant process. The idea to incentivize tribal, state and local cooperation is diminished by considering the financial resources of each. Further, it would be appropriate to include verbiage under Section 202 that encourages Federal law enforcement agencies to participate on the DOJ funded teams.

Title III, Section 301(a) needs to clarify the type of training. If the intent is to provide flexibility for Indian country police officers to chose alternatives to the Indian Police Academy for basic law enforcement training then it must further clarify that Tribal officers may opt to attend a state, local or tribal academy; however, BIA Police Officers must continue to be trained as Federal officers at the Indian Police Academy. It should be stressed that all basic training for Indian Country police officers must meet or exceed the basic training program of the Indian Police Academy. The Section refers to a National Peace Officer Standard of Training, there is no such standard, as each state has responsibility for developing their individual standards of law enforcement training.

Title III, Section 303., Access to National Criminal Information Databases, must take into consideration that to have a terminal for access to National Criminal Information Databases, tribal law enforcement programs must meet a series of stringent measures intended to safe guard such information. Physical security, trained operators, operator security clearances, and dedicated secure connections all require funding, training and technical assistance. Such funding and training should be managed in the form of the DOJ grant process.

Title III, Section 304., Tribal Court Sentencing Authority contains the provision to empower tribes to impose imprisonment beyond the current one year limitation is an important tool which will potentially lessen the United States Attorney case load while offering sentencing flexibility to tribal court judges. However, there must be a provision to ensure we are not simply warehousing our people. Detention facilities used to house Indian Country inmates must be able to provide culturally sensitive services that include at a minimum, educational programming, workforce integration training, substance abuse treatment and mental health care. The provision to utilize the Bureau of Prisons (BOP) on its face seems to alleviate long-term prisoner housing issues; however, sending Indian Country prisoners to BOP facilities raises concern. Prisoners will likely be separated from their Native communities by great distance and could be subjected to a more sophisticated and dangerous inmate population.

Title IV, Section 402., Indian Alcohol and Substance Abuse. Recognizing there are unacceptable numbers of Native Americans injured or killed each year from alcohol related traffic accidents, this draft bill must call for the National Highway Safety Administration and BIA Indian Highway Safety's involvement in providing funding for reporting, training, equipment, enforcement and specific prevention initiatives.

Title IV, Section 404., Tribal Jails Program. Recent history has proven that new detention facilities can be constructed; however the issue then reverts to an inability to open the facilities for lack of funding for recruitment, hiring, and training of new staff. In fact the former Director of BIA Law Enforcement, Theodore Quasula informed me that a newly constructed juvenile detention facility on the Hualapai reservation sets empty nearly a year after construction. Juvenile crime on the reserva-

tion is rampant to the point that the very juveniles who should be incarcerated in the facility are vandalizing it. Provisions must be in place to ensure appropriate funding is available to staff planned detention construction.

Respectfully submitted,

Walter E. Lamar

The CHAIRMAN. Mr. Lamar, thank you very much.

Mr. Ragsdale, I mean no disrespect by having you testify last, but I wanted you to have the opportunity to hear the other testimony. You represent the Department of the Interior and the Bureau of Indian Affairs here today. You are the Director of the Office of Justice Services at the U.S. Department of the Interior. I felt it would be helpful for you to hear the comments of a wide variety of other witnesses.

We appreciate your being here, and we will recognize you for your statement.

STATEMENT OF W. PATRICK RAGSDALE, DIRECTOR, OFFICE OF JUSTICE SERVICES, U.S. DEPARTMENT OF THE INTERIOR

Mr. RAGSDALE. Thank you, Mr. Chairman, thank you, Madam Vice Chair, and thank you, Senator Thune, for being here today.

I will try to be mercifully brief, Mr. Chairman, to allow time for as many questions as the Committee has time for.

I am pleased to represent the Department of Interior here this morning. I would like to first point out that Secretary Kempthorne has truly been a champion for law enforcement within Indian Country. When he first came on board, he had a five minute meeting scheduled for me for briefing. He took an hour and a half. At the conclusion of that meeting, he said, "This should not stand. We have got to do something." Out of that commitment, he came forward with the Safe Indian Communities Initiative, which we are trying to implement today. Operation Dakota Peacekeeper is an outgrowth of the Secretary's initiative.

I would also like to say that in terms of our relationships, that is, the Department of Interior and tribal law enforcement, in my view, our relationships are stronger with the United States Attorneys, the FBI, the other Federal agencies that we work with in collaboration to do casework and provide law and order on reservations.

You have my written testimony on the scope of law enforcement authority and our responsibilities in the Department of Interior, so I will leave that for your review in the record.

In terms of our meetings and discussions with tribal leaders, Secretary Kempthorne in 2006, in collaboration with NCAI, kicked off the Safe Indian Communities Initiative, which we are now in the process of implementing. We do regular discussions, consultations, with a number of my friends here at this table on a regular basis. We are usually talking about resources, facilities, points and issues of the day on case work and so forth.

My perspective on all of that, everybody is dedicated to trying to get the job done and maximize the limited resources that we have to provide for basic law enforcement within Indian Country. My testimony reflects our comments on the crime data collection. I will just say briefly that our collection of crime data within Interior has been severely hindered by the loss of internet resources and acces-

sibility to all of the array of Federal systems that are available to modern police departments throughout the United States of America.

That hindrance, our inhibition to use internet, has now been lifted, so we look forward to rapidly coming forward to this century in terms of information technology.

Turning to my written testimony concerning special law enforcement commissions, we currently have the authority under the 1990 Indian Law Enforcement Reform Act to maximize cooperative law enforcement throughout the Country. The Bureau of Indian Affairs has strongly encouraged tribes to do that. The inhibitions to that authority to deputize State and local officers is one that there must be consent by the tribal authorities involved, and also that sworn tribal and State officers under the agreement have to have the requisite training requirements in order to be deputized with Federal law enforcement commissions.

One thing I wanted to say about our training. There has been some concern that Indian law enforcement officers are not properly trained in terms of domestic violence and how to handle those types of issues and crimes and crimes against children. Previously, I invited Committee staff, and I would also invite the Committee to do a serious review of our entire law enforcement curriculum, particularly the training that we provide Indian law enforcement officers. I believe it is second to none. Over 105 hours are provided to our basic police officers, both tribal and BIA, in domestic violence, crimes against children, both in written exercise, lectures and practical applications at our academy.

Finally, turning to the issues of tribal sentencing authority, the concept in the draft bill, I will just tell you something I am sure that you are all keenly aware of, that there is limited detention space on or near most Indian communities. There are also limited funds to contract for detention bed space in a non-tribal or non-BIA facility. Extending sentences for longer than one year, provided there are actually facilities available, will result in a big increase in costs to both BIA and the tribal governments.

Secondly, not all tribal courts have an effective appellate process. A defined, effective, consistent and transparent appellate process is important to ensure civil rights of individuals are protected.

Third, consistency in standards and staffing among the facilities would need to be assured as well as constitutional concerns of due process and legal defense. A significant monetary commitment on both the Federal Government and the tribal governments would also be required to close these gaps.

In closing, I want to pay tribute to the law enforcement, corrections and court personnel, as well as other public safety personnel, who work daily at all levels of the tribal, State and Federal sectors of the Government. They do their jobs sometimes at great personal sacrifice to the benefit of our Indian communities.

I noticed this morning the notice about the Eastern Band Cherokee member that was killed serving with the North Carolina Highway Patrol. That is the daily type of risk that our police officers throughout this Country face. As we work to develop better public policy and implement better methods to address public safety issues, I hope we will keep in mind their daily contributions to

make our communities safe and secure. They do their best to ensure a measure of peace and tranquility, reacting to emergency circumstances under too often adverse conditions with very limited resources. They also do their duty selflessly, so that our citizens go about their daily lives without fear of lawlessness. They are true heroes in this society.

Mr. Chairman, members of the Committee, I thank you for providing the opportunity to testify. This concludes my statement.

[The prepared statement of Mr. Ragsdale follows:]

PREPARED STATEMENT OF W. PATRICK RAGSDALE, DIRECTOR, OFFICE OF JUSTICE SERVICES, U.S. DEPARTMENT OF THE INTERIOR

Mr. Chairman and Members of the Committee, I am pleased to provide testimony for the Department of the Interior, regarding concepts aimed toward improving and addressing law and order in Indian Country. Respectfully, the Department is unable to provide a position or comment specifically on draft legislation that has not been introduced at least a week prior to this hearing.

The Bureau of Indian Affairs (BIA) has a service population of about 1.6 million American Indians and Alaska Natives who belong to 562 federally recognized tribes. The BIA supports 191 law enforcement programs with 42 BIA-operated programs and 149 tribally-operated programs. Approximately 78 percent of the total BIA Office of Justice Services' (OJS) programs are under contract to Tribes as authorized under Public Law 93-638, as amended, or compacted to Tribes as authorized under Title IV of the Indian Self Determination and Education Assistance Act, as amended.

The OJS provides a wide range of justice services to Indian country, including police services, criminal investigation, detention facilities, tribal courts, and officer training by the Indian Police Academy.

Indian country law enforcement provides services to a population that is predominantly under the age of 25 and experiences high unemployment rates, and lacks municipal infrastructure. Indian lands range from remote wilderness to urban settings. The close proximity of a number of reservations to the international borders of Mexico and Canada make these locations the perfect targets for drug trafficking and other smuggling operations. Recent reports and news articles outline the challenges faced by criminal justice systems in Indian country. Crime rates on most reservations are unacceptably high.

The Indian Law Enforcement Act of 1990 (25 USC 2801) and the regulations contained in Title 25 of the Federal Code of Regulations provide the statutory and regulatory authority for the BIA. Under this statute, the BIA provides basic police and corrections services while other federal agencies such as the Department of Justice (DOJ), the Federal Bureau of Investigations (FBI), the Drug Enforcement Administration (DEA), and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) also have responsibilities to investigate crimes in Indian country.

Currently, the OJS consults with Indian tribes on an ongoing basis to address concerns in Indian Country. These consultations provide a dialogue between the OJS and the Tribes to address staffing concerns or budget matters through the programmatic, appropriations and budget development processes.

Strengthen Tribal Justice Systems and Recruitment/Retention Efforts

The Department of the Interior's BIA provides several programs designed to strengthen Tribal justice systems. For example, the BIA operates the Indian Police Academy (IPA), which provides basic police training (16 weeks) and a variety of other police, jail and radio dispatch courses for tribal and BIA law enforcement and corrections officers. The IPA is co-located with the Department of Homeland Security's Federal Law Enforcement Training Center (FLETC) at Artesia, New Mexico. The IPA works with State and tribal police academies to permit training in their respective areas.

The IPA staff provides basic coursework in policing, criminal investigations, and detention. In addition, the IPA offers numerous advanced training courses such as child abuse investigation procedures, domestic violence training, community policing, drug investigation, use of force, firearms instruction, archaeological resource protection, police management and supervision, crime scene processing, detention, and dispatcher training.

Our training partnership has proven to be very cost-effective because we share trainers and facilities. The BIA and tribal criminal investigators receive specialized

advanced training at the main FLETC facility in Glynco, Georgia. Select BIA and tribal law enforcement managers also participate in the FBI's National Academy in Quantico, Virginia. Many tribal communities choose to use respective state Peace Officer Standards and Training courses to supplement training of their police.

Upon completion and graduation, the officers have the requisite Federal credentials to be commissioned to serve their communities. The training programs are unique to Indian country policing and are similar to other Federal policing and corrections training required by other Federal law enforcement agencies serving the Federal Government.

Additionally, the OJS provides training for tribal court personnel, which is sponsored by the OJS Office of Tribal Justice Support and by the Tribes themselves. It is the BIA's goal to ensure that all training programs offer the best possible training to tribal and BIA law enforcement, corrections, and tribal court staff.

In addition to the BIA's efforts to strengthen tribal justice systems, the BIA has centralized its law enforcement, corrections and tribal courts programs within one program management area titled the Office of Justice Services (OJS). This organization allows for a centralized focus of the administration and management of basic justice services as well as lending to a cohesive approach to program implementation that allows for unity and cooperation throughout programs.

In an effort to improve recruitment and hiring within all service areas, the OJS is implementing a Recruitment Plan that includes task items for short, intermediate, and long term planning efforts. These efforts include, but are not limited to, increasing the personnel staff available to process and track status on OJS personnel actions; working to improve recruitment efforts at colleges and the military to obtain better qualified applicants; improving and streamlining the process for background checks; and investigating the use of other manpower resources from other qualified law enforcement providers.

Crime Rate Data Collection

Currently, the BIA's crime data are collected by the OJS through monthly crime reports that are submitted by Indian Country jurisdictions (tribes and BIA law enforcement). The method currently used by OJS is as follows: crime reports that are collected are entered into an automated database tool that gathers law enforcement statistics at the lowest level. Crime data are entered at the field from the individual law enforcement agencies that are implementing policing programs. Tribal policing programs without direct access to the BIA's automated database tool submit hard copy information to their respective districts for input into the system.

Crime data information submitted for entry into the system is verified by the agency and then is reviewed a second time at the District Commander level. The District Commander must then provide final approval before the crime data are used at the Headquarters Office for quarterly performance reporting and the development of other statistical reports that are made available to the Department of Justice. Since the Department's last statement for the record, the BIA's internet restrictions have been lifted and full internet access should increase the timely collection of crime data.

In our effort to establish better management information systems for the collection of crime data, the OJS is considering the feasibility of the Incident Management Analysis and Reporting System (IMARS), which is a Department-wide information collection, analysis, and reporting system initiative. The concept behind IMARS is to provide a common information sharing capability across all participating functional areas within DOI for capturing and reporting law enforcement, emergency management, and security incident information. Once IMARS is available Department-wide, the OJS will determine the feasibility of providing an opportunity for tribal collection of crime data using IMARS.

Increasing access to national crime databases and collecting and sharing crime data between agencies would assist in addressing crime in Indian Country, but such authority would require assurances in the protection of confidential information between all the entities authorized to access, input and share information on such databases.

Special Law Enforcement Commission (SLEC) Training and Certification

In an effort to make special commissions available to tribal, state, and local law enforcement, the BIA encourages cross-commissioning so that Federal, tribal, and state authorities can make arrests for each jurisdiction. For instance, BIA offers qualified tribal and state law enforcement officers Federal Special Law Enforcement Commissions (SLEC) so they can enforce federal law. This closes loopholes and allows police to focus on investigating the crime instead of sorting out jurisdictional details, which can be done later with the assistance of legal counsel.

Supplemental training is provided by the BIA and, more recently, through the offices of the United States Attorneys to utilize both tribal and state law enforcement officers in Federal and tribal policing as authorized under the Law Enforcement Reform Act. The Office of the Solicitor and the United States Department of Justice offices determine extension of Federal Tort Claim coverage as authorized under the Reform Act. For the Committee's information, please find attached Table C, which illustrates the SLEC count for all District Locations.

Increasing flexibility in commissioning state and local law enforcement officers to enforce all violations of federal law committed on Indian lands may have a positive effect in addressing the law enforcement needs in Indian Country, however, such increased flexibility, presumably would require increased coordination between all entities who provide training to certify Indian Country law enforcement officers serving in Indian Country.

Tribal Sentencing Authority

Current Federal law provides a ceiling on tribal court penal authority to sentences of no longer than one year and up to a \$5,000 fine for each offense. Some tribes currently sentence tribal offenders concurrently for more than one offense which, in the aggregate, can total more than one year. There are at least two major challenges faced by BIA and tribal corrections programs with the care of inmates subject to long-term sentences for non-Federal felony crimes committed in Indian country:

- 1.) There is limited detention space on or near most Indian communities. There are also limited funds to contract for detention bed space in a non-tribal or non-BIA facilities. Extending sentences for longer than one year will result in increased costs to both the BIA and tribal governments.
- 2.) Not all tribal courts have an effective appellate process. A defined, effective, consistent, and transparent appellate process is important to ensure civil rights are protected and the tribes are not unduly subjected to habeas corpus claims in Federal court.

Tribal court penal authority to sentence offenders for longer terms and maybe choose alternate forms of incarceration may give rise to certain constitutional concerns and also federal policy concerns. Consistency in standards and staffing among the facilities would need to be assured in order to alleviate these concerns. Such consistency among the choices of incarceration, presumably, would again be a significant monetary commitment on both the federal government and tribal governments.

Mr. Chairman and members of the Committee, I thank you for providing the Department of Interior's Bureau of Indian Affairs the opportunity to comment on the issues related to Law and Order in Indian Country. We will continue to work closely with the Committee and your staff, tribal leaders, and our Federal partners. I will be happy to answer any further questions you may have.

SLEC Count for all District Locations

District I	
Rosebud	16
Winnebago	3
District II	
Miami Tribe of Oklahoma	5
Miami Police Dept	30
Eastern Shawnee Tribal Police	6
Chickasaw Nation	12
Choctaw Nation	18
Citizen Band of Potawatomi	14
Prairie Band of Potawatomi	4
Cherokee Nation Marshall Service	19
District III	
Sycuan Tribal PD	7
Hualapi Tribal PD	2
Pascua Yaqui Tribal PD	22
Gila Hoopland Tribal PD	6
River Tribal PD	56
Washoe Tribal PD	3
Las Vegas Tribal PD	1
Tohono O'Odham Tribal PD	8
Tule River Tribal PD	3
Ft. Mohave Tribal PD	7
La Jolla Tribal PD	1
FT. McDowell Tribal PD	13
Los Coyotes Tribal PD	1
District IV	
Laguna	4
Jicarilla	3
Montezuma	26
Cortez	22
Southern Ute	52
District V	
Shoshone & Arapaho	4
Crow Tribal	3
Skokomish Tribal	1
Ft. Hall Tribal	21
Marion County, Sheriff's Office	61
District VI	
Chitimacha Police Department	6
Choctaw Police Department	36
Oneida Nation Police Department	30
Coushatta Police Department	9
Poarch Creek Police Department	15
Seminole Police Department	44
Cherokee Police Department	36
Mohegan Police Department	17
Mashantucket Police Department	18
Narragansett Police Department	3
St. Regis Police Department	13
Total SLECs for all OJS Locations	681

The CHAIRMAN. Mr. Ragsdale, thank you very much for being here and for your testimony.

You heard the testimony of Ms. Stoner and Mr. Lamar. Their testimony said, look, we have such a serious problem here, a crisis of sorts. We have people that commit violent crimes, rape, sexual assaults and other things that are not even prosecuted, and walk around because nothing happened to them. Do you think that is the case? Do you dispute their representation of what is happening on reservations?

Mr. RAGSDALE. No, I don't dispute it. I am also a student of Indian history, particularly in terms of our warrior traditions that go back since time immemorial, about protecting our own communities. I would not disagree with the content of their statements.

I would say that my experience, I spent about seven or eight years as a tribal police chief in eastern Oklahoma. The cooperation that I received from the U.S. Attorneys, whether I had an Indian defendant or a non-Indian defendant, was always outstanding. If I had a good, solid criminal case, the United States Attorney prosecuted, took it to grand jury and went through the process, both in the northern and the eastern districts of Oklahoma. We do have jurisdiction of non-Indian offenders that commit crimes in Indian Country.

So I think what is happening, Mr. Chairman, and I have spent a lot of time, I have a lot of experience in Indian affairs, but I spent a lot of time in Indian Country as well, is that the rate of crime has jumped so much in the last decade or so that many of our police officers are like on a conveyor belt, they are responding and reacting to the incidents of the day. If that is all you do and you do not have the time to sit down and do the hard work of writing the investigation up, providing the criminal information to a prosecutor, whether it is a tribal prosecutor, State prosecutor or a Federal prosecutor, you don't get crimes prosecuted.

The CHAIRMAN. I understand. That in itself undermines the law enforcement system.

Ms. Shappert, we had testimony before Congress by a former high ranking Justice official who came to testify. She said U.S. Attorneys were reprimanded because they "spent an excessive amount of time on Native American issues." We had another U.S. Attorney state publicly that the Justice Department doesn't care about prosecuting crimes on Indian reservations.

I want to ask you to respond to that, and as I do, let me say that three months ago, we wrote to the Justice Department and said, tell us, how many declinations are there, how many cases do you decline, under what conditions do you decline them? What I heard back from the Justice Department just yesterday after three months was, at this time we do not have statistics that we believe accurately reflect the rate of declinations in Indian Country. That is all they say, we don't have any statistics.

And yet what we hear anecdotally from around the Country is that declinations occur all the time. Sometimes for no purposes. I think Ms. Stoner mentioned, you wait for a year, then you get word back after a year, well, we're not going to pursue the case. At that point, the witnesses are gone.

So tell me about this, because we have had testimony that Justice Department actually reprimands U.S. Attorneys that spend too much time on Indian cases.

Ms. SHAPPERT. First of all, I would like to note that when General Mukasey became the Attorney General, one of the first things he did was meet with Native American leaders from Indian Country. He had a meeting in his office with a number of leaders to talk about issues in Indian Country. Indian Country was not part of his background, but he made it a priority beginning early on in his term.

He also made a trip out to Arizona for the express purpose of meeting with tribal leaders and members of the tribal courts in Arizona because he recognized that it needed to be a Department priority. I can only speak from my experience, Senator. I have never been reprimanded, discouraged or in any way inhibited in my ability or in my efforts to prosecute and forward the initiative in Indian Country. Let me tell you what this Administration is doing in that respect.

With regard to the United States Attorneys in Indian Country, the Native American Issues Subcommittee regularly is meeting for purposes of advising the Attorney General. Not only were we out in South Dakota two weeks ago, we were there with the tribal liaisons, because we recognized, we are about to leave. But to continue the mission of the Department of Justice, we need to make sure that we empower the Assistant United States Attorneys who are working in Indian Country.

Not only were we there, but the Deputy Attorney General sent representatives, the Executive Office of U.S. Attorneys was there, and we were there with other law enforcement. We are currently planning yet another meeting of the same components in Arizona for September. We are on the agenda for the Attorney General's Advisory Committee.

You want me to talk about declinations.

The CHAIRMAN. Yes, please.

Ms. SHAPPERT. Okay, glad to. There are two different kinds of cases that U.S. Attorneys prosecute, proactive and reactive. Proactive cases are the paper-intensive, grand jury-intensive, document-intensive Title III wiretap going after Enron cases that we typically do. The reactive cases are more akin to what we do in Indian Country and are frequently more akin to what local district attorneys do. They are the violent crimes, they are responding to issues of violent crime.

Fully a quarter of the violent crime prosecuted by U.S. Attorneys is in Indian Country. It requires a different skill set and it requires a different criteria. When we accept a case for prosecution, a couple of things. First of all, we can only accept it if we can prove it beyond a reasonable doubt. We can't indict a case without being able to prove it beyond a reasonable doubt. Probable cause is not a high enough standard, because we are not only interested in protecting the rights of victims, we have to be concerned about rights of defendants, and do justice. So we don't indict a case if we can't prove it.

When we are looking at a case in Indian Country, we are going to look to make sure it is Indian Country, we are going to look at

whether the victim is an Indian or non-Indian and we are going to be looking at whether the perpetrator is an Indian or non-Indian. So we go through that kind of an analysis.

The CHAIRMAN. I would understand you do that. My question is not, is there work going on. My question is about the result and the Justice Department says, we don't have the foggiest idea how many declinations there are. Now, you have heard the testimony here, you have heard it from Chairman His Horse Is Thunder, Chairman Garcia, you have heard it from Ms. Stoner. It seems to me that the system doesn't work.

Let me make one other point. The current Attorney General, I understand your point about him. I met with him. I provided him the testimony by a U.S. Attorney who said, we were reprimanded. I talked about the crisis, and I appreciate the fact that he apparently took that seriously. My discussion is about a good number of years prior to that, in which we have seen this fester and build, and the violence continue.

But my specific question about declinations is in response to Ms. Stoner and others that I have heard from repeatedly that you send a case up of a violent rape, you don't have the foggiest idea whether somebody is going to pursue it or not, and maybe you don't hear back for a year and a half, and they say, we have decided not to pursue it. If the Justice Department can't even tell us how many they have declined, I don't understand what kind of track they are keeping of these issues.

Ms. SHAPPERT. First of all, the Department of Justice is currently working through the Office of Justice Affairs to improve the quality of our stat keeping, which needs improvement and we are currently working on that. So that is a work in progress.

And I would be glad to report back to this Committee as to what the Department is doing to improve their stat keeping.

Secondly, sometimes cases are referred to another jurisdiction, be it the State or tribal court, for prosecution. Under the current status of the law, it is within the discretion of the U.S. Attorney whether to report our declination. We may not do it for a couple of reasons, Senator. One is, if it is an ongoing grand jury investigation, there may be confidentiality concerns. We may have a victim who is related to a tribal law enforcement officer. And our first concern will always be protecting the victim. So we may not disclose it if we are trying to protect a victim or certain witnesses. So we have those kinds of concerns.

But with regard to the stat keeping, I will be glad to see that we report back to you. But we are working to improve our stat keeping.

The CHAIRMAN. And this is not about statistics so much as it is about U.S. Attorney's office deciding that this ought to be in the front of their office rather than the back of their office, the serious requirement to prosecute felons on reservations.

Mr. Ragsdale, let me ask you, are there, as Mr. Lamar indicated in his testimony and as I have heard before, are there juvenile detention centers that have been built, paid for and standing open unused at this point?

Mr. RAGSDALE. There are, sir.

The CHAIRMAN. Tell me the reason.

Mr. RAGSDALE. The reason, one of the primary reasons is difficulty staffing them, staffing them and recruiting qualified people, because there is no place for them to live. That is one problem.

Another problem is that some of the recent facilities that were brought online were not designed to keep the type of typical juvenile offender that we maintain in our systems today and need improvements.

The CHAIRMAN. Let me ask you specifically about the provision in Mr. Lamar's testimony, the Hualapai Reservation, the juvenile detention center, newly-constructed, on that reservation, sits empty a year after construction. Juvenile crime on the reservation is rampant to the point of the very juveniles who should be incarcerated in that facility are now vandalizing the facility.

What is the purpose of having that facility sit vacant, do you know?

Mr. RAGSDALE. There is not a good purpose for having a facility sit vacant.

The CHAIRMAN. Why is it sitting vacant?

Mr. RAGSDALE. It is sitting vacant because of two reasons. One reason is that we have not been able to staff that facility with the necessary personnel, because it is located in a remote location. The current tribal council is proposing, originally the tribe wanted us to operate the facility, us being the BIA, as a direct operation. They have since decided that they want to contract out the facility and that they want to provide the service directly and are in the process of doing that.

In the meantime, while we have been going back and forth with the tribe on the contracting issue, we have been trying to recruit, but have not been able to staff the facility adequately. And there are improvements that need to be made. Excuse me, I am thinking about another facility. I am sorry, Senator. I don't know that we need to make improvements at Hualapai. The issue has been primarily not being able to staff it.

The tribal government also thinks that they need more money than we have allocated to run the facility. So that has been an issue between the tribe and us.

The CHAIRMAN. You know, Mr. Ragsdale, I have been very critical of the BIA recently. It is, in my judgment, so bureaucratic, so difficult to see accomplishments coming from the agency. And I don't understand why it is not an emergency situation, when you have violent juvenile crime occurring, you have a new facility that is sitting there empty a year after it was built. Why is that not an emergency? You need to make things happen. I am so disappointed with the Bureau of Indian Affairs for its failure to make things happen, in so many different areas.

Mr. RAGSDALE. May I respond?

The CHAIRMAN. You may respond, yes, of course.

Mr. RAGSDALE. Senator, from your perspective, I understand where you are coming from. The Bureau works with very limited resources. There is a system that we have to abide by doing security checks under the post-9/11 requirements. We have been working very hard to try to streamline the bureaucracy so that we can hire people. But even the personnel resources that we have available to us to focus on law enforcement issues is very limited. We

are trying very hard, and the Secretary of Interior is right behind that effort to try and make that better. That is what we are trying to do.

The CHAIRMAN. This limited resources thing, I don't hear anybody coming to these tables from the BIA saying, look, we have a crisis going on here, people are dying, there are people being raped, victims of sexual assault. The fact is, Senator Thune talked a bit about this at the start when we asked for some additional resources to go into the Standing Rock Reservation. This is not a third world country. This is part of our Country.

The dilemma here is we have this fractionated law enforcement system that doesn't work at all, in my judgment. But this notion of not enough resources, I understand that, I believe that is the case. I would like somebody to come to the table who runs the BIA, and it doesn't matter whether it is in the past Administration or this Administration, that says, by God, we need more money to save lives and to help people. Nobody ever does that, because the requirement is to come to this table and support the Administration's budget.

The last person that came to the table and said, I don't agree, we need more resources, got fired the next morning. The very next morning. So I understand why they all—

Mr. RAGSDALE. Well, Senator, I will tell you we need more resources, and I am not afraid to say that. I have testified before this Committee a number of times, and I have not tried to varnish over the situation that we have with regard to public safety in Indian Country. It is a national disgrace.

The CHAIRMAN. I hope you are all right tomorrow morning, then.

Mr. RAGSDALE. We will see.

The CHAIRMAN. But I appreciate that. And what kind of resources are necessary? How much are we short here? I know what we are short in health care, 40 percent of the health care needs are unmet, so we have rationing going on.

But in law enforcement, it seems to me we are desperately short of doing what we need to do. How much do we need here?

Mr. RAGSDALE. Senator, we did a gap analysis. Typically we find, and there are variances, because there are some tribal law enforcement departments that do very well and put their own money and resources into it. But typically, we have about one-third to one-half as many as you would find in the rest of America, as compared to rural law enforcement in America, which is not really a real high standard.

With respect to detention and corrections, in my view, what the Administration and the Congress needs to do is to step back for a moment and look at the status of detention and what we are trying to provide throughout Indian Country. We have to do things differently. Everybody cannot have a detention facility. We have to strategically place detention facilities so that we can handle the kind of population that we have in our facilities.

When I first got started in the Indian Bureau, which is a long time ago, most of our detention facilities were like the hometown jails, where somebody that was arrested for alcoholic behavior or misbehavior associated with alcohol, they were checked into the jail, they sobered up and then they came out. That is not the kind

of offender that we hold in our jails today. We hold dangerous offenders serving one year or more terms that have come from every type of criminal activity from rape to homicide to serious assaults and all those things. The people that we used to hold in our jails we don't hold, because we can't hold them.

The CHAIRMAN. I have so many additional questions, but I don't want to dominate this. The Vice Chair I know has questions as well. Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman. I know that Senator Thune has to leave, so I will defer to him for a few questions and then if I may ask my round. Thank you.

Senator THUNE. Thank you, Mr. Chairman. I want to thank Senator Murkowski for giving me an opportunity to ask some questions.

I appreciate the testimony of the panel. It seems to me, at least, that there ought to be a basic expectation of people who live on the reservations, Indian and non-Indian, that public safety is going to be there. I think that is something that most people in America sort of accept as a basic premise, that that is something that their Government ought to be able to provide. And because of the trust and treaty responsibilities that the Federal Government has with respect to our reservations, the lack of public safety seems to me like a major failure. It is tragic, what we are seeing happening on our reservations, and the data bears that out.

I think the thing I would like to get at, is the resource issue, and I think Mr. Ragsdale has spoken to that. I offered an amendment to the budget resolution this year, when it went through the Senate, to increase the funding for tribal justice by \$200 million over a five-year period or \$40 million a year. Senators Dorgan and Murkowski were supportive of that effort. But it seems to me that is a big—I don't dispute for a moment that that is an issue here. We have to do something to address the resource issue. But we have so many challenges and problems that we face on our reservations today, none of which can be solved until we deal with the basic fundamental issue of public safety. I just don't know how you can have children learning, absent having a secure environment in which to learn. You can't create jobs, you can't have economic development if you don't have public safety. You can't get a company to create jobs on a reservation if they are worried about vandalism or they are worried about crime.

So many of these issues tie back to resources, it all starts there. I think this is the foundation of a lot of the issues that we are facing on the reservations today. So I just say that as a basic overall observation. I think that we have a responsibility, which perhaps because of insufficient funding we haven't met here. But I also think that we just have to have a focus from the BIA on this issue. That is not to say that to the detriment of other important work that the BIA is doing.

But we have jails in our State of South Dakota. The Crow Creek jail closed on the assumption that the Lower Brule jail was going to open. It has not been adequately staffed. They are shipping people to Cheyenne River. We have all these ongoing issues with the wide geography that we have in South Dakota, 2.4 million acres, as Chairman His Horse Is Thunder has testified on Standing Rock,

and just inadequate law enforcement presence out there. It just goes up and down the chain.

That is why I think this bill is so important, because there are so many issues that need to be addressed, some of which are policy-related, I think addressing the issue of tribal courts being able to put people in jail for longer than a year at a time is important. That seems to me to be, you have to know that if you are going to get involved in crime on the reservation, there are going to be consequences to that.

But I guess I say all that in a circuitous way of getting around to a question. Mr. Ragsdale, I do want to ask you, because I think this Operation Dakota Peacekeeper could be a model that could be implemented other places around the Country, certainly on some of the reservations in South Dakota. So I would like to have you speak a little bit more specifically to that, perhaps Mr. Chairman, you could add some insights on that, too. I know this is an issue we have discussed on a number of different occasions.

Mr. Ragsdale, when you were in South Dakota in the last couple of weeks and I had a conversation with you, you indicated that you had seen first hand and actually detained and made some arrests while you were out there. But this seems like a runaway problem, and the only way we are going to address it is to really attack that problem.

I think that Operation Dakota Peacekeeper is, to me at least, an important first step. I am curious to get your reaction about how that has worked, how it might be used as a model on other reservations, and what is necessary in terms of resources to do that. Senator Dorgan raised the issue about resources, too. What is it, what do we need to do to bring some security to our reservations and how can this Operation Dakota Peacekeeper be a part of that solution?

Mr. RAGSDALE. Thank you, Senator. When Mr. Artman first brought up the idea about doing something at Standing Rock because of the problems and the issues and because of the concern of both States' delegations, I was kind of skeptical, because the problem boils down to having the right number of public safety personnel to cover a very large reservation. I sat down with my staff, we did some planning. We decided to employ our emergency service function team, which is set out to do national incidents like responding to hurricanes and national incidents and such. We have used that team to supplement the existing law enforcement operation that we have there.

In terms of numbers, we have uniformed police officers integrated into the local police department, which about measures up to the gap analysis that we need. We have about 12, 14 officers there to operate 24/7 over huge geographic differences. We have supplemented that with about 20 officers, which is still less than the gap, but it appears to be really making a difference.

We have also sent in additional criminal investigators to assist in the difficult crime cases. We have people that are meeting with local officials on a daily basis. What we hope to do is, because we are not going to be able to sustain it for much more than three months, what we hope to do is to help the community find its way

so that we can develop some community strategies, so that we can do better with the limited resources we have.

It appears to be working. The community has accepted us. I was surprised when I was out there on the streets talking to the grandmas and mamas and little kids, how grateful they were to have police officers on the streets. I guess the point is, if we can do that at Standing Rock and make a huge difference and rally the community, to do the community policing that we would like to do, but if you are just reacting to incidents, you don't have time to talk to neighbors and set up neighborhood watches and work with the church leaders and so forth.

So I am hopeful that if we can do that in three months at Standing Rock and make a difference, and as we start to withdraw that the community will be in better shape, and we may be able to employ this tactic at other places. As someone has pointed out, we chose Standing Rock because we had strong tribal support from the chairman, from the delegation. It seems to be working real well.

But Standing Rock is not our worst reservation, by far. Standing Rock has six times the national violent crime rate. We have reservations that it is up to 32 times. We have reservations where police are just reacting, reacting, reacting to calls.

The CHAIRMAN. Senator Thune, President Garcia has an 11:25 departure for an airplane. So in the remaining minute before President Garcia has to leave, might we ask President Garcia, do you wish to comment on some of the other statements you have heard before you have to depart to catch an airplane?

Mr. GARCIA. Yes, Senator, thank you.

The CHAIRMAN. Thank you, Senator Thune.

Mr. GARCIA. I think that if you have statistics like this, this model that we are just now talking about, you have the cost breakdown for a model, you have the effectiveness, because you have monitored it very closely. So roughly, what might happen is that there should be a suggestion that this is X amount of dollars that it costs, and if you can implement that same model throughout Indian Country to some realistic level, that automatically gives you a number that we ought to be requesting to take care of the crime rates and break the cycle of crime, if you will.

But if that kind of data is not provided for you, like the question you asked, Senator, on what is the need, and so I will answer that question about what is the need. I think the funding level for BIA in terms of law enforcement, it is probably less than 20 percent of the needs in Indian Country, is the funding level that they receive. So in order to break the cycle of crime, we need that amount of dollars to move and to make some kind of impact.

If we don't get that, then we are struggling. Because when does the budget cycle start and who implements that budget request? It comes from the President, goes through OMB, and so the only thing that I see the Bureau and the Department asking for is really honing in and trying to hold to the budget request that the President makes, and never mind the needs out there in Indian Country. It is a big dilemma. So I think that is why it is so important that the legislation needs to reflect that. I see that is where we are headed.

But major, major change needs to happen. We can go on and on on criteria and performance and lack of funding and all of that. But I think this sets the tone for where we need to go. So I hope that is what we can do and I hope the funding comes with the legislation.

The CHAIRMAN. President Garcia, thank you. Section 101 of the bill requires the BIA to submit an annual unmet needs report, so we would know their assessment of the quantity of unmet needs and the cost of it.

Thank you very much for being with us.

Senator Thune?

Senator THUNE. Thank you, Mr. Chairman.

I will let you continue, Senator Murkowski, with your questions. But I would just like to, if I could, get maybe some perspective from Chairman His Horse Is Thunder, too. And I appreciate the fact that it takes a lot of leadership to make this model that is being attempted to be implemented here in the Standing Rock Sioux Tribe work, sometimes standing up against some forces that would not like to see it work. So I appreciate the leadership you have provided.

But maybe just your thoughts about that, too, how this particular project has worked. I know it is early in terms of implementation, but I think the concern that most people have is how do we continue it after this three-month period, the so-called surge is completed. I think again, I appreciate, a lot of things in this bill have been based upon input that we have received at all aspects of tribal justice. Hopefully the funding issue we can help address in the budget process. I recognize the need to do that.

But we really need to get our arms around this. I don't know how we can continue to have huge populations of people living in fear. That is not right and we have to do something about it.

I need to go before long, too, but Mr. Chairman, if you would care to comment about your observations about how this Peacekeeper operation is working, I would appreciate that.

Mr. HIS HORSE IS THUNDER. Mr. Chairman, Senator Thune, it appears to be making a huge impact. As Mr. Ragsdale talked about the gap in law enforcement officers and the need that was on our reservation, that the gap analysis said we need somewhere around 36 law enforcement officers. Currently there are an additional 20 law enforcement officers on the reservation. We have 10 who were there before, we have 2 unfilled slots, at least they are not there yet.

So we have 30 police officers. It is close to what we need in terms of filling that gap. The most law enforcement officers Standing Rock ever had is in 1890. We had 45 law enforcement officers on the reservation. As soon as they arrested and killed Sitting Bull, then the number of law enforcement officers started to dwindle on our reservation, to the point today we only have 10.

The Dakota Peacekeepers operation, it is a good operation. But you hit it on the nose, Senator, and that is, what happens after three months, when these 20 law enforcement officers then leave? Do the criminals then come back out of the woodwork? That is a concern.

In terms of what Mr. Ragsdale talked about, that is engaging the community, the churches, the district communities, myself as well, too, in trying to bring the resolve back to the community in terms of, they have an obligation to take care of some of the problem, it is not just a police officer problem, it is a community problem. We agree. It is a community problem, it is.

However, with lack of police officers there, I am afraid that in many ways it will revert back to the same reservation it was before, that we do need additional dollars in order for the community to stay engaged, to have some of the resources it is going to need to supplement, if you will, the lack of law enforcement officers. If we had community security forces, we wouldn't need to be paying nearly as much as regular law enforcement officers, but resources to engage the community in terms of having foot patrols in the communities, programs to engage the youth, the Boys and Girls Clubs are starting to pop up on the reservation, but they are severely under-funded. Opportunities for children to engage in other activities other than criminal activities would be great. So taking a look at resources for those types of programs, in the end it comes down to resources.

Right now, it is a good influx of police officers. It does create one additional problem for us, and that is our court systems. Our court system is arraigning people now seven days a week and our jails are full. We have not been given the additional resources we need to man our courts to keep up with the number of criminals that are arrested on the reservation.

It is a good surge, it is making a difference. I don't think we are going to have the resources to continue, with community support for it, once the surge ends. As Mr. Ragsdale talks about, this peace-keeping pilot was a pilot program to test their abilities to respond to emergencies, such as hurricanes and floods, et cetera. Hurricanes and floods go away. The regular police force that was in those communities where they had hurricanes and floods, et cetera, don't have as big of a task once those natural disasters are taken care of. This is not a natural disaster here, we need a long-term solution.

The CHAIRMAN. Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman. Thank you all for your testimony.

We all appreciate that funding is the crux of so much of the problem. If you don't have adequate funding, it is very difficult to institute any of the initiatives. But Chairman His Horse Is Thunder, I appreciate the recognition, as you spoke in your opening comments, for instance, when you talk about the level of consistency with law enforcement, having the available number of law enforcement, it is not just the numbers. It is the quality of the training that they have.

But we have to appreciate that it is not just a situation where you are able to hire a certain number of qualified individuals, train a certain number. You then have the issues that we face, certainly on your reservation, but we face it up in the State of Alaska, we are trying to get law enforcement individuals out into very remote areas, areas where the environment is not hospitable, you are not on the road system, you are not connected, you have lots of dif-

ferent things going against you. You don't have support for those that are providing the law enforcement there. And then you don't have basic services. And housing is the most basic. If you can't provide for a place in a rural area, you have a trained individual who is willing to come out, willing to make that commitment. But if your family is miserable out there because you are crammed into very inhospitable spaces, I appreciate your reminding us that it is not just about getting a certain number of individuals to sign onto a program. There is a whole host of other factors that allow for success in making sure that we have the quality individual, and those folks that are able to do their jobs.

I don't know what the answer is. I know in Alaska, as we were looking at our teacher shortage issue, we had to make a commitment to build housing for our teachers in certain villages. We have to have housing that is provided by the villages to those who are willing, the village safety officers, that are willing to come in. Otherwise, there is no way that we can keep them.

So as we look to the law enforcement issues, I think we need to recognize that it is bigger than just the prison facilities, the detention facilities and the numbers. We have to have the other aspects of a quality life there as well.

I wanted to ask you, Ms. Shappert, because you have indicated that the Department opposes placing the Indian defendants in the Bureau of Prisons facilities. Yet the reason this is in the draft is because nearly all the tribes have no detention facilities, or very limited space available. If we can't support using the Bureau of Prisons facilities, what is the alternative? Where do you go? What do you do?

Ms. SHAPPERT. I think I have to reiterate the same issues of resource that we have heard from the other members of the Committee. But let me try to explain some of the concerns we have about BOP in particular.

As I think you are probably aware, Senator, the Bureau of Prisons right now is 37 percent over capacity. Most but certainly not all the prisoners in the detention facilities in Indian Country right now are one year offenders. Many of them have much less serious criminal records than the people in the Bureau of Prisons.

If we put them into the Bureau of Prisons, a couple of things. First of all, on a one year sentence, they may never make it into BOP. They would be housed in a detention facility or a State or local jail that is contracted with BOP, because their sentences are so short they wouldn't actually get to BOP. So they may not actually have the advantages of the BOP resources.

The other concern that we have heard raised by some of the tribes is that if they are placed in Bureau of Prison Federal detention facilities, any infractions or violations of the law implicate Federal law and they are subject to punishment under Federal law.

The third thing I would ask you to do, and we will be glad to provide it, is look at a map of where the BOP facilities are in the United States and juxtapose it with Indian Country. There are not many BOP facilities in Indian Country. So as a practical matter, somebody who was convicted in the Great Plains, if they were to go into BOP, might be housed in Florida, might be housed in Pennsylvania. And in respecting the sensitivity of ethnicity and tribal

relationships and family communities and the need to maintain those ties in Indian Country, we are going to lose that if individuals are housed 1,000 miles from where they are otherwise.

Senator MURKOWSKI. And we appreciate that. We are faced with the same situation in Alaska, where we send many of our prisoners, many of whom are Alaska Natives, they go down to Arizona. It is not the ideal situation. But it does seem to me that this is an area that we have to be thinking creatively here.

Mr. Ragsdale, you had mentioned in your comments constitutional concerns that you have, not you necessarily, but that the Department may have with increasing the tribal court sentencing authority as well as placing the Indian defendants in the Bureau of Prisons. Can you elaborate a little bit more on what you believe those constitutional concerns to be?

Mr. RAGSDALE. Yes, ma'am. Typically, as you know, the Federal law sets the maximum amount of punishment to \$5,000 and one year in jail, which in this Country is considered a misdemeanor, even though it may be a felony type crime that someone has committed that the tribe has adjudicated. All tribes do not provide defense attorneys. I know the Navajo Nation does, the Cherokee Nation does, I don't know about the Eastern Band. But there is not a requirement. So that is one issue that would probably have to be addressed.

The other issue would be, there are, and this is a sovereignty issue, is there is a lack of separation of powers between, in many of our tribal government institutions, which is not necessarily bad. But it would raise those kinds of concerns and for both the tribe and the United States of America, in my opinion, to ensure, there would have to be, in my opinion, some reform or consistency overall within the tribal court system.

Senator MURKOWSKI. I have more specific questions about certain provisions in the draft bill that I will direct to individuals by way of written questions. But I wanted to ask you, Mr. Lamar, because of your experience with the BIA and in law enforcement, in Section 104 of the draft legislation, where an office of Indian Country crime within the DOJ Criminal Division is created, this has been objected to by the Department of Justice because they believe that it may pull Indian Country experts from the field.

What do you think about this as a concern? And kind of give me your comments on how you think this new office that we are proposing would assist in prioritizing or coordinating activities between DOJ and how they relate to law enforcement in Indian Country?

Mr. LAMAR. I think, number one, such an office would probably be able to pull up the statistics rather quickly with regard to the declination rates in Indian Country. I know when I was at the FBI, we had a fairly sophisticated records management system back then, in the mid-1990s. In the mid-1990s, there was a question from the FBI agents with regard to the number of declinations. They felt like those declinations were inappropriately high. So it is a push of a couple of buttons on a computer that says how many cases were presented to the United States Attorneys, how many were closed on declination. So those numbers are actually readily available, and I am surprised—

Senator MURKOWSKI. You just need to ask the right division, is that what you are suggesting?

Mr. LAMAR. I think the numbers are readily available, and it is a matter of saying, let's find out what this really is and let's give an inkling to this Committee, is it really an issue and how large is the issue.

The CHAIRMAN. Might I just ask, if you would yield on this.

Senator MURKOWSKI. Yes, please.

The CHAIRMAN. The Justice Department presentation to us yesterday, dated June 17th, says "We do not have statistics that we believe accurately reflect the declinations in Indian Country." Do you say that is not accurate?

Mr. LAMAR. Well, I wouldn't say that that is not accurate, because that would leave out the Bureau of Indian Affairs declinations, and would only account for the FBI declinations. But I think it would give an inkling, because the FBI is a primary investigative agency in Indian Country with regard to those crimes. So I think that would give an idea, is it really the problem that we think it is. I believe that it is. I believe that those numbers are going to be extremely high.

So I think that division would be able to then concentrate the right priority on Indian Country. The Department of Justice has previously come in this very room and testified that there is no further need for funding for detention facilities. When I was at the Department of Interior, we were begging for additional dollars to continue to build facilities. Though we had a hard time, as does Mr. Ragsdale, with funding and staffing those facilities, we continued to ask for money to build facilities because the need was there. Yet the Department of Justice testified that the need was not there and that the current facilities were only 79 percent filled.

Clearly, we need more facilities in Indian Country. I think that the Department of Justice, given Indian Country the right priority, will be able to answer those questions, will be able to respond stronger in Indian Country to the crimes that are presented. Clearly, their resources as well are tapped. But if you have 25 percent of your violent crime that is associated with Indian Country, are 25 percent of the resources at the Department of Justice dedicated to that?

When I left the Department of Interior, the Department of Interior is one of the largest Federal law enforcement, represented one of the largest Federal law enforcement contingencies in the United States. So I would say that here you have the Bureau of Indian Affairs occupying about three or four offices at the end of a wing, and an entire building that, a Department that represents a law enforcement agency of that size from the Park Service of BLM, Reclamation and so on. Why aren't some of those folks moved over and detailed to Bureau of Indian Affairs to help them solve some of these tremendous problems?

Senator MURKOWSKI. I appreciate your response, sir. I think it is helpful. I recognize that oftentimes around here, it is not only asking the right question, but making sure that it is exactly the right person that you are asking that question to. It is somewhat frustrating that the Chairman has received a letter saying, we

can't give you the information that some of you believe is available, perhaps just not as fully as they would want.

I would like to point out, and President Garcia mentioned this, that in his opinion, this draft legislation wasn't, I don't think he used the term wasn't complete, but that one of the areas where there was an absence was as it related to Alaska Natives. We recognize that many of the issues as they relate to law enforcement and jurisdiction are different in Alaska than they are in the lower 48, and that has been one of the reasons why we have been a little more reserved as this legislation, or this draft legislation has gone forward. Our State Attorney General has expressed some concerns with the way the legislation is drafted at this point and just how Alaska fits in. So it is something that I want to work with you, Mr. Chairman, as we advance this.

But listening to the testimony this morning, the concerns that are raised, I heard good comments about the general direction. There were some good suggestions in terms of those areas where we perhaps have not yet addressed. So I think this is the start of a very meaningful dialogue on an issue that is of great importance across the Country. I look forward to working with you and other members that are currently co-sponsoring this, to see if we can't make a difference. Knowing that we thought we did something good back in 1990, and then 18 years later, we realize we are no further along than many of us thought. So I would like to know that we can advance this. I look forward to working with you.

The CHAIRMAN. Senator Murkowski, thank you very much. I look forward to working with you as well.

Mr. Ragsdale, thank you for being here and for being candid with us. I am candid with you about my frustrations with the BIA. I hope, I mean, I think we need the BIA to work and work well, work aggressively, work smart on a wide range of issues.

I happen to think we are under-funded on a wide range of things, including health care, housing, education and law enforcement. We are going to work to try to address all of those issues.

Today's hearing was about law enforcement. I think the information given us by a number of witnesses describes the urgency here. Ms. Stoner, thank you for your background and the years you have spent in these areas. I notice you indicated you were at Spirit Lake, you were a tribal judge, I believe, at Spirit Lake for eight or nine years?

Ms. STONER. Tribal prosecutor, yes.

The CHAIRMAN. At the Spirit Lake Nation. And you are now in academics, but you are contributing as well to the same area, and we appreciate that.

Mr. Lamar, thank you for your candid observations and helpful observations. Ms. Shappert, thank you for traveling here to give us the perspective of the U.S. Attorneys. Chairman His Horse Is Thunder, as always, thanks for your leadership day to day on one of our Country's important Indian reservations.

The hearing record will remain open for two weeks for additional submissions to the record. We likely will be submitting additional questions to witnesses and ask that you would respond.

This hearing is adjourned.

[Whereupon, at 11:50 a.m., the Committee was adjourned.]