

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.<sup>1</sup>

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,<sup>2</sup> 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.<sup>3</sup> A recent report established that at least 86 percent of the violators in sexual assault cases involving Native American women were non-Indian.<sup>4</sup> Pursuant to United States Supreme Court case law, tribes have no criminal jurisdiction over non-Indians.<sup>5</sup>

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

<sup>1</sup> 25 U.S.C. Section 1301.

<sup>2</sup> [www.amnestyusa.org/women/maze/report.pdf](http://www.amnestyusa.org/women/maze/report.pdf) last visited January 11, 2008.

<sup>3</sup> [www.ojp.osdoj.gov/bjs/intimate/ipv.htm](http://www.ojp.osdoj.gov/bjs/intimate/ipv.htm) last visited on January 11, 2008.

<sup>4</sup> [www.amnestyusa.org/women/maze/report.pdf](http://www.amnestyusa.org/women/maze/report.pdf) last visited January 11, 2008.

<sup>5</sup> *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.<sup>6</sup>

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.

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