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LAW ENFORCEMENT IN INDIAN COUNTRY

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

JUNE 21, 2007

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LAW ENFORCEMENT IN INDIAN COUNTRY

THURSDAY, JUNE 21, 2007

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 9:30 a.m. in room 485, Senate Russell Building, Hon. Byron L. Dorgan, Chairman of the Committee, presiding.

STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

The CHAIRMAN. The Committee will come to order.

We will begin the hearing this morning. This is the Oversight Hearing on Law Enforcement in Indian Country. This is a hearing at the Committee on Indian Affairs here in the U.S. Senate. We wish all of you good morning and thank you for joining us.

I will be joined by a number of my colleagues who are detained briefly this morning, but they will be here shortly.

Before we begin today I want to take just a couple of moments to remember our colleague, the late Senator Craig Thomas. Senator Thomas sat to my right as Vice Chairman of this Committee. In fact, just several weeks ago at one of these hearings, Vice Chairman Thomas and I talked after the hearing. I told him he looked terrific, and he said he felt terrific. And he, as you know, since that time lost his battle with cancer.

It is with a heavy heart that we continue our work here in this Committee. Senator Craig Thomas was a friend of mine and a friend of all members who served with him in the Senate. The State of Wyoming has lost a wonderful native son, and this Committee has lost someone who was dedicated to working on these difficult and challenging issues. So I wanted to begin this morning with just a moment of remembrance for a wonderful United States Senator, Craig Thomas.

Let me begin, as I did previously, when Senator Thomas was with us, by saying these challenges are daunting. We work together and all members of this Committee have worked together to deal with a range of issues that are very, very challenging for us: housing, health care, and education on Indian reservations. These are difficult challenges. Yet we must address them and meet them.

One of those challenges that is especially challenging is the issue of law enforcement. We want to hear from some very important witnesses today about this issue of law enforcement. Five weeks ago, we held an oversight hearing on law enforcement in Indian Country; today we hold another. At the first hearing, we heard

from Federal agency representatives about the role that each of them either plays or is supposed to play with respect to law enforcement in Indian Country. During that hearing, it became clear that law enforcement in Indian Country is confusing, it is complex. We also learned that the Federal agencies all too often are not coordinating between themselves sufficiently or providing adequate resources to the Indian reservations. And that is frustrating.

The purpose of today's hearing is to hear from tribal representatives and from victims' advocates about the state of law enforcement in Indian Country and to hear their recommendations about what we need to do to address it. We will hear from experts about potential solutions to the many, many problems of current law enforcement on Indian reservations.

This issue is one that affects the lives of virtually every American Indian, one that impacts the aspect of life on reservations and one that just cries out for change. At a time when violent crime rates have decreased nationally, Indian reservations are experiencing a steady increase in violent crime. American Indians and Alaska Natives are two and a half times more likely to be victims of violent crime than a member of the general public in this Country. The rate of violence for Native youth between the ages of 12 and 17 is 65 percent greater than the national rate for the general public.

American Indians and Alaska Native women are 2½ times more likely to be raped or sexually assaulted than other women in the United States. The situation has led residents of Indian reservations to live often in fear. In 2004, 81 percent of members of the Couer d'Alene Tribe did not feel safe in their homes, they have told us. I could go on and on at length about examples of the crisis, but I think it is sufficient to state that the statistics are staggering, the current state of affairs can merely be described as a national disgrace and one that we must address.

The Federal Government, including the Federal courts, has placed upon itself the burden to exercise the day to day law enforcement authority over 55 million acres of Indian Country lands. Yet our efforts to secure these lands can only be described as shameful. We, the Federal Government and the courts, have created a jurisdictional maze in Indian Country that has resulted in a failed system that fails to protect victims and communities.

I have a chart that shows the law enforcement jurisdiction in Indian Country. It is confusing, it is an unbelievable maze. It creates different approaches, dealing with the race of the offender, the race of the victim, the severity of the crime, whether the crime was committed on tribal land, tribal land in a Public Law 280 State, or State land. And Indian Country is the only place in the Nation where this is the case.

Let me give a recent example of how this jurisdictional maze impacts victims. The Gallup Independent newspaper reported yesterday about a situation where a Native woman who was raped had to wait 3 years to have her case prosecuted. Native American woman, raped, waited 3 years for prosecution of that crime. The problem was that it was unclear whether the crime was committed on tribal land or non-Indian land. The type of land the crime was committed on determined whether the tribe, the Federal Govern-

ment or the State government had jurisdiction. The Navajo Nation had to determine whether the land was tribal trust land. Once it decided the land was not tribal land, the tribe had to transfer the case to the State of New Mexico. Once the State of New Mexico began prosecuting it, it had been 3 years since the commission of the crime.

The problem of law enforcement, like many other problems in Indian Country, is one that was created by the Federal Government. It has existed for over a century. Trying to solve it, along with all the other problems, is a daunting task. But this Committee must begin to work with tribal leaders and work with the Federal agencies to find a solution to these issues. That is the purpose of this hearing, our second hearing on Indian law enforcement.

To my colleagues, first of all, let me welcome Senator Murkowski and Senator Tester. I began this morning commenting on the fact that this was our first hearing without the presence of our late colleague, Craig Thomas, and the work he had done and the commitment that he had to addressing these issues. I know that you both feel the same way. Let me call on you for any opening comments, Senator Murkowski.

STATEMENT OF HON. LISA MURKOWSKI,
U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman. I have to admit, I feel a bit awkward sitting in this spot. This was Craig's chair and I would sit right down there and I was quite happy to do so.

I think we all acknowledge that our hearts have a hole in them after his departure.

On Sunday, June 10th, the National Congress of American Indians met in my hometown of Anchorage for their semi-annual convention. At that time, it was an opportunity for many of us, I spoke about the contributions of Senator Thomas. We could probably devote an entire session to those contributions in the Senate and in the other body, where he chaired the Subcommittee on Native American Affairs. But if we were to do that, we probably wouldn't get to our witnesses. I recognize that President Garcia has devoted a portion of his prepared testimony to speak as a tribute to our departed colleague. I look forward to that.

Mr. Chairman, as you know, I had hoped at the weekend of the convention there in Anchorage, the NCAI meeting, to conduct a field hearing of this Committee on the issues that were identified by the Amnesty International report on domestic violence and sexual assault in Indian Country. But out of respect for our departed colleague, we went ahead and canceled that hearing, scheduled to actually take place on the date of Senator Thomas' funeral. So we have not rescheduled that, but I hope that we will do that in the very near future.

Passing references to the issue in a hearing focused on the broader challenge of law enforcement in Indian Country really don't do justice to this issue. The Amnesty International report identified the shortcomings in the Indian Health Services process for obtaining the forensic evidence necessary to support prosecutions. This was news to me. I don't recall that we ever heard from the Indian Health Service testifying to that effect.

You mentioned the statistics as I was walking in, in terms of the extremely high incidence of reported rapes, domestic violence against Alaskan Indian women and Native American women. I am told that nothing that we learned in the Amnesty International report was new to any of those who work with victims of domestic violence and sexual assault within Indian Country. Truth be told, I have actually had some people say, why is it that you are listening to the Amnesty International report when we have been trying to send you the same message for years? And I am not inclined to argue that point.

As I see it, the Amnesty International report was a wake-up call that the Federal Government has not been listening carefully enough to the advocates for our Native women. That is wrong and it needs to change. Native women need to feel safe and to be safe in their Native communities. Providing the tribes with the law enforcement tools to protect our Native women, holding the Federal Government to its trust responsibility to apprehend and to prosecute those who commit felonies in Indian Country, those are the keys to public safety in Indian Country.

I haven't studied the chart here that you have given to me. But I will tell you, my eyes swim as I look at the various jurisdictional regimes there. And it is no wonder that there is confusion, it is no wonder that there is under-reporting, it is no wonder that we see the statistics that we do. I look forward to the testimony from the witnesses this morning and again appreciate your having the hearing this morning.

The CHAIRMAN. Senator Murkowski, thank you very much. I did not indicate, and should have, that Senator Murkowski is the Acting Vice Chair now of this Committee. I welcome her participation as the Acting Vice Chair and I look forward very much to working with her. Senator Murkowski, you have been one of the most active members of this Committee, as has my colleague, Senator Tester. I very much appreciate your work.

Senator Tester.

STATEMENT OF HON. JON TESTER,
U.S. SENATOR FROM MONTANA

Senator TESTER. Thank you, Mr. Chairman. There is little that I can say more than what you and Senator Murkowski have said about our colleague, Senator Thomas, and his departure from this life. I will tell you that I had the opportunity and privilege to be at Senator Thomas' funeral in Casper. It really spoke to what kind of a man he was and what kind of a man we knew, even though I had the opportunity to work with him for only a little over 5 months. He was a stand-up guy that was straight up and told you what he thought. I appreciate that personally among people.

It was a nice funeral, as funerals go. It really did hit home to me that somebody who really lived a pretty vigorous life, he was a wrestler in college, high school, and in the mornings when I worked out, oftentimes Senator Thomas was there, over the last 5 months. So even though he knew he was fighting leukemia, it was somewhat of a surprise to see him go so quickly. He will be sorely missed on this Committee. As I look at the pad and I see Byron

Dorgan, Chairman and Craig Thomas, Vice Chairman, it doesn't seem quite right that he is not here.

With that, Mr. Chairman, I do want to address the issue of violence in Indian Country, and I want to thank you for holding this hearing. I want to thank the folks who are here today to testify, taking time out of your busy schedules to come.

The crime rate, jurisdictional issues, economic challenges all fit into what the crux of this problem is. I think the offenses against women is truly troubling. There is also drug problems and crimes that go along there, and the incidence of murder and the frequency of those kinds of crimes is not acceptable. I can tell you that in Montana, we have seven reservations. I live within 25 miles of one of them myself.

And I can tell you, the jurisdictional issue is a big issue. But probably a bigger issue than that is sheer numbers of law enforcement people that are available. And I look forward to hearing what the people who are here to testify here today say about the challenges that they face and solutions to those challenges. I appreciate your taking the time to be here.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Tester, thank you very much.

Our first panel today will include the Honorable Marcus Wells, Jr., Chairman of the Three Affiliated Tribes in New Town, North Dakota; the Honorable Herman Dillon, Sr., the Chairman of the Puyallup Tribe of Tacoma, Washington, and he is accompanied by Larry LaPointe, Council Member; Ms. Bonnie Clairmont, Victim Advocacy Specialist, Tribal Law and Policy Institute, St. Paul, Minnesota.

I appreciate very much all of you joining us today. We will begin with Chairman Wells. Your formal statements will be made a part of the record in their entirety, and you may summarize if you please. Chairman Wells, why don't you proceed.

STATEMENT OF HON. MARCUS D. WELLS, JR., CHAIRMAN, THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION; ACCOMPANIED BY DAWN CHARGING, DIRECTOR OF GOVERNMENT RELATIONS AND CAPTAIN HART, LAW ENFORCEMENT DIRECTOR

Mr. WELLS. Good morning, Senators, Chairman Dorgan, Members of the Committee. My name is Marcus Dominic Wells, Jr., Ee-Ba-Da-Gish, bald eagle and Moza, coyote. It is an honor to appear before you this morning.

I represent the Mandan, Hidatsa and Arikara Nation, the home of the Three Affiliated Tribes of Fort Berthold Indian Reservation of North Dakota. Appearing as a witness before this Committee, I humbly ask for your help.

In 1998, I ran for the Three Affiliated Tribes' business council as a Four Bear Segment representative. Since that time, I have served two terms where I have served on our seven-member business council. Last November, I was elected Chairman of our Tribe.

As each year passes, we have lost trust in the day to day operations of our local and regional BIA law enforcement offices, located in the Great Plains regional office of Aberdeen, South Dakota. At one time, we had a close working relationship with the

BIA law enforcement. Today, we have lost that partnership and the result is a lack of faith and trust in BIA law enforcement.

I do not see open lines of communication between our tribal government and the BIA law enforcement. On the Fort Berthold Indian Reservation, BIA has a full-time staff of 10 officers. Seven of the ten are field positions; three are continually vacant and unfilled. On any given day, several BIA officers are detailed to other reservations without any notification to our tribal government or trial law enforcement.

Our reservation is split in half by the Missouri River and the Garrison Dam. Fort Berthold has just under one million acres of land. The average response time is 1 hour, depending on which side of the reservation is in need.

In 1996, we applied for COPS–FAST Grant Monies and received funding. We have developed a tribal police force. This funding purchased vehicles and equipment and helped us train law enforcement officers for the tribes. Today we have six full-time tribal officers.

One would think dual forces, BIA and tribe, would work together to protect our enrolled members and other citizens who reside within the exterior boundaries of the Fort Berthold Indian Reservation. But that is not the case. Since becoming Chairman, I and our tribal council have begun to rebuild our tribal programs and reformulate our tribal budgets. One of our first priorities was to improve our tribal law enforcement program.

We had lost the COPS–FAST grant from the Department of Justice, and immediately needed to raise $600,000 to ensure that our tribal police force had protection funds. This imposed a great burden on our overall tribal budget, but it had to be done, because our people's safety is my greatest concern as Chairman.

I must make one important statement before I continue. We have the deepest respect for the men and women who serve as Indian law enforcement officers. Please do not think for a moment that we disrespect the people who are tasked with protecting our people. We have the deepest respect for their work and for the jobs they do. Our problems stem from a lack of good faith cooperation from District One Special Agent of the Great Plains Area and higher levels within the Office of Law Enforcement Services.

Many of our tribal officers are former career BIA officers. But we are experiencing daily interference from BIA law enforcement in our tribal police operations. For example, the Acting BIA Chief of Fort Berthold failed to provide a sidearm to our assistant criminal investigator and failed to respond when I and our tribal police captain, Nelson Hart, called to ask why the firearm was not provided. This unwise and unreasonable BIA interference puts our tribal officers at risk and endangers the people they are trying to protect. The local BIA Acting Chief will not respond to our phone calls, and the Great Plains Area Special Agent in Charge Office of Justice Services District One. The BIA Great Plains Regional Office has not responded to calls in any instance or in other instances.

In December, we notified District One BIA Great Plains Regional Office Special Agent in Charge Elmer FourDance of our desire to 638 contract our law enforcement division. According to the Indian Self-Determination Act, the BIA has 90 days to approve or decline

the Tribe's contract proposal. We had repeatedly requested technical assistance to complete the contract in a timely manner, but never received a response from BIA.

Then on the 89th day, Elmer FourDance arrived at Fort Berthold and approached a member of the council to inform him that the BIA had rejected the Tribe's contract proposal. He did not follow the chain of command or offer to assist the tribe in any manner. In fact, despite my repeated telephone calls, he has never come to see me personally or talk to me since I have been elected Chairman November 7th, 2006.

My phone is ringing off the hook with concerned parents and tribal members. We have a growing meth problem. We have a growing meth problem that is continually getting larger. We have adolescent gang activities; reportedly two groups of 13 or more youth are running wild, and vandalism and other related violent activities.

My executive secretary's home was broken into. A television was stolen and she discovered the kids at the end of her street were the offenders. The BIA officers refused to take her complaint. She went to our tribal criminal investigator and he took her complaint, and he is investigating today.

A mother called me, her son's life was threatened by another local teenager. The mother wanted protection for her son. BIA did not respond to her calls. She did not hear from them. Later, her son went on an errand to the local store, where the boy who threatened to kill him showed up with a knife. He defended himself with his bare hands and took away the knife. When the BIA police arrived at his home later and apprehended him, he is now serving time in jail.

Vandalism is out of control in our community and city streets. Main Street, New Town has continually been the victim of break-ins, the variety store, the liquor store and the smoke shop have all been broken into. All of these stores are within two city blocks of the BIA headquarters.

So you can see, there is not any respect for the BIA law enforcement. When you call 9–1–1 in our community, the dispatcher's first question is, are you an enrolled member. If they say yes, they dispatch law enforcement. The response time can be up to an hour.

Domestic violence is on the increase. Our tribal members are intermarried and mixed with non-Indians. If an Indian woman calls 9–1–1, BIA or tribal officers are dispatched. If a male offender is a non-tribal member, they cannot remove that individual without calling for city or county backup, because of the Supreme Court *Oliphant* v. *Squamish* case in 1978.

One story comes to mind where one of our members called for help. BIA responded and could not remove the non-Indian. The county would not respond. Officers managed to control the situation and left the residence. Hours later, the officer responded a second time. Things had escalated. The woman, in self-defense, had pulled a knife in an effort to protect herself and her children. The BIA officer removed her and she was booked for the offense. Her children were taken by social services. Where is the justice?

You are familiar with the Amnesty International report called the Maze of Justice, studied in 2005 and 2006. I am standing here

before you to ask you to hear our plea for help. Our women are suffering under the injustice of law enforcement and the judicial system. This is a very complex issue. Multi- jurisdictional issues make law enforcement hard on a reservation, as it is shared with non-Indian residents and communities.

We supported State legislation that would recognize tribal and BIA officers. It became a racial battle. Misinformation was rampant. It did not take long to witness racism within the halls of the North Dakota Assembly. Lack of understanding and turf protection between governments, sheriffs, fraternal orders of police, post board, threatened to kill legislation. A watered-down version of the bill was passed, but only after months of political wrangling. To date, we have not taken action on the legislation, as our North Dakota Tribes were so offended by the process.

If blood spills on our land, it is the same color regardless of who is bleeding. Our officers have a difficult job. I know you are listening to us. I humbly ask you to hear our pleas.

Our issues have escalated to the level that we asked our Congressional delegation to intervene. The letter of support for our law enforcement, self-determination law enforcement proposal was dated May 31st. To today's date, we have not been contacted by District One.

We are paying a Washington, D.C. law firm to guide us through the 638 process, money that our tribe should be spending on health care for our elders, diabetes, education or water development. I pray for each and every one of you so our Creator will guide you to make the right decisions. Thank you.

[Phrase in native tongue.]

[The prepared statement of Mr. Wells follows:]

PREPARED STATEMENT OF MARCUS D. WELLS, JR., CHAIRMAN, THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION

Chairman Dorgan and Members of the Committee: Thank you for this opportunity to provide further testimony with regard to the oversight of law enforcement in Indian Country.

In my recent written submission to the Committee, I discussed the catastrophic shortage of law enforcement personnel on our Reservation and expressed the Three Affiliated Tribes' support for additional resources to place officers where they are needed. We continue to operate at only about 20 percent of necessary staff—just seven (7) BIA law enforcement officers to cover a service area of one million acres. Moreover, we have discovered that these officers also often detail off-Reservation areas, meaning that there could be as few as five (5) officers or less available to respond to police calls or emergency situations.

To make matters worse, in several instances these BIA officers have simply not responded with appropriate diligence. Recently, six (6) guns and some body armor equipment were stolen from the home of one of the Tribes' own law enforcement officers. The BIA responder took statements, but the Tribes are unaware of any BIA follow-up on this brazen and worrisome burglary. In contrast, just last Friday, an individual made accusations that the same Tribal officer's dog had bitten someone. Several BIA officers, along with other agents, converged on the officer's home in response to the dog-bite allegation. Also recently, a mother called BIA officers to inform them that some individuals were threatening to kill her son, but there was no response from BIA. Instead, BIA officers subsequently arrested the threatened son himself. In another outrageous example, members of two gangs went on a spree of theft and breaking car windows, and then ran down the main street chasing children with an axe and a knife, just one block from the BIA law enforcement headquarters. The BIA response in these situations bears no relationship to the gravity of the underlying circumstances. These kind of actions (or inaction) by the BIA undermine our Tribal residents' faith in the ability of the justice system to effectively

meet our needs. Moreover, this state of affairs at Fort Berthold most likely offers an accurate snapshot of the law enforcement problems affecting all of Indian Country.

For these reasons and others, as I have testified previously, the Tribes have determined that effective law enforcement services will be best attained by having the Tribes themselves operate the law enforcement program through a self-determination contract with the Department of Interior pursuant to the Indian Self-Determination and Education Assistance Act (ISDA), Pub.L. No. 93–638. However, from the time we initially proposed to BIA to enter into negotiations for such a contract, we have experienced a lack of communication and cooperation from BIA officials. We requested certain technical assistance and information from the BIA in order to put together a complete contract package, but we received little or no help. We have still not received the technical assistance we requested. This intransigence needs to be overcome.

In fact, we have noticed a marked decrease in communication and cooperation between the Tribes and the BIA's Aberdeen office since the law enforcement program was moved to the Great Plains Regional Office of Law Enforcement Services (OLES). While this change was meant to improve the efficacy of law enforcement in Indian Country, it has instead made it more difficult for tribes to communicate with the appropriate BIA officials.

The Tribes have always supported the BIA's provision of law enforcement services—including spending a good deal of our own Tribal resources toward effective law enforcement. For example, we have utilized $600,000 of Tribal funds for the COPS–FAST program, in hopes of increasing the number of responders on our Reservation. However, there are many barriers to overcome—including officer training and cross-deputation with the Federal, state, and local governments. As I mentioned previously to the Committee, more effort needs to be made to ensure that state-run police academies and training programs are certified to provide the necessary basic training for on-Reservation officers. In addition, more work needs to be done to ensure that tribal officers can be authorized to act effectively across Federal, state, and local jurisdictional lines. At Fort Berthold, for example, currently the Tribes would need to enter into cross-deputation agreements with six different counties, in addition to the State of North Dakota and the Federal Government.

I look forward to the opportunity to answer any questions the Committee may have, as well as the opportunity to provide supplemental written testimony based on today's discussion.

Attached letter

U.S. SENATE
Washington DC, May 31, 2007

Hon. Marcus Wells, Jr.
Chairman,
Three Affiliated Tribes of the Fort Berthold Reservation,
New Town, ND

Dear Chairman Wells:

Thank you for contacting us regarding your request for technical assistance in contracting law enforcement on the Fort Berthold Reservation. Our staff has had several conversations with the Aberdeen Bureau of Indian Affairs (BIA) office, Law Enforcement Division, about your tribe's desire to contract the service under the Self-Determination Act.

We understand that Elmer Four Dance personally delivered all of the necessary documentation needed for the tribe to complete a contract proposal and, once it is submitted, it will then be reviewed for approval.

The BIA has told us personally that it is the agency's desire for this to move ahead and they will provide as much help as possible to see that it is successful. We are pleased to bring you this news and we will continue to keep you updated upon receiving any new information regarding this matter. Thank you.

Sincerely,

BYRON L. DORGAN AND KENT CONRAD

The CHAIRMAN. Chairman Wells, thank you very much for your testimony.

I did not mention that you are accompanied by Dawn Charging, Director of Government Relations for your Tribe, and Captain

Hart, the Tribe's Law Enforcement Director. We appreciate their being here as well.

Mr. WELLS. Thank you, Chairman.

The CHAIRMAN. Next we will hear from the Honorable Herman Dillon, Sr., the Chairman of the Puyallup Tribe of Tacoma, Washington. Mr. Dillon, it is nice to see you again. Thank you very much for being here.

STATEMENT OF HON. HERMAN DILLON, SR., CHAIRMAN, PUYALLUP TRIBE OF INDIANS; ACCOMPANIED BY LAWRENCE W. LAPOINTE, COUNCIL MEMBER

Mr. DILLON. Thank you, Senator, and thank you, Ms. Murkowski and Mr. Tester, for allowing us to testify. It is an honor and we are very pleased that you are willing to accept what we have to say.

I am Herman Dillon, I am Chairman of the Puyallup Tribe of Indians. With me today are my councilmen, Lawrence LaPointe; behind me I have our Government Affairs Director, Rolean Hargrove; Michael Bowechop is our Compliance Director and Policy Analyst; and our legal attorney from here in the great city of Washington, D.C., Addie Rolnick.

I would like to thank the Committee for asking me to testify today on behalf of the Puyallup Tribe about law enforcement needs in Indian Country. The Tribe was pleased to have Chairman Dorgan visit the Puyallup Reservation recently to see some of our needs first-hand. I would also especially like to thank Senator Cantwell for inviting us. As the Senator from Washington, she is all too familiar with the gang and drug problems we are facing. She understands that these problems affect all of us, Indians and non-Indians alike, and that we, tribes, State and Federal Government, must cooperate in order to find solutions. I thank her for working with us to do this.

The Puyallup Reservation is located within the urban Seattle-Tacoma area in the State of Washington. Our reservation is 18,061 acres and it encompasses most of the city of Tacoma. The area is a checkerboard of tribal land, Indian-owned fee land and non-Indian-owned fee land. Our reservation land includes parts of six different municipalities: city of Tacoma, city of Fife, city of Milton, city of Puyallup as well as Edgewood and Federal Way.

The Puyallup Tribe also provides services for 3,680 tribal members, and over 24,000 additional Native Americans from over 345 tribes and Alaska Native villages in our service area. We share law enforcement authority with both the State and local and Federal Governments. Because of the many governments that are involved, because of the checkerboard nature of our land and because the reservation touches many different local jurisdictions, the answer to which government has jurisdiction over a specific crime depends on who the defendant is, whether the land is trust land and which local jurisdiction the land is in.

We have 28 active gangs on the Puyallup Reservation. A few of these gangs are Native gangs, the others are national gangs with Native members. And still others are non-Native gangs on or near the reservation. We have seen gang members as young as 8 years old. The gangs are involved in drug trafficking, weapons sales, turf

wars. I–5 runs through the Puyallup Reservation and is known as a drug corridor. We have meth, crack cocaine, oxycontin. Pierce County has at least 31 meth labs, the most in the State. We have drive-by shootings on a weekly basis, unfortunately.

Between December 2005 and March 2006, we had a particularly brutal spell with 15 drive-by shootings on the reservation. Two of our tribal members were killed, one of them Joseph Dillon, my grandson, who was an innocent bystander. He didn't belong to a gang. He was a graduate of our tribal high school. Just before Christmas, a non-Native gang from the east side of Tacoma fired several shots through the side of Joe's mother's house. The shooters were probably after Joe's cousin, Donald George-Oya. Donald, who dropped out of high school after 10th grade, was affiliated with a gang called the Native Gangster Crips. NGC was involved in a gang war with the Pirus, and the drive-by was an act of revenge.

But as in the case in many drive-by shootings, the shooters just aimed blindly into the house where they thought Donald lived, and they fired. One shot hit Joe by mistake, killing him.

At Joe's funeral, the police arrested his younger brother, Dale Oya, in connection with an earlier shooting. Then just weeks later, the Pirus found Donald riding his bike and fired 29 rounds into his body. In a matter of weeks, this family lost three of its young men to gang warfare.

To expand on this further, I am going to turn this over to Lawrence LaPointe at this point. Thank you.

Mr. LAPOINTE. Good morning, Mr. Chairman, Members of the Committee.

What I have been asked to do is probably not in writing. In September, the last weekend of September of last year, I was in the front yard of my home. My grandchildren came over to visit, as they do every Sunday. Approximately 3:30 to 4 o'clock in the afternoon, there was a fistfight that broke out amongst two different gang members. Some of them were my relatives and some were neighborhood youth.

It wasn't 5 minutes later that gunshots rang out. I rushed my grandchildren into my home, the oldest being eight and the youngest being three. Nobody did anything, and I would like the Committee to be aware that I am a veteran of Vietnam. What I heard didn't sound good, and I remember those shots from when I was over there.

But like I said, everybody in the whole neighborhood stood as the shooters got in their car and left. And I walked over to the young man that was shot in the leg, upper thigh, and it hit his main artery in his thigh. I put pressure on it until the paramedics came and the young man lived. Nobody was killed that day. That was my intent, was not to see anybody die. Fortunately, the wounds didn't take their lives. I think that that's where the maze begins and the maze probably ends there. The Tacoma Police Department, which we have a mutual aid agreement with in regards to law enforcement services within our very urban area, took the case. They went to prosecution and one person is still in jail for attempted murder and two of them released on lesser charges.

But I think that being a checkerboard reservation, like you say in your earlier statement, where does law enforcement begin for In-

dian Country and where does it end and who has jurisdiction. There was another incident in October of 2006, where somebody tried to break into my house. It was a young man, he was high on drugs and drinking. And he didn't get in, but he went to another door and broke in. Tribal law enforcement came in, they tazed him five times before he surrendered to them.

And it wasn't 2 weeks later, I received a call from the Federal Bureau of Investigation because the young man was charged with raping somebody two blocks away from me on trust land. So I am purchasing my home, so it is still in fee land until I request and go to trust. But where does it start and where does it stop as far as jurisdiction and funding to protect our citizens on our reservation?

[The prepared statement of Mr. Dillon follows:]

PREPARED STATEMENT OF HON. HERMAN DILLON, SR., CHAIRMAN, PUYALLUP TRIBE OF INDIANS

I would like to thank the Committee for asking me to testify today on behalf of the Puyallup Tribe about law enforcement needs in Indian country. The Tribe was pleased to have Chairman Dorgan visit the Puyallup Reservation recently to see some of our needs firsthand. I would also especially like to thank Senator Cantwell for inviting us. As the Senator from Washington, she is all too familiar with the gang and drug problems we are facing. She understands that these problems affect all of us—Indians and non-Indians alike—and that we—tribes, states and the Federal Government—must cooperate in order to find solutions. I thank her for working with us to do this.

I. Law Enforcement in Indian Country

The need for basic law enforcement resources across Indian country is severe. In 1997, the Department of Justice estimated that at least 2,000 additional officers were needed just to meet minimum safety standards.[1] This need has become even more pressing in recent years because of increased methamphetamine use, production and trafficking on reservations. Police officers working on reservations frequently patrol alone because of personnel shortages. Understandably, newly-trained and veteran officers often leave to take jobs that require less of a risk to their personal safety, exacerbating officer shortages. Equipment needs are equally significant. It is a vicious cycle—lack of funding for even the most basic elements of a law enforcement program is part of what contributes to the perception that reservations are "lawless" places. This perception is what makes our communities attractive to drug dealers, which in turn increases the need for Federal resources.

And law enforcement in Indian country is much more than police. Tribes also operate court systems, detention facilities, drug treatment services and other alternatives to detention. Many tribes have invested in preventative programs, such as youth centers, youth activity programs and drug education. As governments, we recognize our responsibility for fostering positive change and rehabilitation, even in our jails. More often than not, the inmates are people from our community who will be returning to the community when they are released, so we have a particular incentive to help them pursue positive changes. Otherwise, we will be stuck in a cycle of arresting and locking up our own people.

II. Puyallup Tribal Law Enforcement

The Puyallup Reservation is located in the urbanized Seattle-Tacoma area of the State of Washington. Our 18,061-acre reservation encompasses most of the city of Tacoma, but the area is a "checkerboard" of tribal land, Indian-owned fee land, and non-Indian owned fee land. Our reservation land includes parts of six different municipalities (Tacoma, Fife, Milton, Puyallup, Edgewood and Federal Way). The Puyallup Tribe also provides services for 3,680 tribal members and over 24,000 additional Native Americans from over 345 Tribes and Alaska Native villages in our

[1] U.S. Department of Justice, *Report of the Executive Committee for Indian Country Law Enforcement Improvements: Final Report to the Attorney General and the Secretary of the Interior* (October 31, 1997).

service area.[2] We share law enforcement authority with both the state/local and Federal Governments. Because so many governments are involved, because of the checkerboard nature of our land, and because the reservation touches many different local jurisdictions, the answer to which government has jurisdiction over a specific crime depends on who the defendant is, whether the land is trust land, and which local jurisdiction the land is in.

Washington is a Public Law 280 state, which means the state exercises some jurisdiction in Indian country, but the state's jurisdiction is limited to a few specific subject areas.[3] In addition to those specific areas, the state has jurisdiction over crimes committed by Indian people on non-trust land, and jurisdiction over all crimes committed by non-Indians on the Reservation. Of course, this does not mean that the Tribe has no law enforcement authority. PL–280 did not strip tribes of their inherent jurisdiction, so the Tribe shares authority with the state over Indian people who commit crimes on non-trust land and over Indian people on trust land in the subject areas described above. The Tribe also continues to exercise broad criminal jurisdiction—exclusive of the state—over Indian people on trust land. Finally, the Federal Government has responsibility for law enforcement on the reservation, particularly over major crimes committed by Indian people.

The Puyallup Nation Law Enforcement Division currently has 24 commissioned officers and three vacant positions. These officers are charged with the service and protection of the Puyallup Reservation 7 days a week, 24 hours a day. Our officers are also responsible for enforcing tribal hunting and fishing laws in our "usual and accustomed" fishing areas off the reservation. For tribes in the Northwest and other areas with treaty-protected off-reservation hunting and fishing rights, enforcement of tribal hunting and fishing codes consumes an enormous amount of tribal law enforcement resources.

We also have a tribal court and an adult detention facility. We have an agreement with the county to house our juveniles in the county juvenile facility. Our tribal court has full criminal jurisdiction over Indian people, although under the Indian Civil Rights Act our court can only sentence people to up to 1 year in jail and/or up to a $5,000 fine. The Puyallup tribal court regularly handles minor drug sales and possession cases, some shootings, and other incidents. The United States Attorney has jurisdiction over serious crimes committed by Indians on the Reservation but, as I describe below, Federal enforcement is very limited in practice. Instead, when more serious incidents occur, tribal prosecutors sometimes elect to have the county prosecute tribal members so that longer sentences can be imposed.

We operate our law enforcement department and our detention program pursuant to a self-determination contract with the BIA. Puyallup has also received COPS grant funding for several years. This funding has been very important to our law enforcement program, especially for purchasing new and updated equipment. However, the Committee should understand how little money tribes actually receive from Federal sources. Contract funding covers the salary for one police officer and one detention officer. COPS funding helps us with equipment costs. But the other 26 police officer positions and nine detention officer positions are funded by the Tribe.

III. Gangs on the Puyallup Reservation

We have *28 active gangs* on the Puyallup Reservation. A few of these gangs are Native gangs, others are national gangs with Native members, and still others are non-Native gangs that operate on or near the Reservation. Many members are teenagers, but we have seen gang members as young as 8 years old. These gangs are involved in drug trafficking, weapons sales, and turfwars. I–5, which runs from Mexico through San Diego and up the coast all the way to Canada, runs through the Puyallup Reservation and is known as a drug corridor. We regularly encounter methamphetamine, crack cocaine and Oxycontin. Pierce County is also home to at least *31 meth labs*—the highest in the state. We have drive-by shootings on a weekly basis.

Between December 2005 and March 1, 2006, we had a particularly brutal spell, with *15 drive-by shootings* on the Reservation. Two of our tribal members were

[2] The city of Tacoma has the sixth highest percentage among U.S. cities of American Indians and Alaska Natives, 3.6 percent of the total population.

[3] In 1957, Washington elected to assume jurisdiction over Indian Country within the state pursuant to the voluntary provision of Public Law 280. 25 U.S.C. § 1231. Washington assumed criminal and civil jurisdiction only over eight specific subject areas—compulsory school attendance, juvenile delinquency, public assistance, domestic relations, mental illness, adoption, dependent children and certain motor vehicle offenses. Wash. Rev. Code § 37.12.010. It exercises more extensive jurisdiction over some reservations pursuant to tribal consent, *see* Wash. Rev. Code § 37.12.021, but Puyallup is not one of those tribes.

killed. One of them, Joseph Dillon, was not even involved in gangs. He was a graduate of our tribal high school. Just before Christmas, members of the East Side Pirus, a non-Native gang from the East Side of Tacoma, fired several shots through the side of Joe's mother's house. The shooters were probably after Joe's cousin, Donald George-Oya. Donald, who dropped out of high school after 10th grade, was affiliated with a gang called the Native Gangster Crips. NGC was involved in a gang war with the Pirus, and the drive-by was an act of revenge. But, as is the case in many drive-by shootings, the shooters just aimed blindly into the house where they thought Donald lived and fired. One shot hit Joe by mistake, killing him. At Joe's funeral, the police arrested his younger brother, Dale Oya, in connection with an earlier shooting. Then, just weeks later, the Pirus found Donald riding his bike and fired 29 rounds into his body. In a matter of weeks, this family lost three of its young men to gang warfare.

The escalating violence is just a symptom of a gang problem that now goes back three generations in our community, and we are worried about what this means for our youth in the future. Nearly half of Puyallup tribal members are 17 years old or younger, and one-third of them are under 10 years old. As they grow up, our children are facing many of the risk factors that we know can lead to gang involvement, such as poverty (73 percent of students at our tribal school qualify for free or reduced lunch), lack of education (the dropout rate for Native students in Washington state is consistently twice that of all students), and family instability (the number of dependency, guardianship and family services cases at Puyallup more than doubled between 2000 and 2006).[4]

The Puyallup Tribe has responded to the gang problem. We established a Gang Task Force about 4 years ago comprised of the Tribal Police Department, representatives from various Tribal Services Divisions and community members. The Gang Task Force developed a working definition of a street gang and a four-pronged approach to gang prevention activities: (1) enforcement, (2) intelligence, (3) education, and (4) physical-mental health. We believe this fourth prong is often overlooked in other communities, and our police work closely with our family and social services departments to ensure that we address problems like substance abuse among our members.

The Tribe also pays each year to send its officers to receive specialized gang training from the National Gang Crime Research Center. In fact, Puyallup officers have recently become presenters at these conferences, drawing on our experience to assist other jurisdictions and partnering with the NGCRC to focus more on the needs of tribal communities. Of course, such a major law enforcement undertaking will require more officers, additional and continued training, specialized equipment, and better detention facilities for adults and juveniles. Right now, our police department could use an additional 3–4 officers dedicated to gang issues, so that the informal gang operations unit can focus on intelligence and tracking. We are doing what we can, but *we cannot afford to be shortchanged in law enforcement resources.*

IV. Cooperation with State Law Enforcement

The Tribe works closely with state and local law enforcement authorities. We recognize that in this day and age, such inter-jurisdictional cooperation is essential. We are fortunate to have a good working relationship with the state, county and city agencies. We have had intergovernmental agreements with Pierce County and the city of Tacoma for many years, and we recently entered into one with the city of Fife. Our tribal police officers are cross-deputized, so that we can arrest people under city or county jurisdiction, then turn them over to the local authorities to be processed. Working together with the state is especially important for us because much of the crime in our community is perpetrated by non-Indian people. Of all arrests made by Puyallup Tribal Police, over three-fourths are of non-Indian people. Arrests of non-Indian people by tribal police increased 15 percent between 2004 and 2006, while the number of arrests of Native people decreased.

We are thankful that last summer, the Tacoma Police Department established a gang response unit. They also have an officer specifically assigned to tribal issues. The Puyallup Tribal Police Department now meets monthly with the Tacoma Police to share information. This kind of information-sharing is essential for gang work because the gangs would use any lack of communication between police departments to their advantage. We have also begun to work cooperatively on "gang emphasis patrols," in which officers saturate an area known to have a lot of gang activity.

[4] In a report on youth gangs in Indian country, the Office of Juvenile Justice and Delinquency Prevention found that social problems in the community were the greatest contributor to growing gang problems on reservations. Major, et al., *Youth Gangs in Indian Country* (OJJDP Bulletin, March 2004), at 11.

Through these patrols, we have already apprehended two of our three most wanted criminals and confiscated a number of handguns.

In July 2006, Senator Cantwell convened a roundtable discussion with tribal and local law enforcement agencies in order to discuss resources and solutions. What they found was that the Puyallup Tribe had the most highly developed gang response strategies of any of the departments operating in the area. Our officers were often the first to come into contact with gang members for low-level offenses. They are also often the first responders to major gang-related crimes. Even more importantly, many of our officers are members of the tribal community, so they are familiar with young gang members and their families. This familiarity helps our officers to be able to do more prevention and intervention work, and it also helps with information-gathering. Our local law enforcement agencies understand this, so we have been able to forge a good working relationship in which the jurisdictions assist each other in order to provide the best possible law enforcement services.

V. Cooperation with Federal Law Enforcement Agencies

Legally, the Federal Government still has jurisdiction and law enforcement responsibility on the Puyallup Reservation under the Major Crimes Act. In addition, many of the gang and drug crimes we are experiencing would be Federal offenses whether or not they were committed on an Indian reservation. The gangs that are active on the Reservation are mostly national gangs, including Crips, Bloods and several major Asian and Hispanic gangs. Drug dealers come through the Reservation as they transport drugs across state lines on I–5, also a Federal crime. In particular, we depend on Federal assistance when a major crime is committed by an Indian person because, although our jurisdiction is exclusive of the state's, we do not always have all the resources to investigate or the jurisdiction to impose long sentences.

Unfortunately, we get very little help from Federal Government. In practice, the tribal police have to request Federal assistance each time a serious case arises. We recently had a rape occur on trust land, and our primary suspect was an Indian person. We asked the FBI to investigate, but got no response initially. Tribal police had to do almost all of the investigative work. When we had still heard nothing from the FBI, we prepared to prosecute the suspect in tribal court, despite our limited jurisdiction. The FBI finally responded after the suspect had been in jail for 50 days—just 1 week before the deadline for a speedy trial. At that point, their role was limited to reviewing and reporting on the investigation already conducted by tribal police.

In another instance, a shooting occurred on trust property, and we were unable to get a response from Federal officials. This put the Tribe in a difficult position in terms of investigating the crime because we do not have a Crime Scene Investigation unit. Fortunately, we were able to borrow the city of Tacoma's unit in order to perform the investigation. This example is emblematic of the level of basic law enforcement assistance we generally get from the Federal Government. Even though the Federal Government retains jurisdiction in name, it is the state that we rely on in practice to support our efforts.

A major area of concern for the Puyallup Tribe is the ability of tribes to work cooperatively with Federal law enforcement agencies. This includes the BIA, but also the Federal Bureau of Investigation (FBI), the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the Drug Enforcement Administration (DEA). We are also concerned that Federal crime legislation, especially laws relating to gangs and drugs, should be developed in consultation with tribal governments. If tribes are made active partners in law enforcement efforts, and if we can access funding and assistance on at least the same level as other governments, our police departments and courts will be much better equipped to prevent these crimes and to go after these criminals.

VI. Funding

The Puyallup Tribe is in great need of a new detention center. Until 2001, the Puyallup Tribe operated a regional detention facility, providing detention services to many surrounding tribes on a contract basis. Due to damages from the February 2001 Nisqually earthquake, we have had to relocate to modular/temporary facilities, which were not built to any Federal/state or tribal health or construction standards. The modular units are far from secure, though. Since the relocation to modular facilities, the Tribe's ability to effectively and safely incarcerate detainees has been compromised due to the condition of the temporary detention facilities. Last year, an inmate housed in one of the modular units cut a hole in the floor and escaped.

In an effort to protect the safety and welfare of the Native community the Puyallup Tribe has initiated the planning and development of a Justice Center to be

located on the reservation. The Justice Center will provide necessary facilities for the delivery of law enforcement and judicial services including a Tribal Court, Court Clerk, Prosecution, Probation, Public Defender and Law Enforcement services, including Police Headquarters and a 32-bed Adult Detention facility. The Tribe has set aside tribal land for the new facility, but we have been unable to get financial assistance for even the planning stages of our new facility.

Of course, we understand that money is tight. Every year, we come to Washington along with other tribal leaders to testify before the House Appropriations Committee on funding needs for Indian country. For at least the past 3 years, law enforcement has been one of the most—if not the most—acute area of need. We have heard many other tribal leaders testify that they are in desperate need of funding for police and detention. The deplorable conditions existing in Indian Detention facilities are documented in the September 2004 report issued by the U.S. Department of Interior Inspector General's Office.[5] What is most frustrating, though, is being shuttled back and forth between various governmental offices.

We have approached both the BIA and the DOJ, but funding from both Departments has been at record low levels for the past several years. The agencies simply throw up their hands and tell us there is no more money to construct detention facilities. This year, an increase was proposed for yet another "Initiative" to improve Indian country law enforcement, but the Administration apparently decided to balance this cut by eliminating funding for all tribal justice programs—including courts, detention and intervention programs—within the DOJ. It is extremely difficult to chase scarce funding between two Federal agencies which seem to have very little communication with each other, and both of which avoid responsibility by pointing to the other one. We do not believe these agencies—particularly the BIA—should be permitted to abdicate their trust responsibility for Indian issues in this way.

VII. Conclusion

We are very grateful to the Committee for turning its focus to the issue of law enforcement in Indian country. Effectively fighting crime in Indian country requires navigating a complex and shifting set of jurisdictional rules. It means cooperating with state, local and Federal law enforcement agencies. It also means weaving together a patchwork of available sources of funding to create a stable funding base. As you move forward with your investigation, we encourage you to look at the following specific areas of concern:

- Limited tribal jurisdiction over serious crimes;
- Allocation of responsibility between the BIA and the DOJ for Indian country law enforcement issues;
- Barriers to cooperation between tribes and Federal law enforcement agencies;
- Lack of funding for related services, such as gang prevention, youth intervention services, recreation, mental health and substance abuse treatment—services that are also essential to reducing crime.

Other supplementary information submitted by Mr. Dillon has been retained in Committee files, some of which can be found at:

http://www.thenewstribune.com/news/local/story/5695871p-5104067c.html

http://www.thenewstribune.com/news/local/story/5698952p-5106009c.html

http://www.thenewstribune.com/news/local/story/5455252p-4923772c.html

http://www.angelfire.com/wa3/yakima_street_gangs/tacoma.html

http://dwb.thenewstribune.com/news/local/story/6121337p-5361907c.html

http://blog.myspace.com/index.cfm?fuseaction=blog.view&friendID=74893280&blogID=...

The CHAIRMAN. Thank you very much for being with us. We appreciate hearing from you the challenges you are facing. We will have a chance to ask you questions.

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[5] Office of Inspector General, U.S. Department of the Interior, *Neither Safe Nor Secure: An Assessment of Indian Detention Facilities,* Report No. 2004–I–0056 (September 2004).

I want to hear next from Ms. Bonnie Clairmont, who is a Victim Advocacy Specialist, Tribal Law and Policy Institute in St. Paul, Minnesota. Ms. Clairmont, thank you for joining us and you may proceed.

STATEMENT OF BONNIE CLAIRMONT, VICTIM ADVOCACY PROGRAM SPECIALIST, TRIBAL LAW AND POLICY INSTITUTE

Ms. CLAIRMONT. Chairman Dorgan, Members of the Committee, thank you for holding this hearing today and thank you for this opportunity to testify.

My name is Bonnie Clairmont. I am from the HoChunk Nation, originally from Wisconsin. Prior to my recent employment with the Tribal Law and Policy Institute, I was an advocate for battered and sexually assaulted women for over 25 years. One of my roles as an advocate is to be the voice for women who have been harmed by violence. I am honored to do that today on behalf of Indian women who are being raped and murdered and their experience with law enforcement as they seek safety and justice.

I cited in the Amnesty International report, Maze of Injustice, the failure to protect indigenous women from sexual violence in the U.S.A. Native women are being raped at disproportionately higher rates than any other race, as you mentioned earlier, Senator Dorgan. It is difficult to know the full prevalence and scope of sexual violence in Indian Country, since there have been no comprehensive studies done. Still, there are a vast majority of Indian women who don't report their assaults to anyone, much less to law enforcement.

Within the Amnesty report, Indian women came forward to tell their stories. They stood up and broke their silence, taking huge risks to speak out about the many injustices they are experiencing, and the insurmountable barriers they face when seeking justice and safety.

In my 25 year career as an advocate, I have worked with hundreds of Indian women who have been raped, battered and family members of women who have been murdered. I bear witness today to the huge barriers that Indian women face as they seek justice and safety and healing. Many of these barriers are being removed for victims in mainstream communities; yet that is not the reality for Indian women who are sexually assaulted in tribal communities. This needs to change, because in my mind, these statistics are not just numbers. We must all be outraged, appalled and spurred to action, because each of these statistics represents a human being, someone's mother, someone's daughter, someone's relative, partner or friend.

American Indian and Alaska Native women who are raped must be afforded the same services as other women who have been raped from the mainstream community. Yet that is not the reality in Indian Country. Indian women who have been raped need advocacy services. They need forensic rape exams in order to gather important evidence for prosecution, to be examined by nurses who are trained and who are sensitive to their needs, to have emergency contraception to prevent pregnancy from rape. They need prophylactic treatment to prevent the possible transmission of sexually transmitted diseases. Yet there are many Indian Health Service fa-

cilities that are not equipped to provide these services, leaving American Indian and Alaska Native women without needed services, or having to travel great distances to obtain these needed services.

Moreover, leadership at the Indian Health Service has been unable or unwilling to develop national standards and protocols to its facilities on responding to sexual violence. This is unacceptable. Indian women who have been raped have a right to obtain safety and justice. Yet that is not the reality in Indian Country, because in many tribal communities, there are no tribally based law enforcement officers and existing tribally based law enforcement agencies are under-resourced and unable to provide appropriate response.

So American Indian and Alaska Natives must rely on law enforcement officers outside of their communities, such as the Bureau of Indian Affairs and the Federal Bureau of Investigation authorities. Response time in many instances is very slow. There is often a serious lack of cooperation and collaboration and information sharing between these agencies and tribal authorities and advocates. Consequently, there is a serious lack of reporting of sexual assaults by Indian women.

Indian women don't report their assaults because they don't trust law enforcement authorities. They fear retaliation, they fear maltreatment by inadequately trained law enforcement officers.

It is quite apparent that there is a desperate need for law enforcement reform; a desperate need for sweeping changes to law enforcement, policy and protocols. The Federal Government should provide increased resources for law enforcement agencies to provide immediate response to victims of sexual assault in Indian Country. Law enforcement agencies, particularly those Federal agencies such as the BIA and the FBI, should be mandated to work in closer collaboration with tribal governments, tribally based law enforcement agencies and advocates through establishing cooperative agreements for the sharing of information and working together to establish coordinated community response teams.

I believe that many of these problems are not insurmountable and can be ameliorated. I fully support and agree with the recommendations as highlighted in the Amnesty report. Some of those key recommendations would be to provide increased funding for law enforcement on tribal lands and ensure that in policy and practice, that all police officers have the authority to take action in response to reports of sexual violence, including rape within their jurisdiction and apprehend the alleged perpetrators in order to transfer them to the appropriate authorities for an investigation and prosecution.

In particular, with sexual violence committed in Indian Country and in Alaska Native Villages, tribal law enforcement officials must be recognized as having authority to apprehend both Native and non-Native suspects; provide increased funding to the Indian Health Service and ensure that sexual assault nurse examiner programs are prioritized and that standard protocols are in place; provide increased funding for tribal justice systems. The Department of Justice should also urgently provide data on the extent to which Federal prosecutors are prosecuting crimes of sexual violence in In-

dian Country. Ensure increased funding for essential support services for Native survivors of sexual violence.

Amnesty International is currently asking Congress to undertake the following steps; in particular, to fully fund and implement the Violence Against Women Act, and in particular, Tribal Title IX, the first-ever effort within VAWA to fight violence against Native American and Alaska Native women. This includes a national baseline study on sexual violence against Native women, a study on the incidence of injury from sexual violence against Native women, and a tribal registry to track sex offenders and orders for protection.

I and my sister advocates have worked long and hard to raise awareness to the problem of sexual violence in our communities; to create and improve services for victims of sexual violence; and to mobilize our communities to protect Indian women and to hold offenders accountable. Much of the work of advocates throughout Indian Country started from our kitchen tables and from our front porches and mostly with very limited resources. I am proud of the work done by the many Indian women advocates that have worked tirelessly to send a resounding message that we are experiencing a national tragedy in Indian Country. It is clear that our voices are being heard with the passage of VAWA 05 Title IX.

Although funding is desperately needed, money alone will not solve these problems. Last, improving policing alone will not solve the problem. It is my hope that the Federal Government, in close partnership with tribal governments, honor their trust relationship to keep women safe; that they should take steps to hold offenders accountable and to provide the level of services needed by all victims of sexual violence and those same services that are afforded to all victims from mainstream communities. It must be made clear that sexual violence in any form will not be tolerated and that victims will be protected with the full force of the law.

Thank you.

[The prepared statement of Ms. Clairmont follows:]

PREPARED STATEMENT OF BONNIE CLAIRMONT, VICTIM ADVOCACY PROGRAM SPECIALIST, TRIBAL LAW AND POLICY INSTITUTE

Chairman Dorgan, Members of the Committee: Thank you for holding this hearing today and thank you for this opportunity to provide testimony. My name is Bonnie Clairmont and I am from the HoChunk Nation originally from Wisconsin. For the past 3 years, I have been employed with the Tribal Law and Policy Institute as the Victim Advocacy Program Specialist. I live in St. Paul, MN but my work involves training, technical assistance and victim advocacy throughout Indian Country.

Prior to my employment with the Tribal Law and Policy Institute, I was an advocate for battered and sexually assaulted women for over 25 years. Throughout my 25 year career, I was an advocate for victims of sexual assault whose cases were being heard in state courts and working with communities that were developing multidisciplinary response teams and establishing or improving sexual assault protocol under state jurisdiction. My work also includes working with a few tribal nations starting to do similar work, that of creating multidisciplinary response teams and to improve their response to victims of sexual assault. One of my roles as an advocate is to be a voice for women who have been harmed by violence and I am honored to do that today on behalf of Indian women who are being raped and murdered. I want to focus my comments on the role of law enforcement within the context of sexual violence crimes committed against American Indian women based on my advocacy work.

The Tribal Law and Policy Institute is a non profit organization (see *www.tlpi.org*) is a Native owned and operated nonprofit corporation, organized to design and de-

velop education, research, training and technical assistance programs which promote the enhancement of justice in Indian Country and the health, well-being, and culture of Native peoples. The vision of the Tribal Law and Policy Institute (TLPI) is to empower Native communities to create and control their own institutions for the benefit/welfare of all community members now and for the future generations. The mission of TLPI is to embrace and strengthen tribal sovereignty and justice while honoring community values, protecting rights, and promoting well being.

In 2004, Amnesty International (AI) approached the TLPI seeking technical assistance with Amnesty's planned study into the problem of sexual violence against Native American and Alaska Native women. Over the course of the last 3 years, TLPI has provided a range of technical assistance services to AI on this study—including providing background, providing resources, gathering information, establishing contacts, setting up meetings with service providers, identifying victim/survivors to interview and reviewing drafts and reports for accuracy.

Most importantly, however, we took a lead role interviewing victim/survivors. I have been the lead person in interviewing the victim/survivors in two of the locations (Standing Rock and Oklahoma) in order to maintain culturally appropriate and victim sensitive interviewing. I was personally involved in interviews of more than 50 victim/survivor interviews.

I would like to clarify two issues. First, Amnesty International paid TLPI for all the time and travel costs associated with this project and no Federal funds were used for this project. Second, I am appearing today in my own capacity rather than on behalf of the Tribal Law and Policy Institute.

We have been hearing the statistics that American Indian and Alaska Native women are being raped, beaten, stalked and murdered at rates higher than any other race. As cited in the *Amnesty report, Maze of Injustice, The Failure to Protect Indigenous Women from Sexual Violence in the USA,* the U.S. Department of Justice's own statistics indicate that Native American and Alaska Native women are more than 2.5 times more likely than other women in the U.S. to be raped. According to these Department of Justice statistics, more than 1 in 3 Native American and Alaska Native women will be raped at some point during their lives and 86 percent of perpetrators of these crimes are non-Native men. It is difficult to know the full prevalence and scope of sexual violence in Indian Country since there have been no comprehensive studies done. Based on my years of experience as an advocate, I bear witness to the fact that the statistics reflected in this report are grossly underestimated.

Amnesty International's research and report only validated what Native American and Alaska Native women have known for a long time; that sexual violence against women has reached epidemic proportions and what is most troubling is that the vast majority of Indian women often face insurmountable barriers to accessing services and realizing any type of justice for the horrendous acts of violence they have experienced. The Amnesty Report contains numerous stories of tragedy, but woven throughout the report are stories of survival and stories of hope. One by one, Indian women came forward to tell their stories, they stood up and broke their silence, taking huge risks to speak out about the many injustices they are experiencing, hoping that their stories, their gifts of truth would create change for other Indian women who are sexually assaulted, beaten and murdered and that they would find some measure of justice by speaking out.

In my 25 year career as an advocate, I have worked with hundreds of Indian women who've been raped, battered and family members of women who've been murdered. I provided advocacy and support to victims of sexual assault from all walks of life both Native and non-Native because the crime of rape knows no racial or socioeconomic barriers. I come here today to bear witness to the pain and suffering and devastation caused by these horrific crimes. I bear witness to the huge barriers that Indian women face as they seek justice, safety and healing. Based on my experience of working within state courts and working with multidisciplinary teams within these jurisdictions, many of these barriers are being removed for victims in mainstream communities, yet that is not the reality for Indian women who experience sexual assault in tribal communities. This needs to change because in my mind, these statistics are not just numbers. It is so easy to become lulled into a state of apathy when we only see numbers. I must constantly remind people, that we must be outraged, appalled and spurred to action because each of these statistics represents a human being, someone's mother, daughter, partner, relative, friend.

Sexual violence comes in many forms and regardless of whether the type of sexual assault fits neatly into a criminal definition, the effects of the choice that that offender made to violate someone, to totally strip her of her decision-making powers, for a few minutes of gaining some personal satisfaction for himself, can result in weeks, months and often years of pain and suffering for the victim. Yet recent sta-

tistics on the rate of prosecution of sexual assaults in Indian Country indicate that offenders are being allowed to rape with impunity. I cannot impress upon you enough, the devastating impact that one experience of sexual violence can have on a person. Sexual violence is much more than a physical assault and violation but extends to a holistic impact affecting every aspect of that person's humanity including her mind, her spirit and her body and the effects can remain with the victim often for years. Indian women who've been raped must not only experience one of the most humiliating, life altering traumas that anyone can experience, but must also grapple with the negative attitudes about rape, the lack of services available in many tribal communities, the lack of appropriate response from service providers such as within the Indian Health Service, and tribal, state and Federal law enforcement authorities. It has been my experience that most women from mainstream communities have access to these crucial services, but that is not the reality for Indian women who've been sexually assaulted.

I would like to describe a typical scenario that Indian women may experience after a sexual assault. This woman has just experienced one the most humiliating, life threatening crimes that anyone can experience. She called law enforcement authorities—yet no one has responded to her call, perhaps due to severely underresourcing or poor access to training. This may be due to law enforcement agencies lack of collaboration and communication or their inability to establish clear lines of authority and jurisdiction. She knows that with other calls, generally it can often take days to get an officer to respond. After much thought she has decided to set out to have a rape exam performed because she's been told that's the only way the assault can be investigated and her perpetrator can be prosecuted with the evidence they will gather at the hospital. She's afraid that she may have contracted a sexually transmitted infection or may have even gotten pregnant from the rape. She either must ask someone to give her a ride, or if she has a vehicle, it may not be very reliable. If she's fortunate she may have someone such as a friend or relative, even better an advocate accompanying her on this trip otherwise she is driving alone to the hospital that may be as far as 100 miles away. There she is, perhaps in a great deal of physical pain because Indian women are more likely to suffer physical injury with the rape. She may be in severe emotional distress, not fully comprehending the magnitude of the sexual assault or what will happen to her in the future. She is terrified, second guessing whether she should report her assault to law enforcement authorities because her perpetrator threatened her with further harm if she did. Yet despite her efforts to seek services that most women in mainstream communities are able to receive, it is quite likely that she will be turned away at the end of her journey, or will be referred to another facility because this Indian Health Service facility does not have a rape kit or anyone who can administer the exam. For those few Indian women who are fortunate enough to have a rape exam done, and to have their assaults investigated, they many never see their cases prosecuted or even receive any communication on the status of their cases or whether the suspect was arrested or not. Yet they see their rapist go free. He may pass by her house on a daily basis. He may be bragging about his exploits, alleging that she asked for it and deserved it. These are the stories that I have heard all too often, to which I bring testimony.

American Indian and Alaska Native women who are sexually assaulted have rights and needs that must be met. American Indian and Alaska Native women need services, need the help of advocates yet there are still many reservations and tribal communities where there are no advocacy services. American Indian and Alaska Native women who are raped must be afforded the same services as other women who've been raped from the mainstream community. Yet that is not the reality in Indian Country. Indian women who've been raped need forensic rape exams. They need to be examined by nurses who are trained and who are sensitive to their needs. Indian women need to have emergency contraception to prevent pregnancy from the rape. Indian women need prophylactic treatment to prevent the possible transmission of sexually transmitted diseases. Yet there are many Indian Health Services facilities that are not equipped to provide these services. Many do not have the necessary kits. Many of them do not have trained nurses or physicians to administer the kits and still more do not provide the emergency contraception and STI treatment that are needed by any woman who's been raped. Indian women must be afforded the same services that I know women from the mainstream society are receiving. That is not the reality for Indian women seeking emergency medical treatment following a sexual assault. Moreover, leadership at the Indian Health Service has been unable or unwilling to develop national standards or guidelines to its facilities on responding to sexual violence. This is unacceptable.

Indian women who've been raped have a right to safety and justice. The only way most Indian women feel they can find justice is by turning to law enforcement. Yet

that is not the reality in Indian Country because in many tribal communities, there are no tribally based law enforcement officers so they must rely on law enforcement officers outside of their community such as the Bureau of Indian Affairs police, state or local law enforcement agencies or the Federal Bureau of Investigation authorities. The response time in most instances, is very slow. There is often a serious lack of cooperation and collaboration between these agencies and tribal authorities and advocates. Consequently, there is a serious lack of reporting of sexual assaults perpetrated on Indian women. Indian women do not report their assaults for many reasons. One of the reasons that Indian women who've been raped don't report their assaults is because they don't trust law enforcement authorities. They have heard the horror stories that they may be blamed, not taken seriously. They are criticized for reporting and then recanting their stories. They are questioned inappropriately leaving the woman feeling responsible for the crime rather than being seen as a legitimate victim of a crime.

There is a lack of awareness as to why sexual violence happens in tribal communities. The problem of sexual violence against Indian women is not simply caused by the "meth" problem in Indian Country. Indeed it may have some impact on the problem of violence against Indian women but the problem of violence against Indian women has been a pervasive problem in tribal communities for many years prior to the increasing prevalence of this drug and it's associated problems. Alcohol has always been the drug of choice to facilitate rape and the drug most commonly associated with sexual violence.

Indian women also report that even if they do report their assault to law enforcement, nothing will happen especially if the perpetrator is a non-Native perpetrator or if the perpetrator is an acquaintance or husband. There is an apparent lack of trust in tribal, state and Federal law enforcement authorities. A woman must be able to trust law enforcement, to be willing to cooperate with them, and many of these officials have not earned the trust. So today, I also carry the message that healing is very difficult to achieve if victims do not feel safe or if they do not experience some measure of justice.

It is quite apparent that there is a desperate need for law enforcement reform, desperate need for sweeping changes to law enforcement policy and protocols, increased resources for law enforcement to increase the response needed to these crimes and last but not least, all law enforcement agencies, particularly those Federal agencies such as the Bureau of Indian Affairs law enforcement agencies and the Federal Bureau of Investigations should be mandated to work in closer collaboration with tribal governments, tribally based law enforcement officials, advocates, through establishing cooperative agreements for the sharing of information, working together to establish coordinated community response teams. There is a clear lack of effective collaboration between tribal authorities and their federal partners. Even if tribal authorities want to prosecute many of these perpetrators, they are unable to do so. As cited in the Amnesty report, the Violence Against Women Act called for coordinated, community responses to domestic violence, sexual assault, and stalking crimes. It is quite evident that coordinated community response is the best approach for achieving lasting and effective results. Strong partnerships and vigorous coordination must be present at the Federal, state, local and tribal levels in order for real change to occur.

I believe that many of these problems are not insurmountable and can be ameliorated. I fully support and agree with the recommendations in the Amnesty report which are summarized as follows:

Key Recommendations

Provide Additional Resources for Standing Rock Initiatives

- The Federal Government should provide funds immediately for the Standing Rock Tribe to support its shelter for survivors of sexual violence on the Reservation.
- The Federal Government should ensure that there is additional funding to support the increased capacity of shelters throughout North and South Dakota that provide services to Indian women.
- The Federal Government should allocate long term and sustained funds to the Standing Rock Police Department, including funds to increase staffing.
- Law enforcement response to women who are survivors of sexual violence must be improved urgently (see below).

Develop Comprehensive Plans of Action to Stop Violence Against Indigenous Women

- Federal and state governments should consult and cooperate with Indigenous nations and Indigenous women to institute plans of action to stop violence against Indigenous women.
- Federal, state and tribal authorities should, in consultation with Indigenous peoples, collect and publish detailed and comprehensive data on rape and other sexual violence that shows the Indigenous or other status of victims and perpetrators and the localities where such offences take place, the number of cases referred for prosecution, the number declined by prosecutors and the reasons why.

Ensure Appropriate, Effective Policing

- Federal authorities must take urgent steps to make available adequate resources to police forces in Indian and Alaska Native villages. Particular attention should be paid to improving coverage in rural areas with poor transport and communications infrastructure.
- Law enforcement agencies should recognize in policy and practice that all police officers have the authority to take action in response to reports of sexual violence, including rape, within their jurisdiction and to apprehend the alleged perpetrators in order to transfer them to the appropriate authorities for investigation and prosecution. In particular, where sexual violence is committed in Indian Country and in Alaska Native villages, tribal law enforcement officials must be recognized as having authority to apprehend both Native and non-Native suspects.
- In order to fulfil their responsibilities effectively, all police forces should work closely with Indigenous women's organizations to develop and implement appropriate investigation protocols for dealing with cases of sexual violence.

Ensure Access to Sexual Assault Forensic Examinations

- Law enforcement agencies and health service providers should ensure that all Indigenous women survivors of sexual violence have access to adequate and timely sexual assault forensic examinations without charge to the survivor and at a facility within a reasonable distance.
- The Federal Government should permanently increase funding for the Indian Health Service to improve and further develop facilities and services, and increase permanent staffing in both urban and rural areas in order to ensure adequate levels of medical attention.
- The Indian Health Service and other health service providers should develop standardized policies and protocols, which are made publicly available and posted within health facilities in view of the public, on responding to reports of sexual violence.
- The Indian Health Service and other health service providers should prioritize the creation of sexual assault nurse examiner programs and explore other ways of addressing the shortage and retention of qualified Sexual Assault Nurse Examiners.

Ensure That Prosecution and Judicial Practices Deliver Justice

- Prosecutors should vigorously prosecute cases of sexual violence against Indigenous women and should be sufficiently resourced to ensure that the cases are treated with the appropriate priority and processes without undue delay. Any decision not to proceed with a case, together with the rationale for the decision, should be promptly communicated to the survivor of sexual violence and any other prosecutor with jurisdiction.
- U.S. Congress should recognize that tribal authorities have jurisdiction over all offenders who commit crimes on tribal land, regardless of their Indigenous or other identity and the authority to impose sentences commensurate with the crime that are consistent with international human rights standards.
- Federal authorities should make available the necessary funding and resources to tribal governments to develop and maintain tribal courts and legal systems which comply with international human rights standards.

Ensure Availability of Support Services for Survivors

- All governments should support and ensure adequate funding for support services, including shelters, for American Indian and Alaska Native survivors of sexual violence.

Urge the U.S. Congress to Provide Adequate Funding

Amnesty International is currently asking Congress to undertake the following important steps:

- Fully fund and implement the Violence Against Women Act—and in particular Tribal Title (Title IX), the first-ever effort within VAWA to fight violence against Native American and Alaska Native women. This includes a national baseline study on sexual violence against Native women, a study on the incidence of injury from sexual violence against Native women and a Tribal Registry to track sex offenders and orders of protection.
- Increase funding for the Indian Health Service (IHS) and IHS contract facilities. Such moneys should be used to increase the number of Sexual Assault Nurse Examiners so that survivors may receive timely forensic medical examinations, at no charge, following sexual assault. Furthermore, the IHS should ensure that appropriate protocols are in place for the treatment of survivors of sexual violence.

I, and my sister advocates, have worked long and hard to raise awareness to the problem of sexual violence in our communities, to create and improve services for victims of sexual violence, to mobilize our communities to protect Indian women and to hold offenders accountable. Much of the work of advocates throughout Indian Country started from our kitchen tables and front porches and mostly with very limited resources. I am proud of the work done by the many Indian women advocates that have worked tirelessly to send a resounding message that Indian women are experiencing a national tragedy. It is clear that those voices have been heard with the passage of VAWA 05 Title IX (Tribal Programs).

The Violence Against Women Act has improved Federal, state, and local responses to sexual assault however much remains to be done in order to more fully address the crisis that is occurring in Indian Country and addressing the needs of victims of sexual violence and their families. While the VAWA initiated progress in strengthening the criminal justice system's response to sexual violence, it's clear that major service, funding and policy gaps still exist in Indian Country. Although funding is desperately needed, money alone will not solve these problems.

Lastly, improving policing alone will not solve the problem. It is my hope that the Federal Government in close partnership with tribal governments, should take steps to hold offenders accountable and to provide the level of services needed by all victims of sexual violence and those same services that are afforded to victims from the mainstream community. It must be made clear that sexual violence in any form, will not be tolerated, and that victims will be protected with the full force of the law.

For more specific information on the Amnesty International report "Maze of Injustice: The failure to protect Indigenous women from sexual violence in the USA", I have attached Amnesty International testimony (by Carol Pollack, Researcher for Amnesty International U.S.A.) from a June 1, 2007 U.S. House of Representatives Field Hearing of the Committee on Natural Resources, Office of Indian Affairs. I ask that this attachment be made part of the official record on this hearing of the U.S. Senate Committee on Indian Affairs.

ATTACHMENT—"THE NEEDS AND CHALLENGES OF TRIBAL LAW ENFORCEMENT ON INDIAN RESERVATIONS" BY CAROL POLLACK, RESEARCHER FOR AMNESTY INTERNATIONAL U.S.A.

Introduction

Madame Chairwoman and Members of the Committee, thank you for inviting Amnesty International to testify on an issue that significantly impacts the human rights of American Indian and Alaska Native women. I would like to submit my full statement for the record. I will focus my remarks on the findings of Amnesty International's recent report "Maze of Injustice: The failure to protect Indigenous women from sexual violence in the USA".

Amnesty International is a worldwide human rights movement with more than 2.2 million members and supporters in more than 150 countries and territories. Amnesty International's vision is for every person to enjoy all of the human rights enshrined in the Universal Declaration of Human Rights and other international

human rights standards. Amnesty International's mission is to conduct research and take action to prevent and end grave abuses of all human rights. Amnesty International is independent of any government, political ideology, economic interest or religion. The organization is funded by individual members; no funds are sought or accepted from governments for investigating and campaigning against human rights abuses.

"Maze of Injustice" Report

On April 24, 2007, Amnesty International released the findings of over 2 years of investigation into the problem of sexual violence against Native American and Alaska Native Women. The report is part of a worldwide campaign to Stop Violence against Women launched by Amnesty International in March 2004. Since then AI has published reports on aspects of violence against women in 40 countries.

Amnesty International launched an investigation after learning that U.S. Department of Justice's own statistics indicate that Native American and Alaska Native women are more than 2.5 times more likely than other women in the U.S. to be raped. According to Department of Justice statistics, more than 1 in 3 Native American and Alaska Native women will be raped at some point during their lives and 86 percent of perpetrators of these crimes are non-Native men.

Amnesty International's report examines some of the reasons why Indigenous women in the U.S. are at such risk of sexual violence and why survivors are so frequently denied justice. The report is based on research carried out during 2005 and 2006 in consultation with Native American and Alaska Native individuals. In the course of this research, Amnesty International interviewed survivors of sexual violence and their families, activists, support workers, service providers, and health workers. Amnesty International also interviewed officials across the U.S., including tribal, state and Federal law enforcement officials and prosecutors, as well as tribal judges. Amnesty International also met representatives from the Federal agencies which share responsibility with tribal authorities for addressing or responding to crimes in Indian Country.

Amnesty International conducted detailed research in three locations with different policing and judicial arrangements: the State of Oklahoma, the State of Alaska, and the Standing Rock Reservation in North and South Dakota. While this report presents a national overview of sexual violence against Indigenous women, it primarily presents our specific findings in these key areas of research.

Each location was selected for its specific jurisdictional characteristics. Oklahoma is composed for the most part of parcels of tribal lands intersected by state land where tribal, state or Federal authorities may have jurisdiction. In Alaska, Federal authorities have transferred their jurisdiction to state authorities so that only tribal and state authorities have jurisdiction. The Standing Rock Reservation illustrates the challenges involved in policing a vast, rural reservation where tribal and Federal authorities have jurisdiction.

The Standing Rock Reservation (also known as the Standing Rock Lakota/Dakota Reservation) straddles the border of North and South Dakota and covers an area of 2.3 million acres (approximately 9,312km^2). Some 9,000 people live on the Reservation, about 60 percent of whom are Native American. The Standing Rock Tribal Council is the tribal government and the Standing Rock Police Department (SRPD) is operated by the BIA. The Standing Rock Tribe has a tribal court, which hears civil and criminal complaints.

Amnesty International is indebted to all the survivors of sexual violence who courageously came forward to share their stories and to those who provided support to survivors before and after they spoke with Amnesty International and to the Native American and Alaska Native organizations, experts and individuals who provided advice and guidance on research methodology and on the report itself. Amnesty International hopes that "Maze of Injustice" can contribute to and support the work of the many Native American and Alaska Native women's organizations and activists who have been at the forefront of efforts to protect and serve women.

This report attempts to represent the stories of survivors of sexual violence; their perspectives must inform all actions taken to end violence against Indigenous women. The report presents and references their statements. For example:

> One Native American woman living on the Standing Rock Reservation told Amnesty International that in September 2005 her partner raped her and beat her so severely that she had to be hospitalized. He was released on bond and an arrest warrant was issued after he failed to appear in court. However, SRPD officers did not arrest him. One morning she woke up to find him standing by her couch looking at her.—Interview (name withheld), February 2006

High Levels of Sexual Violence

Amnesty International's research confirmed what Native American and Alaska Native advocates have long known: that sexual violence against women from Indian nations is at epidemic proportions and that Indian women face considerable barriers to accessing justice. Native American and Alaska Native women may never get a police response, may never have access to a sexual assault forensic examination and, even if they do, they may never see their case prosecuted. As a result of barriers including a complex jurisdictional maze and a chronic lack of resources for law enforcement and health services, perpetrators are not being brought to justice.

Amnesty International's interviews suggest that available statistics on sexual violence greatly underestimate the severity of the problem and fail to paint a comprehensive picture of the abuses. No statistics exist specifically on sexual violence in Indian Country; more data is urgently needed to establish the prevalence against Indigenous women.

One support worker in Oklahoma told AI that only 3 of her 77 active cases of sexual and domestic violence involving Native American women were reported to the police. A medical professional responsible for post-mortem examinations of victims of rape and murder in Alaska told AI that Alaska Native women comprised almost 80 percent of confirmed cases in the state since 1991.

According to FBI figures, in 2005 South Dakota had the fourth highest rate of "forcible rapes" of women of any U.S. state. Interviews with survivors of sexual violence, activists and support workers on the Standing Rock Reservation indicate that rates of sexual violence are extremely high. Many women interviewed by Amnesty International on the Standing Rock Reservation could not think of a single Native American woman within their community who had not been subjected to sexual violence, and many survivors reportedly experienced sexual violence several times in their lives by different perpetrators. There were also several reports of gang rapes and Amnesty International was told of 5 rapes which took place over 1 week in September 2005.

High levels of sexual violence on the Standing Rock Reservation take place in a context of high rates of poverty and crime. South Dakota has the highest poverty rate for Native American women in the USA with 45.3 percent living in poverty. Crime rates on the Reservation often exceed those of its surrounding areas.

Amnesty International documented many incidents of sexual violence against American Indian and Alaska Native women however the great majority of stories remain untold. Violence against women is characteristically underreported due to fear of retaliation and a lack of confidence that reports will be taken seriously. Historical relations between Indigenous women and government agencies also affect the level of reporting sexual violence.

There are more than 550 federally recognized American Indian and Alaska Native tribes in the United States. Federally recognized Indian tribes are sovereign under U.S. law, with jurisdiction over their citizens and land and maintaining government-to-government relationships with each other and with the U.S. Government. The unique legal relationship of the United States to Indian tribes creates a Federal trust responsibility to assist tribal governments in safeguarding the lives of Indian women.

The welfare and safety of American Indian and Alaska Native women, as citizens of sovereign tribal nations, are directly linked to the authority and capacity of their nations to address sexual violence. However, the Federal Government has steadily eroded tribal government authority and chronically underfunded those law enforcement agencies and service providers that should protect Indigenous women from sexual violence.

Issues of Jurisdiction

Amnesty International received numerous reports that complicated jurisdictional issues can significantly delay the process of investigating and prosecuting crimes of sexual violence. The Federal Government has created a complex maze of tribal, state and Federal law that has the effect of denying justice to victims of sexual violence and allowing perpetrators to evade prosecution.

Three main factors determine where jurisdictional authority lies: whether the victim is a member of a federally recognized Indian tribe or not; whether the accused is a member of a federally recognized Indian tribe or not; and whether the alleged offence took place on tribal land or not. The answers to these questions are often not self-evident. However, this information determines whether tribal, state or Federal authorities have jurisdiction to investigate and prosecute the crime. Jurisdiction of these different authorities often overlaps, resulting in confusion and uncertainty.

Tribal and Federal authorities have concurrent jurisdiction on all Standing Rock Reservation lands over crimes where the suspected perpetrator is American Indian. In instances in which the suspected perpetrator is non-Indian, Federal officials have exclusive jurisdiction. Neither North nor South Dakota state police have jurisdiction over sexual violence against Native American women on the Standing Rock Reservation. State police do however have jurisdiction over crimes of sexual violence committed on tribal land in instances where the victim and the perpetrator are both non-Indian. The jurisdictional challenges differ in Alaska and in Oklahoma.

As recorded by Andrea Smith, University of Michigan, Assistant Professor of Native Studies Jodi Rave, "South Dakota Tribal-City Police Department a National Model for Handling Domestic Abuse," The Missoulian, September 24, 2006: *"[N]on-Native perpetrators often seek out a reservation place because they know they can inflict violence without much happening to them."*

Amnesty International is concerned that jurisdictional issues not only cause confusion and uncertainty for survivors of sexual violence, but also result in uneven and inconsistent access to justice and accountability. This leaves victims without legal protection or redress and allows impunity for the perpetrators, especially non-Indian offenders who commit crimes on tribal land.

According to a state prosecutor in *South Dakota,* the confusing and complicated jurisdiction over crime on and around reservations in South Dakota, means that some crimes just "fall through the cracks." Amnesty International also received reports that perpetrators seek to evade law enforcement by fleeing to another jurisdiction.

Flights by criminal occur in both directions—away from and to tribal land. Walworth County Sheriff Duane Mohr stated the problem with this as follows in the Rapid City Journal, December 21, 2005: *"It's only about a mile from town to the bridge. Once they cross the bridge [to the Standing Rock Reservation], there's not much we can do. . . We've had people actually stop after they've crossed and laugh at us. We couldn't do anything."*

Some tribal, state and federal law enforcement agencies address the jurisdictional complexities by entering into cooperation agreements. These may take the form of cross-deputization agreements, which allow law enforcement officials to respond to crimes that would otherwise be outside their jurisdiction. A second form of agreement addresses extradition in situations in which a perpetrator seeks to escape prosecution by fleeing to another jurisdiction. Across the U.S., experiences of such inter-agency cooperation agreements vary greatly. Where they are entered into on the basis of mutual respect, cooperation agreements can have the potential to smooth jurisdictional uncertainties and allow improved access to justice for victims of sexual violence.

In Standing Rock, the SRPD and some state agencies have explored cooperation through cross-deputization agreements that empower SRPD officers to arrest and detain individuals for crimes committed on state land and enable state police officers to arrest individuals for crimes committed by Native Americans on tribal land.

Problems of Policing

Amnesty International found that police response to sexual violence against American Indian and Alaska Native women at all levels is inadequate. Although jurisdictional issues present some of the biggest problems in law enforcement response, other factors also have a significant impact including lack of resources and lack of communication with survivors.

Lack of Resources: Delays and Failure to Respond

Law enforcement in Indian Country and Alaska Native villages is chronically underfunded. The U.S. Departments of Justice and Interior have both confirmed that there is inadequate law enforcement in Indian Country and identified underfunding as a central cause. According to the U.S. Department of Justice, tribes only have between 55 and 75 percent of the law enforcement resources available to comparable non-Native rural communities. AI also found that a very small number of officers usually cover large territories and face difficult decisions about how to prioritize their initial responses.

The *Standing Rock* Police Department in February 2006 consisted of 6 or 7 patrol officers to patrol 2.3 million acres of land, with only 2 officers usually on duty during the day. Amnesty International documented lengthy delays in responding to reports of sexual violence against Indigenous women. Women on the reservation who report sexual violence often have to wait for hours or even days before receiving a response from the police department, if they receive a response at all.

> *"It feels as though the reservation has become lawless"*—Roundtable interview, Standing Rock Reservation (name withheld) February 22, 2006

Sometimes suspects are not arrested for weeks or months after an arrest warrant has been issued. Amnesty International was told that on the Standing Rock Reservation there are on average 600–700 outstanding tribal court warrants for arrest of individuals charged with criminal offences. Failure to apprehend suspects in cases of sexual violence can put survivors at risk, especially where the alleged perpetrator is an acquaintance or intimate partner and there is a threat of retaliation.

The Standing Rock Police Department was selected, together with the law enforcement departments of 24 additional tribal nations, to receive an annual base increase in Federal funding of law enforcement services. The SRPD began receiving an additional US$250,000 per year starting in 2006. However, according to the Chief of Police the funds will be needed primarily to fill vacancies in the existing police force, rather than increasing the number of law enforcement officers on the reservation.

Amnesty International found that FBI involvement in investigations of reports of sexual violence against Indigenous women is rare and even in those cases that are pursued by the FBI, there can be lengthy delays before investigations start.

Amnesty International's research also revealed a worrying lack of communication by all levels of law enforcement with survivors. In a number of cases, survivors were not informed about the status of investigations, the results of sexual assault forensic examinations, the arrest or failure to arrest the suspect, or the status of the case before tribal, Federal or state courts.

> The mother of a survivor of sexual violence from the Standing Rock Reservation told Amnesty International how she returned home in September 2005 to find her 16-year-old daughter lying half-naked and unconscious on the floor. She took her daughter to the hospital in Mobridge, South Dakota, where a sexual assault forensic examination was performed. She described how the suspected perpetrator, fled to Rapid City, South Dakota, which is outside the jurisdiction of the SRPD. He returned to the Reservation in early 2006 and was held by police for 10 days, although both mother and daughter only discovered this when they rang the SRPD to ask about the status of the case. They found out that the suspect was to go before a tribal court, but the mother told Amnesty International that to get this information, she had to go to Fort Yates and ask them in person. She told Amnesty International that she hoped that the case would be referred to the Federal authorities because this would mean a lengthier sentence for the perpetrator. She said that, months after the attack, a Federal Bureau of Investigation (FBI) officer and a BIA Special Investigator arrived unannounced. As the daughter was not home at the time, the mother told them where to find her. However, she never heard from them again. Federal prosecutors did eventually pick up the case and in December 2006 the perpetrator entered into a plea bargain and was awaiting sentencing at the time this report was written.—Interview with mother of survivor (name withheld)

Training

Amnesty International is concerned that Federal, state and tribal training programs for law enforcement officials may not include adequate or sufficiently in-depth components on responding to rape and other forms of sexual violence, on issues surrounding jurisdiction and on knowledge of cultural norms and practices. As a result officers often do not respond effectively and are not equipped with the necessary skills to deal with crimes of sexual violence.

Amnesty International received reports that small law enforcement agencies with few resources have considerable difficulty freeing up officers to attend training courses. An officer in the SRPD reported that training on interviewing survivors of sexual violence is not available unless it is hosted or paid for by another organization. He noted that, given the limited number of officers on the force, the SRPD cannot provide them all with training opportunities.

Inadequate Forensic Examinations and Related Health Services

An important part of any police investigation of sexual violence involves the collection of forensic evidence. Such evidence can be crucial for a successful prosecution. The evidence is gathered through a sexual violence forensic examination, sometimes using tools known as a "rape kit". The examination is performed by a health professional and involves the collection of physical evidence from a victim of sexual violence and an examination of any injuries that may have been sustained. Samples collected in the evidence kit include vaginal, anal and oral swabs, finger-nail clippings, clothing and hair. All victims of sexual violence should be offered a forensic examination, regardless of whether or not they have decided to report the case to the police. In its National Protocol for Sexual Assault Medical Forensic Examina-

tions, the U.S. Department of Justice recommends that victims should be allowed to undergo the examination whether or not they formally report the crime.

Law Enforcement Officials

As the first to respond to reports of a crime, law enforcement officials should ensure that women can get to a hospital or clinic where their injuries can be assessed and the forensic examination can be done. This is particularly important where women have to travel long distances to access a medical facility and may not have any way of getting there themselves, including in Standing Rock. Once a sexual assault forensic examination has been completed, law enforcement authorities are responsible for storing the evidence gathered and having it processed and analyzed by laboratories.

In some cases, law enforcement have mishandled evidence from forensic examinations from health care providers, including through improper storage and loss or destruction of evidence before forensic analysis had been carried out.

Amnesty International found that the provision of sexual assault forensic examinations and related health services to American Indian and Alaska Native women varies considerably from place to place. Survivors of sexual violence are not guaranteed access to adequate and timely sexual assault forensic examinations—critical evidence in a prosecution. Often this is the result of the U.S. government's severe under-funding of the Indian Health Service (IHS), the principal provider of health services for American Indian and Alaska Native peoples.

Health Service Providers

It is essential that health service facilities have the staff, resources and expertise to ensure the accurate, sensitive and confidential collection of evidence in cases of sexual violence and for the secure storage of this evidence until it is handed over to law enforcement officials.

The IHS facilities suffer from under-staffing, a high turnover, and a lack of personnel trained to provide emergency services to survivors of sexual violence. Amnesty International found that the IHS has not prioritized the implementation of programs involving sexual assault nurse examiners (SANEs)—registered nurses with advanced education and clinical preparation in forensic examination of victims of sexual violence—throughout its facilities. Although there are no figures on how many IHS hospitals have SANE programs, officials indicated to AI that fewer than 1O had implemented such programs. Moreover, according to a study performed by the Native American Women's Health Education Resource Center, 44 percent of IHS facilities lack personnel trained to provide emergency services in the event of sexual violence.

Reports to Amnesty International indicate that many IHS facilities lack clear protocols for treating victims of sexual violence and do not consistently provide survivors with a forensic sexual assault examination. IHS officials told Amnesty International that the agency had posted detailed protocols online. However, these protocols are not mandatory and a 2005 survey of facilities by the Native American Women's Health Education Resource Center found that 30 percent of responding facilities did not have a protocol in place for emergency services in cases of sexual violence. Of the facilities nationwide that reported having a protocol, 56 percent indicated that the protocol was posted and accessible to staff members.

Amnesty International is also concerned that survivors have sometimes been required to bear the cost of an examination or of traveling long distances to health facilities. Women who have been raped on the Standing Rock Reservation may need to travel for over an hour to get to the IHS hospital in Fort Yates. Once there, they may discover that there is no one on staff who is able to conduct a sexual assault forensic examination. In 2006 the hospital employed one woman doctor who undertook most of the examinations. According to a Fort Yates IHS health professional, "most male doctors don't feel trained and don't want to go to court. So they will send rape cases to Bismarck for examination there." According to the practitioner, only one third of the women referred from Fort Yates on Standing Rock to the medical facility 80 miles away in Bismarck actually receive an examination. Some women do not make the journey to Bismarck and those that do may face lengthy delays and leave without an examination.

Although IHS services are free, if an American Indian woman has to go to a non-IHS hospital for an examination, she may be charged by that facility. The IHS has a reimbursement policy, but it is complex and survivors may not be aware of it. In some cases the IHS has reportedly failed or refused to pay for forensic examinations at outside facilities. This can be a significant obstacle. Survivors of sexual violence in the southern portion of the Standing Rock Reservation are much closer to Mobridge Regional Hospital than Fort Yates, but because the former is not part of

the IHS it may require payment. For women dealing with the trauma of very recent sexual violence, concerns about being required to travel further or to pay can be a serious disincentive to undergoing a forensic examination.

Barriers to Prosecution

> A Native American woman in 2003 accepted a ride home from two white men who raped and beat her, then threw her off of a bridge. She sustained serious injuries, but survived. The case went to trial in a state court but the jurors were unable to agree on whether the suspects were guilty. A juror who was asked why replied: "She was just another drunk Indian." The case was retried and resulted in a 60-year sentence for the primary perpetrator, who had reportedly previously raped at least four other women, and a 10-year sentence for the second perpetrator.

Despite the high levels of sexual violence, Amnesty International found that prosecutions for crimes of sexual violence against Indigenous women are rare in Federal, state and tribal courts, resulting in impunity for perpetrators. The lack of comprehensive and centralized data collection by tribal, state and Federal agencies renders it impossible to obtain accurate information about prosecution rates. However, survivors of sexual abuse, activists, support workers and officials reported that prosecutions for sexual assault are rare in Federal, state and tribal courts.

Tribal courts are the most appropriate for adjudicating cases that arise on tribal land. However, the U.S. Federal Government has interfered with the ability of tribal justice systems to respond to crimes of sexual violence by underfunding tribal justice systems, prohibiting tribal courts from prosecuting non-Indian or non-Alaska Native suspects and limiting tribal court custodial sentencing to only 1 year per offense.

Given the inadequate rate of Federal and state prosecutions of sexual assault cases, some tribal courts prosecute sexual assault cases despite this sentencing limitation to hold offenders accountable. Some tribal prosecuting authorities charge suspected perpetrators with multiple offenses, which provides the possibility of imposing consecutive sentences; others work with criminal sanctions other than imprisonment, including restitution, community service and probation.

At the Federal level, crimes on the Standing Rock Reservation may be prosecuted by U.S. Attorneys located in Aberdeen or Bismarck. However, Amnesty International's research suggests that there is a failure at the Federal level to pursue cases of sexual violence against Indigenous women. Prosecutors have broad discretion in deciding which cases to prosecute, and decisions not to prosecute are rarely reviewed.

From October 1, 2002 to September 30, 2003, Federal prosecutors declined to prosecute 60.3 percent of the sexual violence cases filed in the United States. Only 27 of the 475 cases they declined were prosecuted in other courts. Because data on sexual violence specifically from Indian Country is not compiled, this statistic includes all cases involving Indigenous and non-Native victims. However, these numbers provide some indication of the extent to which these crimes go unpunished. Significantly, between 2000 and 2003, the BIA was consistently among the investigating agencies with the highest percentage of cases declined by Federal prosecutors. It is not possible to establish how many of these cases submitted by the BIA involved sexual violence. The U.S. Justice Department does not publish statistics on the extent to which it prosecutes crimes of rape against Indian women so it is impossible to know the true extent to which it is failing to prosecute these serious crimes.

One of the research challenges faced by Amnesty International was in relation to gathering data related to Federal prosecution rates of crimes of sexual violence that take place in Indian Country. Amnesty International sent questionnaires to the 93 individual U.S. Attorneys, who prosecute crimes within Indian Country at the Federal level, seeking information on prosecution rates for crimes of sexual violence committed against Indigenous women. Amnesty International was informed by the Executive Office of U.S. Attorneys that individual U.S. attorneys would not be permitted to participate in the survey. The Executive Office of U.S. Attorneys told Amnesty International that data collected is not broken down into specific offense categories, such as sexual assault crimes. The Executive Office for U.S. Attorneys did provide Amnesty International with a list of some of the cases of sexual violence arising in Indian Country that had been prosecuted in recent years. Of the 84 cases provided, only 20 involved adult women. The remaining cases mostly involved children. In the cases listed, prosecutions for sexual violence against adult Native American women took place in only 8 of the 93 districts. Given the lack of comprehensive data, Amnesty International was unable to establish the extent to which

crimes of sexual violence against Indigenous women are prosecuted by Federal authorities.

At the state level, sexual violence crimes carried out in areas bordering the Standing Rock Reservation may be prosecuted by state's attorneys in neighboring counties in North or South Dakota. Many Native Americans from Standing Rock indicated that cases in general involving Native American victims and non-Native perpetrators are not prosecuted vigorously by state courts in North and South Dakota. A District Attorney in a bordering county told Amnesty International that, in South Dakota, insufficient funds can affect the number of cases prosecuted. It would also appear that state attorneys receive little or no training on prosecuting sexual violence and on cultural competency.

Indigenous survivors of sexual violence also face prejudice and discrimination at all stages and levels of Federal and state investigation and prosecution. Amnesty International is concerned that this can influence decisions about whether to prosecute cases, how prosecutors present survivors during trials, how juries are selected and how they formulate their decisions.

Amnesty International received a number of reports that prosecutors at all levels fail to provide information consistently to victims of sexual violence about the progress of their cases. Survivors are frequently not informed of whether their cases will proceed to trial.

Inadequate Resources for Indigenous Support Initiatives

Programs run by Native American and Alaska Native women are vital in ensuring the protection and long-term support of Indigenous women who have experienced sexual violence. However, lack of funding is a widespread problem. Programs run by Indigenous women often operate with a mix of Federal, state, and tribal funds, as well as private donations. However such funding in often limited.

In 2005, the non-governmental organization South Dakota Coalition against Domestic Violence and Sexual Assault contributed to the founding of Pretty Bird Woman House, a domestic violence program on the Standing Rock Reservation. The program, which is named after Ivy Archambault (Pretty Bird Woman), a Standing Rock woman who was raped and murdered in 2001, operates a shelter in a temporary location and does not yet have funding for direct services for its clients, but helps women to access services off the Reservation. Given the rates of violence against women on the Standing Rock Reservation, it is imperative that the Reservation have its own permanent shelter.

For women in or near the southern part of the Reservation, there are two shelters available: the Sacred Heart Shelter on the Cheyenne River Reservation, or Bridges Against Domestic Violence (BADV), which is located in Mobridge, South Dakota and where up to 85 percent of women using the shelters are Native American, mainly coming from the Standing Rock Reservation. In March 2005, BADV held a conference entitled "Decide to End Sexual Violence." There were reports that following the conference women on the Reservation showed increased confidence in reporting. Amnesty International believes that public outreach and education such as that undertaken by BADV is an important element in creating an environment in which survivors feel able to report sexual violence.

The Federal Government should provide funds immediately for the Standing Rock Tribe to support its shelter for survivors of sexual violence on the reservation. The government should ensure that there is additional funding to support the increased capacity of shelters throughout North and South Dakota that provide services to Indian women.

An important achievement in the provision of culturally appropriate support services to Native American and Alaska Native women has been the formation of 16 tribal coalitions working against domestic and sexual violence across the U.S. The specific activities of the coalitions vary, but often include the provision of training to tribal governments, law enforcement officials, prosecutors, health professionals, support workers and activists. At national level, organizations such as Sacred Circle and Clan Star provide national leadership and policy guidance for Native women's organizations and shelters.

International Law

Sexual violence against women is not only a criminal or social issue; it is a human rights abuse. While the perpetrator is ultimately responsible for his crime, authorities also bear a legal responsibility to ensure protection of the rights and well-being of American Indian and Alaska Native peoples. They are responsible as well if they fail to prevent, investigate and address the crime appropriately.

The United States has ratified many of the key international human rights treaties that guarantee Indigenous women's protection against such abuses, including

the right not to be tortured or ill-treated; the right to liberty and security of the person; and the right to the highest attainable standard of physical and mental health. All women have the right to be safe and free from violence.

International law is clear: governments are obliged not only to ensure that their own officials comply with human rights standards, but also to adopt effective measures to guard against acts by private individuals that result in human rights abuses. This duty—often termed "due diligence"—means that states must take reasonable steps to prevent human rights violations and, when they occur, use the means at their disposal to carry out effective investigations, identify and bring to justice those responsible, and ensure that the victim receives adequate reparation. Amnesty International's research shows that the United States is currently failing to act with due diligence to prevent, investigate and punish sexual violence against Native American and Alaska Native women. The erosion of tribal governmental authority and resources to protect Indigenous women from crimes of sexual violence is inconsistent with international standards on the rights of Indigenous peoples.

The U.N. Declaration on the Rights of Indigenous Peoples, adopted by the U.N. Human Rights Council in June 2006, elaborates minimum standards for the recognition and protection of the rights of Indigenous peoples in diverse contexts around the world. Provisions of the Declaration include that Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development (Article 3); that States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women . . . enjoy the full protection and guarantees against all forms of violence and discrimination. (Article 22(2)); and the right of Indigenous peoples "to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, where they exist, juridical systems or customs, in accordance with international human rights standards" (Article 34).

Key Recommendations*

We respectfully refer you to "Maze of Injustice: The failure to protect Indigenous women from sexual violence in the USA" for more detailed information and recommendations. Thank you for the opportunity to testify on this important human rights topic.

The CHAIRMAN. Ms. Clairmont, thank you very much. We appreciate your testimony.

The testimony given by all of you is in some ways very depressing, because it describes a law enforcement that seems broken, describes victims who are victimized by crime for which there is not appropriate law enforcement follow-up.

Chairman Wells, you indicated that your tribal lands cover 1 million acres, you have 6 law enforcement officers and the response time is generally about an hour, is that correct?

Mr. WELLS. It depends on what side of the reservation the incident happens. We had a case where a security officer for the Mandaree segment was beaten up by two individuals. He had a two-way radio and a flashlight, and it was night, of course. It took an hour and a half for the police officer on duty, who was a tribal COPS–FAST officer, to come from the White Shield segment all the way around the reservation, which includes the bridge, going through Four Bears Bridge, down to Mandaree, took an hour and a half. And he basically had to not clean himself up until he had photos taken. That night, the million acres was being patrolled by one tribal COPS–FAST officer, a female. She did the job that night.

The CHAIRMAN. You describe in your testimony the contacts you have had with Bureau of Indian Affairs regional office, for which there is no response. Is that common?

* See Key Recommendations section of Ms. Clairmont's prepared statement.

Mr. WELLS. For Fort Berthold, I believe we have been shorted when the line of authority for supervision was changed in 1999 or so, from the line superintendent of the BIA being the supervisor of the local police chief of the BIA, they transferred it down to do the justice to Aberdeen area. Since then, we have lost the communication connection. When that took place, it eroded to basically blowing us off.

As the Chairman since November 7, 2006, I haven't had one call, one visit in my office. I have called, written letters, even on the 638 opportunity that was our last avenue to try to make a difference on law enforcement. It was 8 years that I am aware of that we held off doing a 638 process. And now we are doing that, and we can't even get technical contact, whether by phone or by mail.

I think on paper, they say they are doing what they are supposed to. But in reality, they are just blowing us off.

The CHAIRMAN. We will probably talk to the Vice Chairman because I think it might be useful for us to do a survey around the Country of tribal leaders and tribal governments, to evaluate their contacts with and the responses to the regional Bureau of Indian Affairs offices. The fact is, we know from history the BIA is an unbelievably bureaucratic system. And it bothers me to hear that we have regional offices that don't respond, even when we requested them to respond, they do not respond adequately.

So I think it might be useful for us to do some sort of evaluation around the Country of how these regional offices are serving the interests.

Ms. Clairmont, are things getting better or are they deteriorating with respect to the areas that you are working in?

Ms. CLAIRMONT. It is difficult to know. I can only base my comments on anecdotal evidence and what I hear from victim survivors that their reports are not being responded to appropriately. Long delays, if they hear at all from law enforcement. So I think it has been, the conditions have been pretty poor all along. So it is difficult to gauge any kind of improvement when that is all you hear.

The CHAIRMAN. This Committee really thanks you for your work, for a lot of years of work on behalf of victims. That is the Lord's work and thank you for doing it.

Ms. CLAIRMONT. Thank you.

The CHAIRMAN. Chairman Dillon, the tribe that you chair, that is an urban tribe, isn't it? It is Tacoma, Washington?

Mr. DILLON. Yes, sir. It is partly in the city of Tacoma, partly in the city of Fife, as well as Milton and Edgewood.

The CHAIRMAN. Aside from the issue of lack of resources, which is a big deal, what part of the problem with respect to the justice that we attempt to achieve on Indian reservations, what part of the problem is as a result of all these jurisdictional issues?

Mr. DILLON. I think the biggest problem probably comes from the lack of understanding and whose jurisdiction it is. Although we do have a relationship with the city of Tacoma and the County of Pierce, and we have just, I think, completed one with the city of Fife, there is a failure of who is the correct jurisdiction to enforce the law there. We helped solve part of the problem, once we had finished the local agreement with the city of Tacoma, we were having a very serious, well, it is getting serious again, that was the

drugs, tribal lands, knowing that the city or county couldn't come in and assert authority there. Once these agreements, inter-local agreements had been completed, it did away somewhat on those areas. But the gangs have continued to build and build, and they are back on the reservation again.

It is the lack of, more the lack of understanding who has the authority and who is willing to accept that authority.

The CHAIRMAN. I thank both you and Chairman Wells for giving us a description of the challenges you are facing. Of course, the purpose of our hearings are to try to find responses and answers and to try to find solutions. We will be hearing as well from Joe Garcia, the President of the National Congress of American Indians, on the next panel and some others as well.

We appreciate the recommendations that you have offered. Mostly we thank you for being willing to come to Washington to share with us the challenges that you find as tribal leaders. We are very interested in trying to work through all of these jurisdictional issues and trying to work through the issues of providing adequate resources. Having one person providing law enforcement for a million acres and having an hour and a half response to a violent crime is just not acceptable. That is not something that we should accept in this Country.

Yes, sir?

Mr. LAPOINTE. If I might add, Mr. Chairman, our law enforcement and our court system do not have the ability to prosecute beyond 365 days, which is the term on Native reservations. And the streets, they argue with themselves. Our law enforcement says, well, let city of Tacoma have it because they have stronger laws than we do, they can convict and send people to prison or treatment or whatever.

The CHAIRMAN. But that is a decision you have made at the tribal level?

Mr. LAPOINTE. No, our chief of police made that decision.

The CHAIRMAN. But I am talking about the limitation of 1 year in jail and a $5,000 fine, which I understand is the limitation on your court system.

Mr. LAPOINTE. Yes.

The CHAIRMAN. That is a judgment your tribe has made, or would make, is that correct?

Mr. LAPOINTE. No, that is what Federal law allows us.

The CHAIRMAN. I see.

Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman, and thank you to all of you for your testimony, Chairman Dillon, Mr. LaPointe and Chairman Wells, I recognize that it is one thing to come and give testimony before a committee and speak technically. But to appreciate the personal impact to your families that you have seen, to hear your description of having to pull your grandchildren out of the way of drive-by shootings, it makes it even more real to those of us sitting up here on the dais. So I appreciate the stories.

Chairman Wells, you made a statement, you said that when somebody dials 9–1–1, the first question that is asked is, are you a tribal member. Well, if you say no, what happens to that call?

Do they try to direct your call to the appropriate entity that would then respond? Or do they hang up on you?

Mr. WELLS. I believe it would go to the city police, that is if it is within the confines of New Town, and then the city police of Parshall.

Senator MURKOWSKI. Would they transfer that call? I want to make sure that they don't just hang up and say, well, you have the wrong number.

Mr. WELLS. I believe so. But we have intermarriages, where non-Indian spouse and an Indian spouse, and it runs into really a frustration and confusion. Then it is not easy for the officers, any way you go. That maze that you had up there earlier is what we endure.

But I believe the 9–1–1 system is good for the city of Parshall and the city of New Town if it is a non-Indian. But if it is a tribal member, they turn different ways.

Senator MURKOWSKI. And again, the question is, whether or not they attempt to assist you in going in the right direction in terms of contacting the authorities there, so that you are not just told, well, sorry, we can't help you. We want to know that 9–1–1 is going to work whether you are a tribal member or non-tribal member, whether it is an individual where the victim is from a tribe or not from a tribe, you shouldn't have to sort through the jurisdiction table before they send somebody to help. It sounds like it is still pretty complicated.

Mr. WELLS. Madam Vice Chair, I believe it is a 50–50. And more or less less than 50 percent that you will be served.

Senator MURKOWSKI. I see. Very disappointing.

Ms. Clairmont, I too want to thank you for your advocacy in a very important area for many years. You do very good work and we greatly appreciate it. I would like to think that one day you can come back and report to this Committee that things are improving and that we are making good, positive headway.

I want to ask you a couple of questions about the Amnesty International report. They state in one of their conclusions that the high rate of sexual violence against indigenous women in the United States is directly linked to the failure of the authorities to bring those responsible for these crimes to justice. That is kind of their summation. You have indicated that you are supportive of the report. But does this kind of synthesize the problem in your opinion, that it is a failure of the authorities to bring those responsible to justice?

Ms. CLAIRMONT. I believe so, yes. I support that.

Senator MURKOWSKI. Do we have statistics that indicate the success in terms of convictions versus the number of sexual incidents that are reported? Do we know how many cases are actually brought through to conviction?

Ms. CLAIRMONT. It is difficult for Amnesty International, U.S.A. to obtain that information from the U.S. Attorney's Office. They are unwilling to release those kinds of statistics.

Senator MURKOWSKI. I think those statistics would be incredibly telling. If part of our problem here is under-reporting because people, women do not believe that their case is going to be pursued. And the statistics bear that out, that you can report after being a

victim and in fact nothing is done, the case is dropped, the prosecutor just doesn't pay attention to it or it doesn't even get to the prosecutor. That in and of itself is very, very telling. So we would like to work to better understand these statistics, because I think they could be extremely important to us.

You mentioned in terms of the processes out there and the report itself recommends that the law enforcement authorities establish effective processes for responding to the reports. You mentioned some kinds, I think you just used the word national protocols. What do we need in order to make clear what the process is or should be for responding to reports of sexual violence? Have you attempted to define that or do you have some suggestions for us in that area?

Ms. CLAIRMONT. In mainstream community, there are teams that are being organized called sexual assault response teams. There are a few tribal communities that are attempting to do the same, and they are finding it really difficult to work in collaboration with their Federal partners in their jurisdictions, because they are unwilling to come to the table. And they cite many reasons for that. They say they are under-resourced or under-staffed, have a huge caseload, all of the excuses.

But it is difficult to really do extensive collaboration if your partners are missing at the table. I feel that is one way that we could improve the response from those agencies, is by working in closer collaboration with tribal officials in a coordinated response fashion.

Senator MURKOWSKI. We have several SART units in Alaska, working in Anchorage and a couple areas outside of Anchorage that have proven to be very, very effective. As you know, our incidence of sexual assault, domestic violence in the State, Alaska Native women notwithstanding, is really very troubling. So we have seen some good successes. I appreciate your pointing that out as a model.

You also mentioned the training, the sexual assault nurse examiners training. One of the things that I was quite surprised to learn was that while we might tell our villages, OK, this is what you need to do if there is a rape in your village, but we don't have trained individuals to assist when a victim comes into the clinic. Now, again, this is an issue probably of funding. But it is also going to be imperative that we have this training available, that we have the forensic kits available. That was another astonishing fact, to realize that we don't have the ability to help these women when they come in, if we don't have the forensic kits.

Ms. CLAIRMONT. Exactly.

Senator MURKOWSKI. How bad of a problem is this? Is it nationwide, around the reservations and up in my State as well?

Ms. CLAIRMONT. That is my understanding. There was a survey done by, it is a long title, the National American Indian Women's Health Education Resource Center did a survey on Indian Health Service facilities to see if they had protocol, if they had kits available, if they had trained examiners. By and large, those facilities that they surveyed said they either didn't have protocol or they weren't aware of it or they had protocol but hadn't had training on it or didn't have nurses available to provide the exams and weren't aware of kits that were available.

So that study is available. And we hear that over and over again from Native women, that they have to travel, sometimes 100 miles or more, to be able to get to a facility in order to have the rape exam done. And it is done, they may even be charged because of the contractual agreements with Indian Health Service, that they are going to be billed for that exam. And that shouldn't happen. They should be able to receive rape exams at no cost.

Senator MURKOWSKI. It just seems to me that we have put so many impediments in front of the victim. And it is no wonder that you are not able to prosecute some of these cases, if in fact we haven't been able to preserve the evidence, if we haven't had the assistance of a trained sexual assault nurse examiner. We are failing from the get-go in terms of being able to respond to these women.

Again, I thank you for your advocacy and I look forward to working with you on this issue.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator Tester?

Senator TESTER. Thank you, Mr. Chairman. Thank you all for being here today. It goes without saying we really appreciate your time and your testimony.

Chairman Wells, just so I can understand this, the BIA, you spoke of their law enforcement in Indian Country where you are. Are they the exclusive law enforcement provider for Native Americans? Or are there other folks that are also responsible for law enforcement? It is a question that I just simply don't know the answer to.

Mr. WELLS. Within the Tribe, we had an agreement with the Department of Justice, with the grant, after 2 years of a tribal COPS–FAST officer being on the grant, we would pick him up 100 percent. Now, at $600,000, we can pick up to ten officers.

Senator TESTER. So who is then responsible? Does that still fall under the BIA's responsibility? Or is it under your tribal council's responsibility for that law enforcement? Who is the oversight?

Mr. WELLS. As the grant was written, we come up with a memorandum of understanding to allow the BIA to have supervision authority. In respect to the BIA, they did it for many years as law enforcement goes. And we didn't 638 the program, so we used the BIA as supervisor of our law enforcement, who were hired by the Tribe's COPS grant.

Senator TESTER. So the Tribe hires them through the grants in this particular case?

Mr. WELLS. Yes.

Senator TESTER. And the BIA supervised them as they do their current officer force?

Mr. WELLS. Yes.

Senator TESTER. So you really don't, I mean, if there are problems and the BIA chooses not to work with you, which, if my understanding is correct by your testimony, they aren't in contact with you much at all at this point in time.

Mr. WELLS. No.

Senator TESTER. There is little opportunity for you to give influence into law enforcement deficiencies.

Mr. WELLS. Right. The 638 process was our last alternative. We chose to try to work through the problems for eight long years and it just didn't work. So out of reluctance, we are 638ing. But we are not going to 638 an under-funded program. We are going to see what the dollars and the startup costs will be and see if it is even going to be economical.

But in the end, we respect law enforcement 100 percent and we support them. The differences, though, are major. I heard earlier from Senator Murkowski, the Vice Chair, about the issues of down home. I have down home stories, but I don't know if you have enough time today, where a 16 year old juvenile, all-State basketball player, was stopped for being after curfew. BIA law enforcement officer thought that it was OK to slam her into the ground and throw his knees into her ribs and to bruise her face on the gravel. And it is all on the camera, all these cop cars have cameras on the front.

A former chairman of our tribes, her daughter was man-handled by a BIA officer in front of her own home when her son was out after curfew. And that was a BIA officer, same officer. So when you get into those issues, and then our tribal COPS–FAST officer, a female, had to file a complaint against that same officer for slamming her leg in the door of a BIA investigation of a rape. And she is trying to advocate for the victim and she is a tribal COPS–FAST. The BIA officer slams her leg in the door three times. And she is in full uniform.

So those are the differences. And those are three internal affairs reviews that we have submitted and have all heard in front of a tribal business council on the record in minutes.

Senator TESTER. So the question becomes, from an accountability standpoint, doesn't the tribal council need to be involved as far as the communication with the BIA, to actually have the kind of law enforcement that you folks as the tribal leaders, as the elected tribal leaders, this could apply to any reservation in the Country, don't you need to have that input as a matter of course in tribal law enforcement? And it is not there?

Mr. WELLS. Senator Tester, we are doing everything we can to work through the chain of authority and we are here today and I am glad I am here today, because I don't have to make any of these stories up, these are actual first-hand accounts.

Senator TESTER. Right. I am just trying to figure out how we can, and I know that the BIA, I think they have a 70 percent shortage in officers, I have read that somewhere, they need to be bumped up. But by the same token, I think we don't have good communication. I am not, by any means, blaming you for this, by the way. When we don't have good communication so that the law enforcement fits the needs of the leadership and the tribe, then I think we have an inherent problem within the BIA that Chairman Dorgan talked about being a bureaucratic nightmare.

Is that something that you see that could be helpful, if we could do something to encourage communication?

Mr. WELLS. I think if there was a solution, I heard Senator Murkowski bring up, well, we are going to come up with some solutions, I think if you put the supervision back into the local super-

intendent of the agency you would have the first step in the right direction.

Senator TESTER. OK, good. Chairman Dillon, the gang influences on your reservation is somewhat disturbing. How long has that been around? Is that a recent occurrence?

Mr. DILLON. No, it has probably been for the last 20 years or better.

Senator TESTER. Is it getting progressively worse, or is it static?

Mr. DILLON. Once again, it is getting worse, yes, with all the meth labs and all the other drugs that are floating through the reservation.

Senator TESTER. So it goes without saying that it as the gang influence gets worse, the drug problem gets worse and all that?

Mr. DILLON. Definitely.

Senator TESTER. OK. Unfortunate.

Bonnie, I just have a question. I was recently in Billings, here about a month ago at the hospital down there and saw what they had for collection and preservation of evidence when it comes to rape victims in southern Montana. It is critically important. I guess the question that I have is, that collection and places for collection of evidence when you have a rape case, to my understanding, there are not a lot of those places around and there are even fewer people that can deal with situations as horrible as this in a hospital surrounding.

It is your opinion that it is markedly worse as far as facilities near Indian Country or in Indian Country? I will give you an example. I live in rural north central Montana. It would be a minimum of 75 miles if anybody got raped around my small community. What I am saying is, is it worse in Indian Country than it is in non-Indian Country? How can we solve this? It seems to me that maybe we need to invest some resources throughout the United States on this issue and maybe have a certain amount of focus toward Indian Country. What is your perspective on that?

Ms. CLAIRMONT. Yes, I believe it is worse in Indian Country. I have been doing an extensive amount of traveling throughout Indian Country, providing training and technical to tribal programs that are trying to improve their response to violence against Indian women. By and large I have been hearing that either those exams are just not available, they are not available at their local Indian Health Service facility, they have to travel a great distance out of the reservation to receive those services.

There are very few, if you were to do a survey of all the Indian Health Service hospitals, you will find that to be true, that they don't have those available services.

Senator TESTER. Thank you. I want to echo the comments of the other members of the Committee, I appreciate your work. I think we can only solve this problem with people like you on the ground that are helping point out the deficiencies in the programs.

Thank you all for being here. I have a lot more questions, and we have another panel. We will continue to work to help solve this problem. It is a big problem in Indian Country. Thank you.

The CHAIRMAN. Thank you very much, Senator Tester.

We have been joined by Senator Cantwell, who I know had other committees this morning. Senator Cantwell, Chairman Dillon has

testified with respect to the situation on his reservation in the State of Washington.

STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

Senator CANTWELL. Thank you, Mr. Chairman. Thank you for holding this hearing. If I could submit a longer statement for the record, I would appreciate that.

I am happy to see members of Indian Country from Washington State testifying, because I think that helping to articulate some of the challenges and facing both meth and domestic violence issues on Indian reservations are part of our challenge. Obviously the cooperation with other law enforcement and access to resources, particularly, I think are one of the stumbling blocks that we have today.

My understanding, Chairman Dillon, and maybe any of the other panelists, is that with the Meth Action grants, Indian Country is able to participate and receive benefits from the Federal dollars that are now allocated to the States. Is that correct?

Mr. DILLON. I believe so, yes.

Senator CANTWELL. Have you worked with local law enforcement in Washington State as part of that coalition?

Mr. DILLON. On that part of the program, I would refer to Mr. LaPointe, who has been 100, 110 percent involved in this whole program. Maybe he has an answer for that.

Mr. LAPOINTE. In response to your question, yes, our tribal law enforcement has been working with other jurisdictions in regard to COPS. We received a letter from the Department of Justice in regard to COPS Meth funding. So we have applied for that.

Senator CANTWELL. So in the focus from Washington, D.C. about how to increase dollars for meth funding, that would be a continued avenue for Indian Country to participate in trying to help solve local problems, that particular funding source?

Mr. LAPOINTE. Yes.

Senator CANTWELL. As opposed to a specific program through BIA?

Mr. LAPOINTE. BIA, like other panelists have testified, is limited with its funding. What we see is diminished funding for the Bureau as time goes on. Hopefully with new leadership in the Senate, that will change.

Senator CANTWELL. One aspect I think of the cooperation, Mr. Chairman, that we have gotten out of the Meth Action grants, in trying to get a comprehensive approach in Washington State, is that we have gone from being second in the Nation with the number of meth labs down to number six. We did that because everybody cooperated together, both the prevention community, the law enforcement community as well as the treatment community. So I would hope that Indian Country would be very active in participating in that coalition at the State level.

In regard to violence against women, is that a problem on the Puyallup Reservation as well?

Mr. LAPOINTE. I don't believe we have as many reports as what others areas in the Country have. Before you arrived, I explained an incident that happened at my house, a young man tried to

break into my house. He was high on drugs and drinking. It was the middle of winter and he had no shirt or shoes on. He had just come from another house that was on trust property, and I didn't know that. Two weeks later, I received a call from the FBI stating that they were charging him with rape, that happened the same night. So I think there are a lot of unreported incidents on our reservation.

Senator CANTWELL. So you think some of the domestic violence issues are inter-related with meth, is what you are saying?

Mr. LAPOINTE. Yes.

Senator CANTWELL. Would you say a high percentage, or you don't know statistically?

Mr. LAPOINTE. I don't know.

Mr. DILLON. I think it would be mainly directed toward the meth problems, as well as cocaine and all the other drugs that people are using on or near the reservation. It does create violence amongst a lot of people. I believe it has probably increased the domestic violence more so than it has in past years. So it is a big contributor.

Senator CANTWELL. Do you think those in the reservation community are aware of some of the treatment and prevention programs?

Mr. DILLON. We try to make everybody as well aware as possible through our tribal newspaper. We have ads there for advocacy for domestic violence, for drugs. We have a treatment center of our own that is up to full capacity all the time. But in a lot of instances, we will refer them out to other agencies where they can receive that help.

Senator CANTWELL. Mr. Chairman, I know you want to get to another panel as well. I think we need to make sure that Indian Country is a full participant in a wide range of services. We found out, and Washington State is working cooperatively with all these communities, we reduced our target from being second in the Nation with the number of meth labs down to number six. Unfortunately, the number of deaths related to methamphetamine are still increased during this time period. We saw that, while law enforcement working together with the communities, were able to actually zone in and target in rural communities where these meth labs were, that what came back was a bigger, scarier problem, the distribution from large organizations through the gang communities of meth distribution. So we are seeing mobile labs that are capable of moving quickly, located in almost in apartment dwelling communities and then just vacated so they can move quickly. And the large import from outside the United States, but then being distributed.

So with 29 tribes in the Northwest, Indian Country needs to be a vital part of that in both the aggressive activities in law enforcement, but also in the prevention and awareness. So I appreciate this hearing and bringing attention, and for the Puyallup Tribe for being here at this hearing.

[The prepared statement of Senator Cantwell follows:]

PREPARED STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

Thank you, Mr. Chairman. I appreciate your dedicated leadership of this Committee and your attention to the pressing issue of law enforcement in Indian Country.

Let me begin by welcoming the Honorable Herman Dillon, Sr., Chairman of the Puyallup Tribe of Indians in my state of Washington. I thank him for making the 3,000 mile journey to our Nation's capitol in order to share the successes and difficulties experienced by the Puyallup. In addition, I would like to welcome Mr. Larry LaPointe, Councilmember of the Puyallup Tribe who is here today accompanying Chairman Dillon.

The city of Tacoma, located on the Puyallup Reservation, has been battling an increasingly severe problem with gangs and meth. When I convened a roundtable in Tacoma last July to discuss the issue, I was pleased to learn about the Puyallup Nation Law Enforcement Division and its advanced gang response strategies. Tribal law enforcement works closely with local municipal, state and Federal law enforcement agencies and tribal officers are many times the first on the scene when a gang crime is reported. Many of the Puyallup's officers are tribal members and know the young gang members with whom they come into contact. This prior relationship makes it easier to intervene and help prevent those young people from falling further into the cycle of gangs and addiction. The relationship between Puyallup tribal officers and young tribal members becoming involved in gangs is acknowledged by surrounding state, Federal and local law enforcement agencies, who work cooperatively with the Tribe and use their relationship with young offenders as a tool in fighting and preventing gang violence in the area. This cooperation serves as a prime example of how the many entities with jurisdiction over law enforcement on Reservations can work together and leverage their strengths and resources to combat the epidemic of meth and gangs.

Even with this advanced response, however, the Puyallup Reservation remains plagued by drugs being run from Mexico to Canada along I–5 and the gang violence that accompanies those drugs. During a 3 month period last year there were 15 drive-by shootings on the Reservation, resulting in the death of two tribal members. The violence is persistent. The Puyallup Reservation is over 18,000 acres and the Tribe provides services for nearly 28,000 people, however they have only 24 commissioned officers and have had to leave 3 positions vacant. Additional officers are desperately needed. Without additional funding, their ability to continue the fight against gangs and meth will be severely compromised.

In the midst of rapidly increasing issues with gang violence and meth, the Administration has reportedly decided to cut funding for all tribal justice programs within the Department of Justice. The courts and detention centers funded by this money are necessary in the administration of justice, and the intervention programs also funded are a key component in preventing gang violence and addiction in the first place. Tribal law enforcement officials are on the front lines of the fight against meth and gangs but in order to effectively fight the problem, they must be sufficiently funded. The Administration's proposal to cut the DOJ programs providing much of this necessary funding is unacceptable. To successfully fight the scourge of meth and gangs affecting Native Americans, we must provide a stable source of funding for tribal justice and other law enforcement and prevention programs. I have fought in the past for this funding and will continue fighting for it in the future. The Puyallup Tribe and the surrounding law enforcement agencies provide an example of the cooperation necessary to fight gangs and meth, but unless we support their leadership through providing necessary funds, the violence on reservations will continue.

Once again, my thanks to Chairman Dorgan for holding this hearing today and to Chairman Dillon for his testimony.

The CHAIRMAN. Senator Cantwell, thank you very much.

We thank all four of you for joining us this morning, and we appreciate the testimony you have given.

Mr. DILLON. We appreciate your having us here. Thank you very much.

The CHAIRMAN. Thank you.

We will call the next witnesses. The Honorable Joe Garcia, President of the National Congress of American Indians. He will be accompanied by Mr. John Dossett, General Counsel of the National Congress. Professor Kevin Washburn, Associate Professor, Univer-

sity of Minnesota Law School, in Minneapolis, Minnesota. And Mr. Thomas Heffelfinger, a partner at Best and Flanagan in Minneapolis, former U.S. Attorney in Minneapolis, Minnesota.

We welcome all of you. As you are getting settled, let me say again that your entire statements presented today will be part of the permanent record. We will ask that you summarize your statements.

Mr. Garcia, we will begin with you. Let me again, as always, thank you for your leadership and thank you for your continuing counsel and thoughtful recommendations to this Committee. You may proceed.

STATEMENT OF HON. JOE A. GARCIA, PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS; ACCOMPANIED BY JOHN DOSSETT, GENERAL COUNSEL, NCAI

Mr. GARCIA. Good morning, everyone. It is always good to see you, Senator Dorgan.

I bring you greetings from Pueblo Country out in New Mexico, we are getting ready for our feast. So if you can come down on Sunday, be sure to do that.

Honorable Chairman Dorgan and Members of the Committee, Senator Murkowski, Senator Tester and Senator Cantwell, thank you for being here. Thank you for the opportunity to testify today.

At the outset, I would like to acknowledge also the loss of the distinguished Senator from Wyoming, Craig Thomas, and thank him and his family for so many contributions. We also dedicated some time at the National Congress of American Indians session in Anchorage, Alaska in memory of Mr. Thomas.

This is the second hearing on law enforcement in Indian Country this year. You have heard a great deal about the horrible crime rates. This is a matter of life and death. It is time, it is well past time for Congress to take action.

I strongly and respectfully urge this Committee to write legislation, work with the tribes to gain their support and then pass legislation in this session of Congress. NCAI has proposed solutions in four general areas. First, we need to improve and hold accountable the Federal law enforcement response at the Department of Justice. Indian communities are completely dependent on the Department of Justice for investigation and prosecution of major felonies. Violent crime rates have been doubling and tripling on Indian lands, while falling everywhere else.

We have serious concerns that the Department of Justice leadership places no priority on addressing crime in Indian Country, and is subject to no oversight or accountability. We understand that Indian Country crimes are not the top nationwide priority. But they should receive consistent attention.

Congress should establish an office of assistant attorney general for Indian law enforcement within the Department of Justice. This position should be appointed by the President and confirmed by the Senate to ensure leadership on Indian Country crime and to serve as a point of contact for Congress and the tribes.

Congress should require the DOJ to collect data on referrals and declinations of prosecution by the U.S. Attorneys' offices. The Senate Committee on Indian Affairs should facilitate a meeting be-

tween Attorney General Alberto Gonzalez and tribal leadership to develop an action plan for internal reforms.

Second, we need to increase cooperation between tribal, State and Federal law enforcement. We need incentives and Federal leadership to increase cooperation between tribal, State and Federal law enforcement. The Federal role could be like the role that FEMA plays in facilitating emergency response plans among State, local and tribal jurisdictions. However, they must be implemented correctly.

Third, we need to reaffirm and support tribal government authority to protect our communities. The Federal and State Governments are not doing the job, and the Indian tribal governments have no power to respond to anything but misdemeanors committed by Indians.

Since the Oliphant decision in 1978, NCAI has urged Congress to reaffirm tribal inherent criminal jurisdiction over all persons within Indian Country. Indian tribal governments are the only entities that have the interest and ability to carry out law enforcement on Indian reservations.

We also agree with Amnesty International that it is a fundamental violation of human rights to deprive Indian tribes, Indian nations, of the ability to protect their community from violent crime. We fully expect that Congress will come to understand the wisdom of restoring tribal criminal jurisdiction.

There are two specific areas that warrant immediate action by Congress to restore tribal law enforcement where Federal and State enforcement is failing completely: domestic violence and minor crimes. Indian women are being assaulted by non-Indian spouses and boyfriends and the Federal and State authorities are not interested and not organized to handle domestic violence. Congress should reaffirm tribal authority to prosecute domestic violence crimes against non-Indians who are married or co-habitating with an Indian family.

Jurisdiction is based on consent. By marrying and living in the tribal community on tribal lands, a person consents to tribal laws regulating domestic relations. In addition, the lack of tribal jurisdiction for misdemeanors committed by non-Indians creates enormous problems for law enforcement. Alcohol and drug-related disturbances, traffic violations and gang activity commonly involve both Indians and non-Indians. The gaps in enforcement defeat community-based policing and create disregard for law enforcement in Indian Country, as you have heard testimony today.

Congress should expand tribal and Bureau of Indian Affairs authority to cover misdemeanors and victimless crimes committed by non-Indians. Congress should amend Public Law 280 to affirm tribal concurrent jurisdiction and allow tribes to retrocede State jurisdiction. Public Law 280 causes lawlessness on reservations.

Fourth, we need to maximize the resources for law enforcement. Basic law enforcement protection and services are severely inadequate. To put it in perspective, Indian Country law enforcement officers make up .004 percent of all law enforcement in the United States. Yet they patrol 2 percent of the land of the United States and 1 percent of the population. Funding must be increased and streamlined for police, courts and detention facilities.

Tribal courts are very important to ensuring a fair system. Congress should develop a trial court setaside in the judiciary appropriations bill.

In conclusion, taken together, these efforts will create a new standard of tough law enforcement on Indian reservations that will discourage criminal activity, elevate public safety and greatly improve the daily lives of our community members. Our goal is to send a new message that law will be rigorously enforced and create a deterrent to crime on Indian lands.

We thank you in advance and look forward to starting our efforts immediately. Thank you, Mr. Chairman and Members of the Committee.

[The prepared statement of Mr. Garcia follows:]

PREPARED STATEMENT OF HON. JOE A. GARCIA, PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS

Honorable Chairman and Members of the Committee, thank you for the opportunity to testify today. This is the first hearing of the Committee since the loss of the distinguished Senator from Wyoming, Craig Thomas. At NCAI, we greatly appreciated Senator Thomas's constructive approach, his good will, and dedication to the betterment of our country. The people of Wyoming were fortunate to have Senator Thomas as their steward in the Senate. I want to acknowledge Senator Thomas today and thank him and his family for his many contributions.

At the outset of my testimony, I am not going to recount the problems facing law enforcement in Indian country. This is your second hearing on the subject this year, and you have heard a great deal about the horrible crime rates in Indian country, particularly violent crime, violence against women and drug trafficking. We have this knowledge in hand, and it is time for all of us to develop solutions and take action. My testimony outlines a series of potential solutions. We urge this Committee to write legislation, work with the tribes to gain their insights and support, and then pass legislation in this session of Congress.

Causes and Solutions for Law Enforcement Problems in Indian Country

The causes of the law enforcement problems can be boiled down to four related elements, and our proposed solutions would address each of these:

1) Criminal jurisdiction in Indian country is extremely complex and responsibility is shared among Federal, tribal and state authorities. This complexity requires a high degree of commitment and cooperation from Federal and state officials that is difficult to establish and maintain.

2) Federal and state authorities do not prioritize their role in law enforcement on Indian reservations. The complexity of jurisdiction makes it easy to avoid responsibilities and there is no system of accountability.

3) Law enforcement in Indian country suffers greatly from lack of resources—there are very significant needs in the personnel, equipment, training and facilities that make up the criminal justice system in policing, investigation, prosecution, courts, and detention facilities.

4) All of these factors combine to create a perception problem that encourages criminal activity and makes victims fearful in assisting law enforcement or prosecution. Criminal activity is encouraged when "routine" crimes such as domestic violence and drug and alcohol offenses are unaddressed.

Our proposed solutions would:

A. Improve and measure the Federal law enforcement response;

B. Increase intergovernmental cooperation with state and local law enforcement;

C. Enhance tribal law enforcement authority;

D. Maximize the use of available resources; and

E. Together these efforts will create a new standard of tough law enforcement on Indian reservations that will discourage criminal activity, elevate public safety, and greatly improve the daily lives of crime victims and potential victims.

A. Improving the Federal Response to Crime on Tribal Land

Under the Major Crimes Act and other Federal laws, Indian communities are completely dependent on the Department of Justice for investigation and prosecution of violent crimes and other felonies committed on Indian reservations. Despite these laws and the Federal trust obligation to protect Indian communities, the violent crime rate on Indian reservations is two and a half times the national average, Indian women are victims of rape and sexual assault at three times the national average, and tribes are faced with an epidemic of drug trafficking in methamphetamines. These crime rates have been doubling and tripling in Indian country while crime rates have been falling in similarly low-income communities throughout the United States. Something is seriously wrong with the Federal law enforcement response.

For many years, tribal leaders have raised the concern that the U.S. Attorneys do not consider Indian country crimes to be an enforcement priority. Although statistics are hard to find, we have heard of unreleased internal reports that U.S. Attorneys decline to prosecute as many as 85 percent of the felony cases referred by tribal prosecutors. These concerns are reflected in the Amnesty International Report "Maze of Injustice" that you heard about earlier today. The lack of data and interest is also reflected in general law enforcement reporting. Crime data is a fundamental tool of law enforcement, but for decades the Bureau of Indian Affairs and the Department of Justice have never been able to coordinate or accurately report on crime rates and prosecution rates in Indian country, making it extremely difficult to review their performance.

Some efforts have been made but with inconsistent results. Former Attorney General Janet Reno created the Office of Tribal Justice, but the status of this office has been diminished in recent years. Former Attorney General John Ashcroft supported the district priorities of the U.S. Attorneys, and under his leadership the Native American Issues Subcommittee of the Advisory Committee to the Attorney General worked to increase prosecutions and address problems with violent crime and drug trafficking in Indian country. However, six of the members of the Native American Issues Subcommittee were among those who were recently replaced, including both the former Chair and Vice-Chairs Thomas Heffelfinger and Margaret Chiara. Monica Goodling, former aide to Attorney General Gonzales, stated in her House Judiciary Committee testimony that Thomas Heffelfinger was replaced because he spent "too much time" on the Native American Issues Subcommittee.

There is a serious concern that the Department of Justice central office places no priority on addressing crime in Indian country, and is subject to no oversight or accountability on its efforts or performance. While we understand that Indian country crimes are not the top priority of Justice, it should be subject to consistent and focused attention. We would suggest the following reforms to improve the performance of the Department of Justice on Indian country crime.

- *Establish an Office of Assistant Attorney General for Indian Law Enforcement within the Department of Justice.* This position would be appointed by the President and confirmed by the Senate to measure performance and ensure that the law enforcement needs of Indian country receive requisite and focused attention; to ensure that the various branches of the Justice Department and other Departments coordinate on Indian country law enforcement; and to serve as a point of contact and information for Congress, the tribes and the public on matters related to Indian country law enforcement.
- *Increase Congressional oversight of the Federal response to crimes under the Major Crimes Act.* As a first step, Congress should require both the FBI and the Executive Office of U.S. Attorneys to establish mechanisms for routinely collecting data on how Indian country crimes are handled. In particular, information should be collected and made available regarding referrals and declinations by the U.S. Attorneys Offices. A policy should be established that U.S. Attorneys will respond in writing to tribal referrals for prosecution, that those decisions will be available for numerical analysis, and that tribes can appeal a declination directly to their district U.S. Attorney.
- *Collect crime data.* Congress should also require that the Bureau of Indian Affairs and the Department of Justice devise a "Tribal Category" and coordinate to produce Indian country crime data and statistics comparable to data collected from state law enforcement by the Bureau of Justice Statistics.
- *Do not transfer functions.* We do not support transferring the law enforcement functions of the Bureau of Indian Affairs to the Department of Justice. BIA Law Enforcement has for over a hundred years conducted general community policing in Indian country. The Department of Justice has no expertise in that type

of police work, but instead is focused on investigation and prosecution of specific Federal crimes. The Department of Justice has not adequately handled its current responsibilities in Indian country, and tribes are very concerned that the Indian policing funding would be redirected away from Indian country law enforcement.

- *Allow for indictment without a grand jury.* Amend Federal law to mirror state law and allow for indictments without a grand jury in criminal cases brought under the Major Crimes Act in Indian Country. The grand jury requirement stands as a significant hurdle to routine prosecution.
- *Codify the consultation requirement* set forth in Executive Order 13175 and expressly require the Attorney General to consult with tribes on law enforcement issues.
- *Require specialized training.* Require all Federal officers working in Indian country (FBI, U.S. Marshalls, DEA, ATF, Border Patrol, etc.) to receive specialized training about Indian country law enforcement.
- The Senate Committee on Indian Affairs should facilitate a meeting between Attorney General Alberto Gonzales and tribal leadership to hear our concerns about law enforcement and to develop an action plan considering the following reforms:
  - —Reestablish the policy to respect the law enforcement priorities of the U.S. Attorneys districts, particularly those districts that contain Indian country.
  - —Elevate the Native American Issues Subcommittee to a seat on the Advisory Committee to the Attorney General.
  - —Return the Office of Tribal Justice to its former status with direct access to the Attorney General.
  - —Implement Title IX of the Violence Against Women Act of 2005 as required by statute and establish the guidelines, tracking, resources, and research needed to address violence against native women.
  - —Establish a policy that U.S. Attorneys will respond in writing to tribal referrals for prosecution, that those decisions will be available for numerical analysis, and that tribes can appeal directly to their district U.S. Attorney.
  - —Support tribal prosecution of domestic violence and drug crimes.
  - —Establish a policy for cross-deputization of tribal prosecutors as Special AUSA's.
  - —Establish a policy that the FBI will tape all confessions.
  - —Establish a policy that the U.S. Attorney will consult with the Indian tribe before seeking the death penalty in any capital case.
- The Senate Committee on Indian Affairs, the House Resources Committee and the Senate and House Judiciary Committees should hold hearings soliciting testimony from the former and present U.S. Attorneys who are members of the Native American Issues Subcommittee, to request their views on criminal law enforcement in Indian country.

B. Increasing Law Enforcement Coordination among Tribal, State and Federal Law Enforcement Authorities

Congress should create incentives and programs to increase cooperation between tribal, state and Federal law enforcement. There is already a significant amount of cooperation in law enforcement between tribes, states, and counties, and there are hundreds of cooperative law enforcement agreements between tribes and their neighboring jurisdictions. These agreements are grounded in the shared recognition that tribes, states and counties can enhance their law enforcement efforts working together. Although law enforcement cooperation is common, it is not found everywhere. There are still a number of places where cooperation is minimal, and the relationships are sometimes antagonistic. In our experience, these poorer relationships are driven by the long histories of disrespect and indifference that have existed for many decades in the rural areas around some Indian reservations, and by a lack of support for individuals who would choose to forge stronger law enforcement ties.

NCAI maintains a partial repository of over a hundred law enforcement cooperative agreements, which vary in their details but typically contain a number of critical features. First, the agreements provide for the deputization of tribal police officers who meet certain minimum qualification and training requirements as state or county officers, so that tribal police can enforce state criminal law within Indian country. Far from treating tribes as unreliable partners in the task of law enforce-

ment, many states and counties have shared their criminal enforcement authority with tribes in order to enhance their ability to control crime. Recognition of these benefits is sufficiently widespread that a number of states such as Arizona, New Mexico, Nevada and North Carolina now provide for the deputization of tribal officers by statute. *See, e.g.,* Arizona Rev. Stat. Ann. § 13–3874 ("While engaged in the conduct of his employment any Indian police officer who . . . meets the qualifications and training standards adopted pursuant to section 41–1822 shall possess and exercise all law enforcement powers of peace officers in this state).

Second, cooperative agreements often provide for the deputization of state officers as tribal police officers so that the former can enforce tribal laws. These provisions reflect recognition by the parties involved that tribal criminal laws form an important part of the law enforcement arsenal. *Third,* the agreements frequently address the execution of search and arrest warrants within Indian country, and contain a variety of cooperative approaches to these subjects. *Fourth,* the parties to these agreements often pledge substantial help to each other in carrying out their investigatory activities.

Through their cooperative agreements, tribes, states and counties pledge to work together extensively on matters of criminal law enforcement. They share authority, manpower, information and other resources in their common fight against crime. "Practice has found that the relationship that arises from the joint training, deputization, and working of tribal and non-tribal police officers under a cross-deputization program can enhance the effectiveness of enforcement." Western Association of Attorneys General, Indian Law Deskbook at 413 (2d ed).

The benefits of cooperative agreements are sufficiently strong that the Federal Government should encourage and provide incentives for the development of law enforcement cooperation among states, counties and tribes. The following are some suggestions for doing so.

- *Consult with tribal, state and local law enforcement* organizations to discuss best practices and ways to create incentives for law enforcement cooperation.
- *Create incentives for states and counties for intergovernmental cooperation on law enforcement.* One method could be to provide specific funding or grants for joint tribal-state law enforcement efforts—for example funding for cooperative work on drug trafficking or gang violence. Another example can be found in the Federal laws that require state governments to cooperate in the development of sex offender registries. In these statutes, any state that fails to meet certain goals will not receive 10 percent of the Federal funds that would be allocated under the Omnibus Crime Control and Safe Streets Act.
- *Federal law enforcement can facilitate state-tribal cooperation.* In the emergency response field, Federal officials often bring together state, local and tribal officials to engage in emergency response planning and exercises, and these efforts assist greatly in building local government cooperation. Federally-led drug enforcement task forces have also been successful in integrating tribal and local police efforts. Consider establishing a pilot project for FBI and U.S. Attorneys to Develop "Indian Country Community Law Enforcement Response Plans" with tribal and state/local law enforcement agencies in targeted areas where cooperation is lacking.
- Congress should ensure that Indian tribes have access to Federal law enforcement data bases and interoperable communications.
- It is important that Congress provide sufficient resources to accompany tribal responsibilities. State and local governments are far more likely to seek cooperation when the tribes have officers and resources to commit to the joint efforts.

C. Enhancing Tribal Law Enforcement Authority

Criminal jurisdiction in Indian country is divided among Federal, tribal, and state governments, depending on the location of the crime, the type of crime, the race of the perpetrator, and the race of the victim. The rules of jurisdiction were created over 200 years of Congressional legislation and Supreme Court decisions—and are often referred to as a "jurisdictional maze."[1] The following is a brief timeline of the development of the jurisdictional rules.

1790–1834—Indian Country Crimes Act—Also know as the "General Crimes Act," this statute extends the Federal criminal laws for Federal enclaves to Indian country—but excludes crimes committed by one Indian against another Indian, and

[1] See Robert N. Clinton, Criminal Jurisdiction Over Indian Lands: A Journey through a Jurisdictional Maze, 18 Ariz. L. Rev. 503, 508–13 (1976)

crimes where an Indian has been punished by the law of the tribe. The statute extends the "Assimilative Crimes Act" to Indian country, making state law crimes punishable in Federal court.

1881—U.S. v. McBratney—Supreme Court finds that states have exclusive jurisdiction over crimes committed in Indian country by one non-Indian against another non-Indian. Ruling later expanded to "victimless crimes" like traffic offenses.

1885—Major Crimes Act—In the wake of the Supreme Court's decision in *Ex Parte Crow Dog,* Congress passed the Major Crimes Act, making Indians subject to Federal prosecution for a list of 7 major felonies—expanded over time to the current list of 16.

1934—Indian Reorganization Act—This statute set the stage for most BIA Courts of Indian Offenses to be replaced by tribal courts.

1953—Public Law 280—Congress delegated criminal and some civil jurisdiction over Indian Country to several states (CA, MN, NE, OR, WI and AK). The optional states (AZ, FL, ID, IA, MT, NV, ND, UT, and WA) assumed all or part of the jurisdiction offered. Amended in 1968, Pub.L. 280 permitted states to retrocede jurisdiction, and provided that no states in the future could assume jurisdiction without tribal consent. Tribes have concurrent jurisdiction.

1968—Indian Civil Rights Act—This statute codifies most of the guarantees found in the Bill of Rights and applies them to tribes. In addition, the law limits tribal court sentencing to a maximum to 1 year in jail or a $5,000 fine.

1978—Oliphant v. Suquamish Tribe—Supreme Court held that tribes do not have inherent criminal jurisdiction over non-Indians unless specifically authorized by Congress. *Santa Clara v. Martinez*—Tribal violations of the Indian Civil Rights Act may not be appealed to Federal court except by write of habeas corpus. *U.S. v. Wheeler*—An Indian tribe may punish a tribal member as an independent sovereign, and not as an arm of the Federal Government.

1990—Duro v. Reina—Supreme Court finds that an Indian tribe may not assert criminal jurisdiction over a nonmember Indian. *Duro Fix*—Congress responds by amending the Indian Civil Rights Act to restore and affirm tribal inherent jurisdiction over all Indians.

2004—U.S. v. Lara—The Supreme Court recently affirmed the Duro Fix and the authority of Congress to restore tribal jurisdiction via legislation—holding that separate tribal and Federal prosecutions do not violate double jeopardy because a tribe is a separate sovereign. The decision left open the possibility of further constitutional challenges to jurisdiction over nonmember Indians on due process or equal protection.

The complexity of the jurisdictional rules—evident in this time line—creates significant impediments to law enforcement in Indian country. Each criminal investigation involves a cumbersome procedure to establish who has jurisdiction over the case according to the nature of the offense committed, the identity of the offender, the identity of the victim and the exact legal status of the land where the crime took place. The first law enforcement officials called to the scene are often tribal police or BIA officers, and these officers may initiate investigation and/or detain a suspect. Then a decision has to be made whether the crime is of the type warranting involvement by the FBI or state law enforcement. These officers then decide whether to refer the case to the U.S. Attorney's office or the local District Attorney.

Federal law enforcement is generally limited to only the most serious crimes. If the offender is non-Indian the tribe has no jurisdiction. Local and state law enforcement are often reluctant to rely on tribal police investigations, subject to confusion over jurisdiction, or simply have a lack of resources. Each of the three sovereigns has less than full jurisdiction, and the consequent need for multiple rounds of investigation often leads to a failure to act. Overall, law enforcement in Indian country requires a degree of cooperation and reliance between Federal, tribal and state law enforcement that—while possible—is difficult to sustain on a broad basis. All of these issues are compounded by a severe lack of resources for law enforcement in Indian country.

The United States Department of Justice has testified to Congress that jurisdictional complexity has made the investigation and prosecution of criminal conduct in Indian Country very difficult and that some violent crimes convictions are thrown into doubt, recommending that the energy and resources spent on the jurisdictional questions would be better spent on providing tangible public safety benefits.[2] A re-

[2] Testimony of The Honorable Thomas B. Heffelfmger, U.S. Attorney, Minneapolis, Oversight Hearing before the Senate Committee on Indian Affairs on Contemporary Tribal Governments:

Continued

port of the Executive Committee for Indian Country Law Enforcement Improvements of the U.S. Department of Justice concluded that one of the major problems of law enforcement in Indian Country is the poor coordination between law enforcement bodies caused by the fragmentation of the criminal justice system.[3]

The impediments to Indian country law enforcement are directly reflected in crime rates. American Indians experience per capita rates of violence that are much higher than those of the general population, and *70 percent of American Indians who are the victims of violent crimes are victimized by someone of a different race.*[4] In particular, the rate of aggravated assault among American Indians and Alaska Natives is roughly twice that of the country as a whole (600.2 per 100,000 versus 323.6 per 100,000). Indians are the victims of violent crime at twice the rate of African-Americans, two and a half times that of Caucasians, and four and a half times as often as Asian Americans.[5]

Since the *Oliphant* decision in 1978, NCAI has urged Congress to reaffirm tribal inherent criminal jurisdiction over all persons within Indian country. An increasing number of prominent state and Federal law enforcement officials support this view because Indian tribal governments are the only entities that have a full and sustained interest and ability to carry out law enforcement on Indian reservations. We also agree with Amnesty International that it is a fundamental violation of human rights to deprive Indian tribes of the ability to protect their communities from violent crime. We fully expect that Congress will come to understand the wisdom of restoring tribal criminal jurisdiction, and look forward to engaging on the related issues, including disparate tribal resources, and the need for improvement of tribal courts and detention facilities.

However, there are also specific problems with law enforcement in Indian country that warrant a close look by Congress to improve tribal law enforcement in the areas where Federal and state enforcement is least likely to succeed.

Domestic Violence and Violence Against Women and Children

There are enormous difficulties in dealing with law enforcement in Indian country on issues of domestic violence and violence among intimate partners. Indian women are being assaulted and raped by non-Indian family members—spouses, boyfriends and fathers—and the Federal authorities are not interested and not organized to deal with domestic violence situations. Statistics on the rape and assault of American Indian and Alaska Native women are shocking and have been widely publicized. One in three American Indian and Alaska Native women will be raped in her lifetime. But the nature of this is less well-understood. Indian women were victimized by an intimate partner at rates higher than those for all other females (Whites at 8.1 per 1,000; Indians at 23.2 per 1,000).[6] The most notable characteristic is the identity of the assailant. *Approximately 9 in 10 American Indian victims of rape or assault were estimated to have assailants who were non-Indian.*[7] Among American Indian victims of violence, 75 percent of the intimate victimization and 25 percent of the family victimization involved an offender of a different race.

The Ninth Circuit Gender Bias Task Force report acknowledges that "[j]urisdictional complexities, geographic isolation, and institutional resistance impede effective protection of women subjected to violence within Indian country."[8] It further notes that although Federal jurisdiction is technically available in some districts over spouse abuse, such prosecutions are rare. It concludes that crimes against women are under-prosecuted in Indian country as the difficulties of prosecution in general, coupled with traditions of non-involvement by law enforcement officials in spousal abuse, make Federal and state enforcement more difficult. The Gender Bias Task Force Report recognized that calling for greater enforcement by the

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Challenges in Law Enforcement Related to the Rulings of the U.S. Supreme Court, July 11, 2002.

[3] Report of the Executive Committee for Indian Country Law Enforcement Improvements of the U.S. Department of Justice, October 1997, Executive Summary.

[4] U.S. Department of Justice, Bureau of Justice Statistics, American Indians and Crime, February 1999, VI, available at *http://www.ojp.usdoj.gov/bjs/pub/pdf/aic.pdf.*

[5] Bureau of Crime Statistics, U.S. Dept. of Justice, Violent Victimization and Race, 1993–98, at 1 (NCJ 176354, 2001).

[6] Tjaden, Patricia, and Nancy Thoennes, Full Report of the Prevalence, Incidents, and Consequences of Violence Against Women, Findings from the Violence Against Women Survey, Washington, DC; National Institute of Justice, November 2000, NCJ 183781, p.22.

[7] Lawrence A. Greenfeld and Steven K. Smith, American Indians and Crime, U.S. Department of Justice Bureau of Crime and Statistics, 1999.

[8] The Effects of Gender in the Federal Courts: The Final Report of the Ninth Circuit Gender Bias Task Force: The Quality of Justice, 67 S. Cal. L. Rev. 745 (1994), at 906.

Federal law enforcement agencies is inadequate in the case of violence against women in Indian country.

- *Reaffirm tribal authority to prosecute domestic violence crimes against non-Indians who are members of an Indian family.* Such authority might be limited to certain classes of persons, such as persons who are married to or co-habitate with a tribal member in Indian country, or persons who violate a protective order. Jurisdiction could be predicated on implied or explicit consent—i.e. by marrying and living in the tribal community on tribal land, a person consents to tribal laws for the purpose of regulating domestic relations.
- *Extend Tribal sentencing limitations under the Indian Civil Rights Act* to provide for appropriate sentences for more serious offenders. In the original 1968 law, tribal sentencing authority was limited to 6 months or $500. In 1986, the authority was expanded to 1 year or $5,000. A 2003 report of the Native American Advisory Group to the U.S. Sentencing Guidelines Commission points out the disparity between tribal sentencing authority and the sentences that are imposed by the Federal Government for crimes committed under the Major Crimes Act. Assaults comprise the greatest percentage of crimes prosecuted under the Major Crimes Act, and the average Federal sentence for Indians prosecuted for assault is 3 years. Because U.S. Attorneys rarely prosecute any crime in Indian country that is not a very significant assault, there is a large gap between the maximum sentencing authority of tribes and the average sentence for the least serious crime that is prosecuted by the Federal Government. Many crimes of domestic violence fall into this gap.

  The issue of increasing sentencing authority raises a concern about the relationship to Federal prosecution declinations, because Federal prosecutors often decline prosecution when they feel the tribe could impose a remedy. Most tribes do not have the resources or facilities for long term incarceration and need the Federal Government to continue to prosecute major crimes.
- *Amend the Adam Walsh Act to expand tribal governments' ability to participate in the national sex offender registry system and remove the unnecessary infringement on tribal authority included in Section 127.* Unfortunately, rather than help unravel the jurisdictional maze, Congress has recently added another layer of confusion to the system with the passage of the Adam Walsh Act. Under Section 127 of the Adam Walsh Act, Indian tribes who wish to participate in the national sex offender registration system as a registration jurisdiction must indicate their intent to do so before July 27, 2007. If a tribe fails to make such an election before the deadline, the authority under the law is delegated to the state. This represents a dramatic departure from the current scheme of criminal jurisdiction in Indian country. Section 127 of the Adam Walsh Act has the potential to effect a dramatic expansion of the scope of state jurisdiction in Indian Country over a narrow class of crimes and will undoubtedly create years of confusion among law enforcement agencies on the ground. It also threatens to destabilize countless carefully negotiated cross-jurisdictional collaborative agreements. This provision was added by the Department of Justice at the 11th hour with no tribal consultation.

  Tribes strongly support the tracking of sex offenders. Congress needs to remove the July 27, 2007 deadline and allow tribes to participate at any time after that date. PL 280 jurisdiction tribes should also be able to participate, and Congress should remove the provision delegating tribal and Federal criminal authority to the states. Congress also needs to fund the National Tribal Sex Offender Registry that was authorized in the Violence Against Women Act in 2005.

Misdemeanors and Victimless Crimes Committed by Non-Indians

The general lack of tribal jurisdiction for misdemeanors committed by non-Indians creates significant problems for law enforcement. Alcohol and drug related disturbances, traffic violations, domestic violence and gang activity commonly involve both Indians and non-Indians. The absence of tribal jurisdiction to deal effectively with non-Indians creates a perception that the likelihood of being caught and punished is low, and encourages a disregard for tribal law enforcement. This problem is compounded by the status of "victimless" crimes—those committed on the reservation by a non-Indian that do not actually involve harm or threat to the person or property of an Indian. Neither the tribe nor the Federal Government has jurisdiction over victimless crimes, only the state. As a result, most routine disorderly conduct, traffic violations, gambling offenses and other moral offenses committed by non-Indians within Indian country are exclusively within the jurisdiction of the state and receive little enforcement attention. These gaps in tribal and Federal jurisdiction de-

feat community-based policing initiatives and create disorder and disregard for law enforcement in Indian country.[9]

- *In consultation with tribes, expand tribal and Bureau of Indian Affairs authority to cover a broader range of "non-major" crimes as well as misdemeanors and "victimless" crimes committed by non-Indians.* This could be done in two ways. First, directly authorize tribes to prosecute misdemeanors. Second, the Bureau of Indian Affairs could be authorized to develop regulations governing misdemeanors and minor crimes committed by both Indians and non-Indians in a manner similar to the National Park Service. See 16 U.S.C. § 1c and also the current regulations governing Indian offenses at 25 C.F.R. Part 11. Legislation and regulations would need to be carefully crafted not to overly "Federalize" misdemeanor crimes that have normally been committed to tribal government enforcement, perhaps through establishment of Federal-tribal agreements that would protect tribal law enforcement. Public Law 638 contracting could playa role, as well as an option for express consent to tribal court jurisdiction in lieu of Federal prosecution.
- *Amend the ICRA to remove the overly burdensome jury trial requirement.* The ICRA requires Indian tribes to provide juries to anyone accused of an offense punishable by imprisonment. The Federal Constitution only recognizes such a right for persons subject to a term of imprisonment for "serious offenses," which primarily refers to non-petty offenses, or those offenses which carry a prison term of greater than 6 months.
- *Amend Public Law 280 to affirm tribal concurrent jurisdiction and allow tribes to retrocede.* Under Public Law 280, state and local law enforcement has displaced Federal enforcement and assumed full or partial jurisdiction over crimes committed within Indian Country in certain states and on certain reservations. Tribal opposition to Pub.L. 280 has focused on the law's failure to recognize tribal sovereignty and the lack of consent of the affected tribes. States have focused on the failure of the Act to provide Federal funding an unfunded mandate on lands that are not taxable. Even though tribes retain concurrent jurisdiction, the Federal Government has viewed Pub.L. 280 as an excuse to cut off tribal financial and technical assistance for law enforcement. The law has contributed to mistrust and hostility between state and tribal officials on many reservations. A common tribal perception is that state law enforcement refuses or delays when the tribe asks for assistance, but vigorously asserts their authority when the tribe does not want them to intervene. Professor Carole Goldberg has made a compelling case that the law has worsened the problem of lawlessness on reservations[10]:

  > Public Law 280 has itself become the source of lawlessness on reservation. Two different and distinct varieties of lawlessness are discernible. First, jurisdictional vacuums or gaps have been created, often precipitating the use of self-help remedies that border on or erupt into violence. Sometimes these gaps exist because no government has authority. Sometimes they arise because the government(s) that may have authority in theory have no institutional support or incentive for the exercise of that authority. *Second,* where state law enforcement does intervene, gross abuses of authority are not uncommon.

National and Tribal Community Homeland Security

The Department of Homeland Security is responsible for assessing the Nation's vulnerabilities related to terrorism, natural disasters and other major public safety matters. Tribal governments are partners and stakeholders in the national homeland security strategy. Tribal law enforcement agencies evaluate vulnerabilities, collect information, provide surveillance and respond and coordinate with Federal, state, local and private entities in the event of a terrorism or related event as required by Homeland Security Presidential Directives. Federal preparedness funding is shared with state governments but not directly with tribal governments for national homeland security purposes. The national preparedness goals will fall short unless tribal governments are provided direct funding by the Congress and the administration for planning, training, exercises, interoperability and equipment acquisition for major events as well as capacity building for prevention activities such as

[9] Testimony of John St. Claire, Chief Judge, Shoshone and Arapaho Tribal Court, Wind River Indian Reservation, Senate Committee on Indian Affairs, February 27, 2002.

[10] Carole Goldberg-Ambrose, *Planting Tail Feathers: Tribal Survival and Public Law 280* (UCLA American Indian Law Studies Center, 1997), p. 12.

information gathering, detection, deterrence, and collaboration related to terrorist attacks.

D. Maximizing the Use of Available Resources

NCAI has long advocated for increased funding for law enforcement in Indian country because of the public safety crisis. Basic law enforcement protection and services are severely inadequate for most of Indian country. For example, a recent Bureau of Indian Affairs analysis indicates that in BIA Law Enforcement, 1,153 officers are needed but it has only 358. The gap is 795 officers (69 percent unmet need). In Tribal Law Enforcement—3,256 officers are needed but tribes have only 2,197. The gap is 1,059 officers (33 percent unmet need). Total need is 1,854 law enforcement officers. To put this in perspective, these 2,555 Indian country law enforcement officers make up about 0.004 percent of the total of 675,734 state, city and county law enforcement officers in the United States, yet they patrol approximately 2 percent of the landmass of the United States and 1 percent of the population.

Increasing law enforcement funding is a top priority. In addition, there are several things that Congress can do to maximize the use of existing resources.

- Authorize BIA police departments to apply for Federal law enforcement grants with tribal approval. Currently direct service BIA police departments are at a disadvantage from tribal police departments. Tribal police departments can apply for Department of Justice grants, HUD grants, and a series of other grants that enable them to access increased funds for personnel and equipment.
- Authorize a tribal courts set-aside in the Judiciary appropriations bill. The Federal courts are funded separately under Judiciary appropriations. Tribal courts could be included in this funding source as a way to relieve the pressure on the Interior budget, and increase support for the Judiciary budget.
- Consolidate and streamline Federal law enforcement funding sources to tribes. Amend grant programs to require Federal agencies to provide maximum flexibility to tribal governments in program administration.
- Reauthorize the Indian Tribal Justice Act.
- Restore COPS program funding.
- Eliminate pass-through funding from states in Federal programs. Indian tribes are separate sovereigns with a direct relationship with the Federal Government recognized in treaties and the Constitution. Unlike cities and counties, tribes are not a subset of a state government. Because of the separate status of tribal governments, in most states the state government does not readily share sources with tribes and it is very difficult for tribes to receive a fair allocation of program funding.
- A Tribal Government Enhancement Fund should be established for the development of tribal law enforcement and courts.

E. Creating a New Standard of Tough Law Enforcement in Indian Country

Law enforcement has been the leading concern of tribal leaders throughout the country for at least the last 5 years that priorities have been measured by the BIA Budget Advisory Committee, and probably for much longer. NCAI strongly encourages Congress to take action on all of the fronts that we have identified above. Taken together—an improvement in the Federal response, an increase in state-tribal cooperation, enhancements to tribal authority, and maximizing law enforcement resources—we can dramatically change the environment for criminal activity on Indian reservations. Our goal is a short term clampdown that will send a new message to the criminal element that law will be vigorously enforced, and thereby create a deterrent to crime on Indian lands. This effort will bring great benefits to Indian communities and our neighbors in public safety, but also in health, productivity, economic development, and the well-being of our people. We thank you in advance, and look forward to starting our joint efforts immediately.

The CHAIRMAN. President Garcia, thank you very much. We appreciate your testimony, as always, and we appreciate your recommendations and suggestions.

Next we will hear from Professor Kevin Washburn. Kevin is an Associate Professor at the University of Minnesota and has testified previously before this Committee. We welcome you again. You may proceed.

STATEMENT OF KEVIN K. WASHBURN, ASSOCIATE PROFESSOR, UNIVERSITY OF MINNESOTA LAW SCHOOL

Mr. WASHBURN. Police officers are sometimes called the thin blue line that protects the ordinary citizen from crime. The problem is that in Indian Country, it is a dotted line. The thin blue line in Indian Country is a dotted line. We need to fill in those gaps. It is crucial.

How did we get to this situation where we have such dotted lines? Part of it appears on the chart that Chairman Dorgan has shown. We have a very complicated system that developed over a long period of time.

One thing that is a fact about that chart, though, is tribes are often secondary. Tribes are not the primary providers of law enforcement in Indian Country. They share that responsibility with the BIA, they share it with States. But the problem is that BIA, and the United States in general, has other priorities besides Indian Country.

Only the tribe is primarily concerned for the Indian reservation. The tribe is the government that is concerned most with what is going on in an Indian reservation. If we make it a State responsibility under Public Law 280, or we make it a Federal responsibility under the Indian Country system, we have taken the responsibility for the problem away from the government that has the most serious interest in correcting the problem. So that is a fundamental problem, and we are not going to get anything corrected, ultimately, until we make sure that tribal governments have primacy on these issues. Anything else, I think, is a half solution or a partial solution.

Now, we have talked a fair bit about the wonderful Amnesty International report that has really shed a lot of light on these issues. But there has also been an interesting series in the *Wall Street Journal* recently. Any problem that has both the attention of Amnesty International and the *Wall Street Journal* ought to be something that we can come together on and achieve solutions. It is on both sides of the aisle, if you will. So I hope that we can do that. I think there is time, there is an ability to take action here if we have those kinds of disparate interests concerned about this issue.

One of the problems, I think, with having the BIA or having Public Law 280 States involved in these problems is the problem that Senator Tester mentioned, it is that accountability gap. Tribal governments are the people that are most responsible to crime victims and offenders on reservations. They live there. And they suffer under those crimes. BIA officials don't necessarily live there. It is just one of the other reservations they have to cover. So there is an accountability gap.

One thing we can do to solve that gap is to increase cooperation. It doesn't have to be the case that when you call up 9–1–1, they say, "are you a member or a non-member?" Through cross-deputization agreements, we can insure that it doesn't matter whether you are a member of the tribe or not. If the tribal police are cross-deputized with State authority and vice versa, State officers with tribal authority, then they can respond to a 9–1–1 call wherever it happens.

Let me tell you, the person dialing 9–1–1 doesn't care who responds. They need action and they need it quick. So those are the people we really need to be serving, and you, as the Government, have the responsibility to provide that. I hope you will work to do that.

When I was first asked to testify, what came to mind to me was a brief chance encounter I had with Rudy Guiliani when he was Mayor of New York City and I was an AUSA, about 10 years ago, an assistant U.S. attorney prosecuting violent crimes in Indian Country. He was basking in the glow of tremendous success in New York City in lowering the crime rate. The crime rate had been falling throughout the 1990s and he was taking credit for that. He had several initiatives that he said caused that.

One of them was his COMPSTAT program, where he got together all the information on a minute by minute basis, all over New York City, and it was all fed into a central computer. And whenever crime rose in one neighborhood, he would send police officers there immediately. He had it very well coordinated, and police officers would pounce where there was a criminal problem. I said, well, you have had great success, Mayor Guiliani, how could we bring that kind of success to Indian Country? And he thought about it for a while, and he said, well, you know, your problem is you have a whole bunch of different jurisdictions out there and you need someone with unilateral authority and control. I have that in New York City. No one could have that in Indian Country in many places.

And I think he is right in some ways. He had established this wonderful system of coordination within New York City. But I thought about what he had said again just a couple of years later on 9/11. And in the aftermath of 9/11 what we saw was these firemen that were trying to save lives, and they couldn't even communicate with one another, because the technology wasn't there to help them cooperate and coordinate.

So while he had developed a wonderful system for law enforcement, he had failed in this other key area of public safety. It illustrates the necessity of good cooperation, the need for really good cooperation. I have to say, when I asked him, how do we apply his law enforcement system to Indian Country, he kind of shrugged and said, good luck, kid. You don't have that kind of authority.

So let me say, I am not endorsing Guiliani right now.

[Laughter.]

Mr. WASHBURN. But he had wrestled with the problem, I guess.

There are lots of good instances of cooperation in Indian Country, cross-deputization agreements. Interestingly, NCAI has cataloged a lot of those agreements, and they are available on NCAI's website. Well, NCAI is a non- governmental organization. It would be far better if someone at the Department of Justice was going to each county that has an Indian reservation and saying, why aren't you agreeing, why aren't you entering cross-deputization agreements? It would be far better if a United States Senator or a U.S. Senate committee were asking counties those kinds of questions and ensuring that cooperation. And maybe, maybe providing some sort of incentives for better cooperation, encouraging people to get together.

Now, cops on the ground tend to work very well together. At higher levels, agencies sometimes collide, especially when they are State versus Federal versus Tribal. We have to work through those differences, we have to get good cooperation in Indian Country. So if I leave here with one thought, it is that we have to really facilitate greater cooperation between State and Federal law enforcement and tribal law enforcement, who need to be primary on these issues.

Thank you for having me here today.

[The prepared statement of Mr. Washburn follows:]

PREPARED STATEMENT OF KEVIN K. WASHBURN, ASSOCIATE PROFESSOR, UNIVERSITY OF MINNESOTA LAW SCHOOL

Thank you for inviting me to appear before the Committee again.

It seems disingenuous to describe law enforcement and public safety in Indian Country as an urgent crisis because it has been a serious problem not just for years, but for decades. I know that this Committee understands the importance of this issue and I applaud you for taking up the issue today and providing an important forum for discussion and, hopefully, for action.

Some facts related to Indian country are muddy, but this one is clear: the models of criminal justice that are responsible for poor public safety in Indian country have emasculated tribal governmental systems and made state and the Federal officials the primary providers of public safety in Indian country. State, county and Federal Governments have competing priorities that distract them from the importance of public safety on Indian reservations. Tribal governments are the only governments that are singularly concerned about the quality of life on reservations. Until tribal governments are restored to a central role and made primarily responsible for assuring safety on Indian reservations, we are likely to see continued problems. Redressing the serious public safety problems on Indian reservations will not be fully successful until the entire system is reconfigured to give tribal governments primacy over reservation communities. *Both tribal self-governance and public safety are better served when tribes exercise a central role in providing public safety and criminal justice on Indian reservations.*

Restoring the law enforcement powers of tribal government is a difficult political challenge. Not only are state and the Federal officials likely to object to transferring power to tribes, but tribal leaders are unlikely to come to you to clamor for more authority. It may not be fruitful politically for a tribal leader to say to Congress, "I would like to have greater power to lock up my own people." Moreover, since public safety is perhaps the most dire social problem on American Indian reservations, tribal leaders may not have adequate resources to address the issue successfully. In such circumstances, a tribal leader may think it irresponsible—and see no advantage politically—in buying into almost certain failure. Moreover, it is politically expedient for tribal leaders to have someone else to share the blame. States and the Federal Government seem to be willing villains. Other than an occasional embarrassing report, Federal and state officials have little political accountability for the failure of public safety on Indian reservations. Thus, though public safety can improve only through greater tribal involvement, we should not expect to see tribal leaders clamoring for greater public safety authority.

Though we must put tribal governments out front in addressing public safety, it will not be an easy task. We cannot restore tribes greater authority without also helping them obtain the necessary resources to do the job. Because I recognize significant political obstacles to wide-ranging restoration of tribal authority, I would like to focus now on partial solutions or measures that might help improve tribal safety that are nevertheless short of wholesale restoration of tribal authority on Indian reservations. One of the best resources tribal governments can have is cooperation. It is to this resource I will now turn.

Partial Solutions/Improvements

If I leave you with one concrete idea here today, it should be the notion that cooperation among existing law enforcement agencies across all orders of government is crucial in dealing with violent crime in Indian country. Criminal offenders do not respect jurisdictional boundaries. Thus, any reform proposal ought to attempt to foster cooperation among law enforcement agencies.

To illustrate my point, I ask you to indulge me a brief anecdote. In 1998, when I was serving as an Assistant United States Attorney prosecuting violent crimes in Indian country in New Mexico, I had a chance encounter with Rudolph Giuliani who was then serving his second term as Mayor of New York City. Giuliani had presided over a long and steady period of decline in crime in New York, both as Mayor and, before that, as United States Attorney, and he was basking in that success.

In light of the fact that violent crime in Indian country had been increasing steadily throughout the 1990s at the same time that it had been decreasing throughout most of the rest of the country, I asked Giuliani what strategies we might use in Indian country to achieve the successes that New York had achieved in reducing violent crime.

Giuliani pondered the question for a moment. He noted that as Mayor of New York City, he had full control over law enforcement through all five boroughs, covering several million citizens. Combining computer technology and improved crime reporting, his Comp-Stat system could monitor the development of crime on a nearly instantaneous basis and with such focus that it could detect crime problems on a block-by-block basis. This information allowed New York City to deploy police officers swiftly and efficiently to neighborhoods desperately in need of attention and to move those resources again on the very next shift. He made the New York City Police Department a model of responsiveness and coordination.

When I asked Giuliani to bring that experience to bear on Indian country, he correctly realized that such coordination was nearly impossible across such vast expanses of land in Indian country jurisdictions, where no one law enforcement agency has unilateral authority and where police officers are spread very thin. Under such circumstances, such coordination simply could not be achieved in the way that it could under the Comp-Stat system and with a single chain of command. He basically said, "you have a terrific problem ahead of you, kid," and wished me luck.

Giuliani's astute insight about the importance of coordination in public safety came to mind again a couple of years later in the aftermath of the World Trade Center disaster. On 9/11, when fire and rescue personnel could not communicate with one another in the crucial minutes before the towers fell, many lives were lost. In one tragic event, it became clear that the tremendous coordination that Mayor Giuliani had achieved in law enforcement had utterly eluded him in another key area of public safety. It was an important lesson for him, I am sure, and it is an important lesson for all of us.

Because law enforcement authority in Indian country is spread across wide expanses of land and many orders of government (Federal, state, tribal, county, and municipal), we will never be able to achieve the level of coordination that Mayor Giuliani's police department achieved in New York City. Indeed, our Federal system is designed to spread out such authority among different orders of government. Given limited resources and crisis conditions, however, we must strive to avoid the lack of coordination that plagued the World Trade Center disaster. We must recognize that no single law enforcement agency can address crime alone. Thus, we must work to facilitate cooperation among them.

One lesson is that law enforcement can be effective in achieving public safety only if there is adequate cooperation between the key actors. I offer the following observations.

I. Most of the Law Enforcement Successes in Indian Country Have Come From Careful and Effective Cooperation Between Law Enforcement Authorities

Law enforcement works best when neither the offender, nor the law-abiding citizen, can detect any gaps in coverage. When a potential offender scans the landscape and considers whether to break the law, he must see a unified front among law enforcement officials. To put it another way, the thin blue line that protects the ordinary citizen from the criminal element cannot be effective if it is a dotted line.

Most citizens in the United States do not care strongly who responds to public safety crises, they just want to know that when they dial 9–1–1, they will get the help that they need. It is the job of government to ensure that kind of confidence. Especially in the many rural districts that include Indian country, effective law enforcement can be achieved only with close cooperation between governments.

The good news is that cooperation between law enforcement agencies is occurring widely in Indian country. This Committee has heard ample testimony of such cooperation, particularly in the methamphetamine context, including tremendous successes at Wind River in Wyoming and with my own tribe, the Chickasaw Nation, in Oklahoma. As tribal organizations build capacity, they are working more and more with their state and Federal counterparts.

In most of the states that have federally recognized Indian tribes, tribal governments have entered agreements with states and/or counties that facilitate coopera-

tion. Many states and the Federal Government, of course, also provide mechanisms for state-wide recognition of tribal police as law enforcement officers. In other states, these agreements are struck at the local level. These agreements span a range of law enforcement activities, reflecting mutual aid efforts, cross-deputization or cross-commission agreements, extradition, and other cooperative action arrangements. They also sometimes address thorny issues such as liability and sovereign immunity. And in addition to normal law enforcement activity, the agreements also sometimes cover the sharing of information between agencies, such as prior arrests, traffic records, and other criminal history.

Effective cooperative agreements have the ability to simplify complex questions, freeing law enforcement officers to focus on the most important aspects of their jobs. The Committee is well aware of the jurisdictional complexities of Indian country, and I will not belabor them here, but police officers tend to be well-trained in the police sciences, not in ethnology or land surveying. Cooperative agreements tend to allow police officers to focus on public safety and not on highly artificial and arcane legal issues, such as jurisdictional boundary lines.

Still, though cooperation is occurring widely, it is not universal by any means. In many jurisdictions, cooperation is not formalized.

II. Even Informal or de facto Cooperation Between Law Enforcement Agencies Can Help Produce Law-abiding Behavior and Thus Serve Public Safety

Even in the absence of formal agreements, the appearance of cooperation and coordination between police officers can help to create an effective public safety net. One of my colleagues, a law professor who is a non-Indian, recendy illustrated this point well. While working on the Navajo Reservation, she was stopped for driving in excess of the speed limit on a lonely reservation highway. When she mentioned that she was non-Indian and that the tribe might not have jurisdiction, the tribal officer apparently offered to let her wait for a state trooper and have her case adjudicated in the state system, with the attendant delay and other ramifications that such action would entail.[1] Under such circumstances, the mere threat of cooperation between law enforcement officials led the professor to see that objecting to tribal authority would waste her time, would likely not be fruitful, and might subject her to more severe traffic penalties. She accepted the citation and opted for the tribal process.

One could easily imagine the same scenario involving a state trooper and American Indian violators. Thus, even informal cooperation, or the appearance of it, can help to assure offenders and non-offenders alike that there is no prosecution-free zone in Indian country.

Whether it occurs formally or informally, cooperation often is the norm in Indian country. Cops tend to be able to work with other cops, especially at the street level, primarily because they share a common enemy and they realize that the enemy is not other law enforcement agents.

III. While Cooperation and Trust Between Law Enforcement Agencies Can Improve Public Safety, Conflict and Lack of Cooperation Among Such Agencies Can Only Undermine Public Safety

Street level police officers may have friendly rivalries with those from other agencies, but they often work well together when responding to a crime or undertaking an investigation. They know that crime control and public safety can be achieved far more successfully when law enforcement agencies work together. Sometimes, however, agencies fail to cooperate. When this happens, public safety suffers.

Some recent events in my own state of Minnesota illustrate the potential for trouble when law enforcement agencies fail to work together. The Mille Lacs Band of Ojibwe Indians exercises some law enforcement functions on its reservation. It also cooperates closely with state and county officials who have law enforcement authority under a 1953 Congressional statute called Public Law 280. In circumstances in which county and tribal law enforcement share authority within the same geographic space, cooperation is key. Indeed, Mille Lacs County and the Mille Lacs Band entered into an agreement in 1998 that provides that each agency shall provide mutual assistance to the other. The 1998 agreement also addresses other important issues, such as how prosecutions will be commenced and how liability for law enforcement torts will be allocated and waives tribal immunity for such actions against the tribe to be tried in the same manner as for municipalities within the state.

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[1] I Bethany R. Berger, *Justice and the Outsider: Jurisdiction Over Nonmembers in Tribal Legal Systems,* 37 ARIZ. ST. L. J. 1047, 1048–49 & n. 7 (2005).

As a result of the agreement, tribal police officers have routinely referred criminal activities to the County Attorney for state prosecution. Since the Band employs 19 tribal police officers who are certified law officers under state law, the Band is a significant partner in providing public safety on the reservation. The Band spends approximately $2 million a year on law enforcement activities and provides a significant law enforcement presence in that part of the County.

Recently, however, the relationship between the County and the Band has deteriorated. The Mille Lacs County Attorney, who is responsible for prosecuting the offenses that arise in Mille Lacs County, has challenged the very existence of the Mille Lacs Reservation itself, arguing that it was disestablished in the early 1900s. In a memo to county employees last year, she ordered all employees to stop referring to Indian land as "reservation" land. This assertion, which conflicts with the County's own agreement with the tribe, caused an unnecessary rift between the County and the Band. Apparently emboldened by the County Attorney's actions, some of the worst prejudices of some members of one of the local communities were on display at a summer parade after news of the memo circulated. On that day, citizens lining the parade route booed and made obscene gestures toward a float carrying elderly American Indian war veterans.

To a criminal law professor, those boos sound an awful lot like the fabric of the community tearing under the enormous weight of prejudice. While booing elderly Indian veterans may be protected speech under the First Amendment, it suggests trouble ahead to anyone concerned about public safety. Imagine the public safety concerns that arise when a crowd of people feel emboldened to express animus in a way that violates our fundamental social norms of respect for the elderly and honor for our Nation's war veterans. Will such people commit acts of violence? If police are called out, will these prejudiced people respect state-certified tribal police officers who are engaged in the routine work of law enforcement in keeping peace?

It is the job of law enforcement officers to build cooperation, not destroy it. Thus, the failure of the county attorney to work toward trust and cooperation may have long term ramifications. This past spring, another occurrence from the same locale stoked great mistrust of the County Attorney by tribal members. In the course of attempting to bring a prosecution for a minor offense, the County arrested a child victim of an assault, only 11 years old, who was jailed overnight, and required to appear in court the next day in an orange jail jumpsuit. The incident drew howls of protest in the tribal community. The tribe felt that the arrest of the child victim had the effect of victimizing the child a second time. As a result, the County Attorney has largely lost the confidence of a large number of the people that she is intended to serve. These events raise an important question: what happens when cooperation fails and law enforcement loses the trust of the community it has been given the responsibility to serve?

IV. Cooperation Must Be Encouraged at Every Step of the Process. When it Fails, Tribal Communities Must Have Alternative Options

Congress must work to provide incentives for cooperation among state, Federal and tribal law enforcement agencies.

As the previous discussion indicates, however, cooperation may fall short even when strong incentives already exist. Through cooperation, the Mille Lacs County Attorney has 19 additional tribal police officers at her disposal to maintain public safety and respond to crimes. This is a tremendous incentive to cooperate. Yet, the County Attorney seems to have worked to undermine that cooperation and made it difficult for tribal law enforcement officials to work with the County.

In circumstances where positive incentives toward cooperation fail, Congress should create an alternative approach, an escape valve, if you will, for tribes. In Public Law 280 states, for example, Congress should give tribes the full ability to opt out of state Public Law 280 jurisdiction in circumstances in which the tribes have lost confidence in the state officials responsible for public safety. While tribes now have a limited retrocession option, existing law requires states to consent to the exercise of such an option. Giving the state the right to veto a retrocession is ill-advised because it prevents the tribe from going elsewhere if the state is not doing its job. The state ought to have incentive to serve the tribe well.

A tribal option for retrocession, that is, a choice, would further tribal self-government by putting key law enforcement questions in the hands of the tribe and force the state to be responsive to the tribe if it wishes to keep the tribe as a partner. It would also further public safety because it would make the government accountable to the community it is supposed to be serving. If a reservation community believes that the state is doing a good job, then the state can continue. But if the state is doing a poor job, then it can install a Federal/tribal system in which tribal officials will be forced to exercise greater accountability for public safety.

To address public safety, Congress should encourage the more robust exercise of existing tribal criminal jurisdiction over misdemeanor offenses by American Indians. Tribal governments are better situated and more responsive to reservation communities. They are thus likely to do a better job in addressing public safety than any Federal or state officials can.

For a limited category of offenses, Congress should consider, perhaps on a pilot basis, giving those responsible tribes that are interested in participating a modicum of misdemeanor criminal authority over non-Indians who commit crimes involving Indians on the reservation. With appropriate safeguards, such jurisdiction could resolve many of the continuing problems in Indian country by placing control over law enforcement and criminal justice with the government that is best situated—and best motivated—to address violent crimes and minor narcotics offenses. Accepting the exercise of limited criminal jurisdiction over non-Indians by tribal governments is a very modest step toward addressing a public safety problem that has existed for far too long.

A final word. Modern Federal policymakers have long been interested in furthering tribal self-government because tribal governments are better at providing services to tribal communities. If we wish to promote public safety, it is hard to imagine a better way to do that than by empowering the government that is most interested in providing it. No government has a greater interest in reservation safety than the government that calls the reservation home. Only the tribal government is fully accountable to the reservation community that must live without public safety.

Likewise, it is hard to imagine a subject more crucial to tribal self-government than public safety. A community cannot effectively exercise self-government when it cannot establish an environment in which citizens can safely and vigorously engage in the activities of governance. Effective tribal law enforcement is a key ingredient to reservation public safety.

Scholars can quibble about whether tribal courts should be able to try non-Indians, or whether state or Federal courts are fair or effective, but unless we have adequate law enforcement in place, all this quibbling is no more useful than re-arranging office chairs in the World Trade Center on September 10, 2001. We do not need agreement on all jurisdictional issues to create public safety in Indian country, but we do need cooperation among those players whose task is to ensure public safety. Those agencies that do not cooperate ought to be strongly encouraged to do so. If they fail to improve, they should step aside in favor of governments that are more interested in providing public safety.

Thank you for asking me to appear here today.

Disclaimer: The comments expressed herein are solely those of the author as an individual member of the academic community; the author does not represent the University of Minnesota for purposes of this testimony.

Bibliography

A bibliography of Professor Washburn's work in the area of criminal justice in Indian country is set forth below, with brief abstracts of each work:

American Indians, Crime, and the Law, 104 MICHIGAN LAW REVIEW 709 (2006). The Federal "Indian country" criminal justice regime, which governs hundreds of Federal Indian reservations across the United States, gives Federal prosecutors, Federal judges, and Federal juries the important responsibility of providing criminal justice for serious local crimes on Indian reservations and also for many less serious offenses. Because Indian country offenses are, by definition, local crimes with little national impact, this work is an unusual part of the Federal docket. For a variety of reasons, related to history and geography and other factors, Federal prosecutors and investigators face numerous practical obstacles in performing their jobs in Indian country. Likewise, because Federal grand juries and trial juries for Indian country cases tend to be constituted from the general population of a Federal judicial district rather than from within the boundaries of the courts' Indian country jurisdiction, these juries fail to represent fair cross-sections of the Indian country community. Such juries cannot serve the community-representative functions envisioned by the Constitution. As a result, Federal Indian country trials operate in a manner inconsistent with basic American norms of criminal justice, such as those set forth in the First and Sixth Amendments to the United States Constitution. And Federal Indian country convictions therefore lack important hallmarks of legitimacy and raise serious constitutional concerns. According to this constitutional critique, the Federal criminal justice system on Indian reservations should be reconceived to give life to existing Federal constitutional norms or repealed in favor of an approach more consistent with constitutional values and modern Federal Indian policy. This article may also be viewed online at *http://ssrn.com/abstract=709383.*

Federal Criminal Law and Tribal Self-Determination, 84 NORTH CAROLINA LAW REVIEW 779 (2006). Under the rubric of "tribal self-determination," Federal policymakers have shifted Federal Governmental power and control to tribal governments in nearly all areas of Indian policy. Normatively, this shift reflects an enlightened view about the role of Indian tribes in Indian policy. As a practical matter, it has also improved services to Indians on reservations by placing functions with tribal service providers who are more knowledgeable and more accountable than their Federal counterparts. Despite choosing tribal self-determination as the dominant theme of modern Federal Indian policy, felony criminal justice on Indian reservations has been an exclusive Federal responsibility, and a highly ineffective enterprise, according to critics, because crime is worse for American Indians than any other ethnic group. The failure to embrace self-determination in Federal Indian country criminal justice is curious. Criminal law has a central role in shaping and expressing community values and identity. And a community that cannot create its own defmition of right and wrong cannot be said in any meaningful sense to have achieved true self-determination. Tracing the history of the century-old Indian Major Crimes Act, it is clear that the Act's original purposes, increasing Federal control and encouraging assimilation, lack legitimacy in the modern era. As mainstream Federal Indian policy has become much more enlightened, the Major Crimes Act has become an embarrassing anachronism. Tribal self-determination strategies in criminal justice might help tribes achieve true self-determination and help Indian country recover from the current criminal justice crisis. This article may be viewed at: *http://ssrn.com/abstract=800828.*

Tribal Self-Determination at the Crossroads, 38 CONNECTICUT LAW REVIEW 777 (2006). The tribal self-determination initiative that began transforming Federal Indian policy thirty years ago has reached a crossroads. Despite its transformative effects on tribal governments and the widespread belief that self-determination has been a successful Federal approach to Indian affairs, no new self-determination initiatives have occurred, at least at the Congressional level, in several years. This Essay looks to the self-determination policy's past for insight about its future and concludes that far more work needs to be done to achieve tribal self-determination. Drawing on the author's broader work, it argues that a fruitful subject for further work is in the area of tribal criminal justice. This article may be viewed at: *http://ssrn.com/abstract=869848.*

Tribal Courts and Federal Sentencing, 36 ARIZONA STATE LAW JOURNAL 403 (2004); 17 FEDERAL SENTENCING REPORTER 209 (2005). Under the prevailing Federal sentencing guidelines, tribal convictions are currently disregarded in Federal sentencing. This article argues that the Sentencing Commission should trust misdemeanor convictions in tribal courts at least as much as it trusts misdemeanor convictions from state, county, and municipal courts. For a variety of institutional reasons, tribal convictions could be considered to have far greater legitimacy than Federal and state convictions. This article cites a trend toward use of tribal court convictions by individual Federal judges to grant upward departures in Federal criminal sentences and argues that the Federal sentencing guidelines ought not treat tribal courts like foreign courts. It explains the numerous similarities between tribal courts and other American courts and argues that tribal courts ought to be treated more like domestic courts. A summary of the article appears as Reconsidering the Commission's Treatment of Tribal Courts, 17 FEDERAL SENTENCING REPORTER 209 (2005), and is followed by four separate comments on Professor Washburn's argument by Federal judges William C. Canby, Jr., (9th Cir.), Bruce Black (D. N.M.), Charles Kornmann (D. S.D.) and Federal Public Defender Jon Sands (D. Ariz.). The summary version can be viewed at *http://ssrn.com/abstract=779624.*

A Different Kind of Symmetry, 34 NEW MEXICO LAW REVIEW 263 (2004). There is a national trend within state courts and legislatures toward recognition of tribal criminal judgments of conviction in a variety of contexts related to criminal law: State courts have relied on tribal convictions for purposes of (1) assessment of an offender's general criminal history in sentencing, (2) for use as a predicate offense for prosecution for an aggravated offense, such as aggravated DWI or domestic violence prosecutions, (3) for driver's license suspension or revocation, (4) for treatment of a juvenile as an adult for purposes of felony prosecution, and (5) for purposes of sex offender registration. This article describes the implications of the increasing recognition of tribal criminal convictions for tribal *civil* judgments. Given that protections for liberty interests are constitutionally prioritized higher than mere property interests, it follows that those states that are willing to rely on tribal criminal convictions in subjecting criminal defendants to greater jeopardy ought to be willing to extend at least as much trust to civil judgments from tribal courts.

The CHAIRMAN. Professor Washburn, thank you very much.

Next we will hear from Thomas Heffelfinger, former U.S. Attorney in Minneapolis, and now a partner at Best and Flanagan. I might say to you, Mr. Heffelfinger, I believe you were at a listening session I held in Minnesota with regional tribes. Since that time, you have been the subject of some comments here in the Congress as you might now, and I will ask you a couple of questions about that. Monica Goodling, a former aide to Attorney General Gonzales, testifying before the House of Representatives, said that you were targeted for dismissal as a U.S. Attorney because of your preoccupation with Indian issues.

So as I introduce you, let me just tell you, if you were focusing a substantial amount of time on what I think are critical issues, I commend you, rather than threaten you with dismissal. I will ask you some questions about that, I appreciate your work and appreciate having seen you in Minneapolis some months ago at the listening session.

You may proceed.

STATEMENT OF THOMAS B. HEFFELFINGER, PARTNER, BEST AND FLANAGAN LLP

Mr. HEFFELFINGER. Thank you, Senator Dorgan and Members of the Committee. Since you already have me off track——

[Laughter.]

Mr. HEFFELFINGER. —let me comment that it is actually shameful and embarrassing for the Department of Justice if that is in fact the official position of the Department, that spending too much time on Indian issues should cause one to be fired. I took that position before the Hennepin County Bar Association the day after Ms. Goodling testified and received a standing ovation. So I am confident that whatever her views are and whatever the views are of the Department of Justice that may have supported her on that issue that it is not shared by the people of the United States.

I thank you very much for the opportunity to address the Committee today. In addition to being U.S. Attorney in Minnesota, and I guess that which got me in trouble with some of the highers-up at the Department, was that I chaired for 5 years, almost 5 years, the Native American Issues Subcommittee. In that capacity, I had opportunity to testify before this Committee three times, twice in July of 2002 and July of 2003 on the issue of law enforcement in Indian Country.

I gave that testimony as a prosecutor, and I would urge the Committee to look back at it. Because from my experience, nothing has changed when it comes to the impact of this confusing jurisdictional mess upon increasing the difficulty of prosecutors doing their job. I am going to attempt to avoid repeating my testimony from 2002 and 2003 and am confident that the Committee can access it. I would call it to your attention again.

In March of 2004, while chairing that committee, I had the honor of participating in a listening session here in Washington that was put together by NCAI on the issue of criminal jurisdiction. A gentleman named Chairpah Matheson, who was tribal council member in Coeur d'Alene, made the following comment: "How can tribes have sovereignty when they can't protect their children and their

women?" I will never forget that comment, because it goes to the heart of a governmental obligation, whether it is Federal or tribal or what, to provide public safety. There can be no higher responsibility for a government.

As you stated, Senator, at the beginning of this hearing, the Native American communities suffer disproportionately from violent crime. What I have not heard, however, is that Native American communities also suffer disproportionately by the conviction of their members for crimes. In Minnesota, for example, the Native American population represents 1 percent of our State population. But, we are a predominantly Public Law 280 community, or State, and 7 percent of our State prison population is Native American. The tragedy of this is that the young people who will become the tribal leaders of the future are growing up inside our criminal justice systems, either as victims or witnesses or as defendants.

What motivated me during my years as a United States Attorney was not only the tragedy of those facts but the fact that this is a Federal problem. Unlike many other problems the Senate faces where we are in partnership with the States, these are Federal problems. The Federal Government has responsibility for major crimes investigations, even Public Law 280 is a creature of Federal law.

For the last 122 years of Supreme Court decisions and stop-gap legislative actions, criminal jurisdiction in Indian Country has become a mess. It is a patchwork quilt of decisions and stop-gap legislation. Every time the Congress or the Supreme Court either returns an opinion or passes a law, all it does is add a box to that confusing chart that you have in front of you of Indian Country criminal jurisdiction.

One hundred twenty-two years of court decisions and stop-gap legislation has created this jurisdictional mess, a mess which means law enforcement is more difficult, delay is normal, respect for the law is deteriorated. The losers in that situation are tribal governments and tribal people. If the Federal Government is going to fulfill its trust obligation and protect the people of Indian Country, it must clarify and simplify in a comprehensive way Indian Country criminal jurisdiction.

I would like to use the balance of my time to give a set of recommendations, something I didn't have the opportunity to do when I was speaking for DOJ. Now that I am a private citizen, I am going to take advantage of it.

[Laughter.]

Mr. HEFFELFINGER. I suggest a two-part process, Senators. The first part is short-term and the second is long-term. Short-term, I suggest that two of the biggest problems of a law enforcement nature facing Indian Country right now are drug dealers, primarily in the area of methamphetamine, and domestic abuse. Most abusers, 70 percent, as we know from the Amnesty study are non-Indian. I suggest that Congress immediately look at ways to empower tribal governments, tribal law enforcement and tribal courts to deal with these two groups of outsiders who are bringing misery into Indian Country.

Number two, as my friend, Kevin Washburn, has stated, multijurisdictional task forces work. However, the confusing criminal ju-

risdiction frequently makes those task forces either impossible to form or impossible to keep in place. In many reservations, and I will use the White Earth reservation in my State, as an example, you have three different counties in which the tribe exists and you have to have a multi-jurisdictional with three counties and innumerable cities.

I would urge the Senate and the House, although I am not speaking to the House, I guess, I would urge Congress to empower these task forces. Yes, I am talking money. I am talking money. Because that works. FBI Safe Trails task forces have worked very, very well in those areas where they have been started, largely because the FBI provides money to entice participation from non-tribal law enforcement.

Number three short-term, establish family violence centers. Everything that Senator Murkowski talked about and was discussed earlier is true. Up in northwest Minnesota, if you are a victim of child abuse or sexual assault, to get to a SANE nurse or a trained physician in dealing with child abuse, you have to drive to St. Paul, which is a four and a half hour drive.

What we established in Minnesota while I was U.S. Attorney are family violence centers to focus on child abuse, sexual assault, domestic violence. These are related law enforcement disciplines. They are also related medical disciplines. We have trained doctors and nurses to treat those three kinds of victims within half an hour of each of the reservations. They serve non-Indian communities as well, because rural America faces similar problems with lack of resource.

Finally, in the long term, the body of Indian Country criminal jurisdiction law has never been comprehensively studied. It is going to take leadership with clout to achieve a comprehensive change. The Department of Justice cannot do this. Quite frankly, it lacks the structure and the resolve to take the leadership in a comprehensive change in this area of jurisdiction.

I am making a recommendation which I will admit I am reluctant to make. I am suggesting that Congress establish a criminal justice commission to develop reforms that will give us a comprehensively new body of criminal law in Indian Country. Now, I am reluctant, because the idea of a commission scares the daylights out of me. It is another group of meetings and a bunch of paperwork that sits in a basement somewhere.

But I am also convinced that without the clout of Congress standing over a commission, holding it to deadlines, providing it with resources and staff, without that type of leadership, we will never achieve a comprehensive improvement in the quality of public safety in Indian Country and the quality of criminal law in Indian Country. Without that comprehensive change, we are merely adding band-aids and we are not going to bring about a long-term change in the quality of life and fight against crime in Indian Country.

Thank you.

[The prepared statement of Mr. Heffelfinger follows:]

PREPARED STATEMENT OF THOMAS B. HEFFELFINGER, PARTNER, BEST AND FLANAGAN LLP

Mr. Chairman and Members of the Committee, my name is Thomas B. Heffelfinger and I am a partner with the law firm of Best and Flanagan LLP in Minneapolis where, among other things, I represent tribal communities. From 2001 to March 2006, I was United States Attorney for the District of Minnesota and also the Chair of the Department's Native American Issues Subcommittee (NAIS). In that capacity, I had the honor of testifying before this Committee three times, twice on issues related to criminal jurisdiction in Indian Country.

In March 2004, as Chair of NAIS, I had the privilege to participate in a listening session put together by the National Congress of American Indians (NCAI) with tribal leaders from around the country on the issues of criminal jurisdiction in Indian Country. At that meeting, Chairpah Matheson, Tribal Councilmember of Coeur d'Alene Tribe of Idaho, asked: "How can tribes have sovereignty when they can't protect their children and their women?" Mr. Matheson's quotation is incredibly compelling. Is there a higher priority for any sovereign government—Federal, state, tribal or local—than protecting the physical safety of its people?

Mr. Matheson's concerns are very real. In a Coeur d'Alene Tribal survey conducted only months before our March 2004 meeting, 81 percent of Coeur d'Alene members did not feel safe in their own homes. Nationally, Native Americans continue to be victimized by crime at a rate two and one-half times the national average. Native American children suffer from neglect and abuse at a rate three times the national average. Native American women, the most heavily victimized segment of our nation, are victimized by sexual assault and domestic violence at a rate more than three times the national average. This was confirmed only recently by the findings of an Amnesty International study.

To add to this concern with victimization, the perpetrators in these reservation crimes are largely Native American, meaning that a disproportionate number of Native Americans are going to prison. For example, in Minnesota, when nine of eleven tribes are Public Law 280 (PL 280) (state jurisdiction) tribes, the Native American state prison population is seven times the state general population.

This is a tragedy; these victims, these defendants, are the tribal leaders of tomorrow.

This is also a Federal problem. These tribal members live either on reservations for which the Federal Government has jurisdiction for major crimes or they live on reservations for which the state has jurisdiction pursuant to PL 280, which is itself a Federal law .

Federal Indian law is a result of 122 years of Supreme Court decisions and congressional actions; there has been no comprehensive plan for Indian Country criminal law and it is a patchwork quilt of decisions and stop-gap legislation that few understand. Every action of Congress or the Supreme Court only makes the law of Federal criminal jurisdiction more complicated and more difficult to understand and use.

Since 1885, when Congress passed the Major Crimes Act,[1] the U.S. Government has had primary responsibility for the investigation and prosecution of serious violent crime in Indian Country, such as murder, manslaughter, kidnapping, arson, burglary, robbery, and child sexual abuse. However, Federal jurisdiction under this statute is limited to the prosecution of Indians only. The Indian Country Crimes Act,[2] which is also known as the General Crimes Act, gives the United States jurisdiction to prosecute all Federal offenses in Indian Country except when the suspect and the victim are both Indian, where the suspect has already been convicted in tribal court or in the case of offenses where exclusive jurisdiction over an offense has been retained by the tribe by way of treaty.

The U.S. Supreme Court has held that where the suspect and the victim are both non-Indian, then the state court has exclusive criminal jurisdiction.[3] Under the Indian Civil Rights Act, tribal courts have criminal jurisdiction over non-member Indians;[4] however, tribal court sentences are limited to misdemeanor punishments.[5] In the 1978 decision of *Oliphant v. Suquamish Tribe,*[6] the United States Supreme

[1] Now codified at 18 U.S.C. § 1153.
[2] 18 U.S.C. § 1152.
[3] *Draper v. United States,* 164 U.S. 240 (1896); *United States v. McBratney,* 104 U.S. 621 (1882).
[4] 25 U.S.C. § 1301(2) & (4).
[5] 25 U.S.C. § 1302(7).
[6] 435 U.S. 191 (1978).

Court decided that tribal courts could not exercise criminal jurisdiction over non-Indians.

The *Oliphant* decision in particular has had a profoundly detrimental impact upon public safety in Indian Country because it limits the authority of local tribal law enforcement in the event a non-Indian is suspected of committing a crime in Indian Country. This is an everyday challenge when police are responding to domestic violence, as 70 percent of domestic assaults upon Native Americans are committed by non-Indians. In response to *Oliphant*'s constraints, some tribal law enforcement agencies have obtained "cross-commissions" from state, local or Federal authorities to expand their authority to arrest non-Indian criminal suspects under state or Federal law. However, such cooperative arrangements are not made in many jurisdictions due to various factors, including local political issues and concerns over liability. As a result, effective law enforcement over non-Indians who commit crimes in Indian Country is not consistent from reservation to reservation.

Confusion over criminal jurisdiction for criminal offenses committed in Indian Country is very real and has a significant, negative impact upon the ability of law enforcement and prosecutors to protect the public. Whenever a violent crime occurs in Indian Country, in order to determine jurisdiction, prosecutors are forced to make a determination concerning who has jurisdiction by answering four questions:

(1) whether the offense occurred within "Indian Country;"
(2) whether the suspect is an Indian or a non-Indian;
(3) whether the victim is an Indian or a non-Indian; and
(4) what the nature of the offense is.

Depending on the answers to these questions, an offense may end up being prosecuted in tribal court, Federal court, state court or not at all.

Determining whether or not the offense occurred in Indian Country is not a simple question. Although "Indian Country" is defined as land that is either: (1) within a reservation; (2) within a dependent Indian community; or (3) an allotment,[7] litigation over whether or not a particular crime scene is within Indian Country can tie up litigation for years. For example, the Indian Country status of certain lands within the Uintah & Ouray Ute Tribe's reservation in Utah took approximately 25 years to litigate,[8] throwing many convictions of violent criminals into doubt until it was eventually resolved in a manner supporting the convictions.[9]

Another complicating factor is the fact that both the Federal Major Crimes Act and the General Crime Act require proof of "Indian" race of either the victim, the offender or both. Nevertheless, "Indian" is not defined in Title 18. At least one Federal circuit, the Tenth, now requires the government to prove the non-Indian status of either the victim or the defendant in order to establish jurisdiction under the General Crimes Act. *U.S. v. Prentiss,* 273 F.3d 1277 (10th Cir. 2001). Why is race a required element for public safety in Indian Country? The only area of Federal criminal jurisprudence where race is an essential element is in the area of Indian criminal law.

Answering these questions adds to the delay, complexity and difficulty of the investigation and prosecution. Only after these questions are answered can a prosecutor turn to the more important questions of sufficiency of the evidence and guilt or innocence. This confusion over jurisdiction generally does not exist in consideration of jurisdiction in most state and Federal violent criminal cases where jurisdiction/venue are determined by the geographic position of the crime scene.

Jurisdictional confusion has an additional detrimental impact upon a factor crucial to protecting public safety in Indian Country: cooperation between tribal, state and Federal law enforcement. Because of the isolated nature of most reservations, the time and distances required to respond and the scarcity of resources, multi-jurisdictional law enforcement cooperation is essential. Unfortunately, confusion over jurisdiction all too often results in "turf battles" or, even worse, unwillingness to assume responsibility. The losers in these disputes are the victims.

One hundred and twenty-plus years of court decisions and stop-gap legislation have created a jurisdictional mess, which means that law enforcement is difficult, delay is normal and respect for law enforcement and judicial process is low. The losers are the people of Indian Country.

If the Federal Government is going to fulfill its trust obligations and protect the people of Indian Country, we must clarify and simplify Indian Country criminal ju-

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[7] 18 U.S.C. § 1151.

[8] *Ute Indian Tribe v. Utah,* 114F.3d 1513 (lOth Cir. 1997), *cert. denied, Duchesne County v. Ute Indian Tribe,* 522 U.S. 1107 (1998), applying the decision of *Hagen v. Utah,* 510 U.S. 399 (1994), *reh. Denied,* 511 U.S. 1047 (1994).

[9] *U.S. v. Cuch,* 79 F.3d 987 (10th Cir. 1996).

risdiction. This effort *must* respect and protect tribal sovereignty. This effort *must* be comprehensive and look at all of Indian Country criminal jurisdiction. It requires a "step back" and new look at how to address Indian Country criminal jurisdiction. Reliance on individual judicial decisions and stop-gap legislative "fixes" will not improve the quality of law enforcement in Indian Country.

Senators, in 2002 and 2003, as a government representative, I also recommended to you the need for a comprehensive clarification and simplification of Indian Country criminal jurisdiction. As a government representative, I did not suggest to you how to accomplish such a clarification of the law. Now I am a private citizen and am free to make a suggestion.

I believe that the Congress should adopt a two-part strategy to enhance law enforcement capacity and reform criminal jurisdiction in Indian Country: a short-term strategy and a long-term strategy.

In the short term, I suggest Congress focus on two to three specific improvements which, although not comprehensive, could achieve immediate results in crucial areas of public safety in Indian Country. Based on my experience, I would suggest three short-term strategies:

1. A limited *Oliphant* fix which would establish tribal jurisdiction over non-Indian offenders accused of domestic violence, child abuse or drug dealing in Indian Country. These are all areas in which recent experience has shown that a disproportionate number of offenders are non-Indian and are committing such crimes with little accountability. These are also the types of crimes in which tribal law enforcement and judicial resources could be highly effective.

2. Congress should incentivize the creation of multi-jurisdictional law enforcement programs, such as task forces and cross-deputization agreements. These incentives, largely financial, could cover equipment, overtime, salaries, etc., which would encourage tribal and non-tribal law enforcement to collaborate and overcome logistical and historic barriers.

3. Financially and legally support the creation of regional, multi-jurisdictional Family Advocacy Centers to serve both tribal communities and neighboring non-Indian rural communities. Family Advocacy Centers, like the Family Advocacy Center of Northern Minnesota in Bemidji, serve the victims of child abuse, adult sexual assault and domestic violence generally through medical-based services. The response to these types of crimes involves similar, but not identical, protocol. Tribal and rural communities cannot afford separate centers for each type of crime; nor can each community in a region afford one. Regional Centers provide victims with prompt medical and law enforcement attention. The focus on medical care allows for the immediate commencement of the physical and mental healing process for the victim, thereby helping break the generational cycle of violence that occurs in these types of crimes.

The long-term strategy should focus on a comprehensive clarification and simplification of criminal jurisdiction in Indian Country. Clarifying a body of law that has never been comprehensively studied and clarified will not be an easy task. It will take leadership with "clout," both here in Washington and in Indian Country. Quite frankly, the Department of Justice lacks the structure and the resolve in this area to provide that leadership. I have thought about this for more than 5 years and am convinced there is only one option: Congress must establish a Congressional Indian Country Criminal Jurisdiction Commission ("Commission") to study the issues and report back to Congress. With Congress' leadership, the Commission will have clout. With a broad-based membership—tribal representatives, prosecutors, defense lawyers, judges, professors and other interested parties—it is very possible to develop a body of law that will be accepted by all interested groups and will remove confusion and improve public safety.

I was initially reluctant to recommend yet another Commission whose work might disappear into the vast mountain of paper generated by the Federal Government. But I have become convinced that only a Congressionally supervised and monitored group of experts and interested individuals can realistically meet this challenge. This Commission will require funding to cover travel expenses so that all members will be able to fully participate. It will require Congressional staff support, not only for administrative assistance, but also to keep Congress fully informed. And, it will require regular reports to Congress in order to keep the Commission on task.

The Commission's mission should be broad and all jurisdiction-related issues should be "on the table" in order to achieve a comprehensive clarification of the law. The issues could include:

- Is jurisdiction based on geography? What is the definition of Indian Country?
- What role, if any, should race play?

- What do we do with the Major Crimes Act and the General Crimes Act? Should jurisdiction be based on a list of crimes?
- What do we do with PL 280 and other specific grants of jurisdiction to states?
- How do we deal with non-Indians on non-Indian crimes on the reservation?
- Should there be an establishment of tribal jurisdiction over non-Indians? (I am among those who believe that a broad "*Oliphant* fix" is ultimately essential to improving public safety in Indian Country. However, such a broad fix must be part of a larger, comprehensive clarification of the law.)
- In clarifying and simplifying criminal jurisdiction, will it be necessary to expand the civil rights of those appearing before tribal courts; *e.g.,* right to indigent counsel, right to jury pool which is a true cross-section of the entire community, right to appeal beyond tribal review?
- How do we deal with the financial and resource impact of re-adjusting responsibility; *e.g.,* burdens on tribal, state and Federal law enforcement and judiciary?

While I was in the Department of Justice, I attempted to establish a task force to accomplish the clarification and simplification I now suggest. For a variety of reasons, I was unsuccessful. That experience convinced me that without Congressional leadership, there will be no comprehensive reform of Indian Country criminal jurisdiction. Unless we achieve such a comprehensive clarification and simplification, we will not be able to significantly improve our ability to protect the people of Indian Country from serious crimes. Continued isolated judicial decisions and legislative "fixes" simply will not do the job. The combination of short-term and long-term strategies will provide immediate help in areas where it is desperately needed and future broad-based improvements in public safety in Indian Country.

The CHAIRMAN. Mr. Heffelfinger, thank you very much for your testimony.

I say as one member of this Committee, now as Chairman, that I am frankly weary of hearings to hear about the problems. I very much appreciate all of you today who have not only described the problems, but said, here are some of the things that we should and must do to begin to address them. I mentioned before the things that I have seen and the circumstances of the devastating crime and the victims that come from that crime on Indian reservations. It is almost unbelievable to me. Yet nothing ever seems to happen except we have hearings and talk about it.

I hope, and Senator Murkowski and I and Senator Tester and other members of the Committee, we are going to make every effort to develop new initiatives, new initiatives with the recommendations that you and others have given us to try to address these issues. It is just almost unbelievable what we are hearing and seeing and things aren't getting better. It is up to us. As you indicated, it is a Federal responsibility. When a young 3 year old girl is put in a foster home with no investigation about whether that home is a safe place and a drunken party ensues and the young girl has her nose broken and arm broken and hair pulled out by the roots, that 3 year old girl was injured because one case worker was working 150 cases and never checked to see where that 3 year old girl was being placed. It is our responsibility. And it goes on and on and on.

We must, it seems to me, find a way to begin moving well beyond the hearing stages here and developing initiatives and pushing them. I think in some ways, the catalyst of the Amnesty International report ought to wake everybody up to say, you can't let this continue, this must stop. I very much appreciate the testimony that you have given us.

I am not going to focus on this, but I am going to ask you one question about the Justice Department. Because these problems

have existed over different Administrations, over a long period of time. But when I hear someone come to the Congress to say that a U.S. Attorney was threatened to be fired or was on a list to be fired because he or she spent too much time working on Native American issues, I worry about that. I notice that either four of the eight or five of the eight U.S. Attorneys who were in fact replaced were on the committee, the committee that you were on, dealing with Native Americans.

Is that purely coincidence? If what the testimony said, is they worried about you because you spent too much time worrying about law enforcement issues on Indian reservations. Do you have any speculation about whether some who did get fired lost their jobs because of that?

Mr. HEFFELFINGER. Senator, members of the Committee, it is true that five of the eight who were fired, including Margaret Chiara, who replaced me as chair, were on the Native American Issues Subcommittee. But more importantly, they were actually leaders on that committee.

One of the reasons that we did spend a lot of time on Native American issues while I chaired it is that we took the consultation requirement very seriously. All of our meetings but one, the organizational meeting, were on Indian reservations. And every one of our meetings, we had five of them, four of the five were hosted by four of those people who were fired: Iglesias, Charlton, McKay and Bogden. It is also true that Native American issues are viewed within the Department of Justice as "local" issues. When there is a conflict between local issues and issues that are considered more of a national priority, there is disagreement between main Justice and the field.

I can tell you that all of those five people were zealous advocates in their own districts for improving public safety in Indian Country and improving Indian Country's role in our broader homeland security infrastructure.

As to the specific reasoning why individuals were put on that list, I think you will have to ask Kyle Sampson. But it is not a mere coincidence that five of eight were leaders amongst Native American prosecutors.

The CHAIRMAN. I will not ask further about that, except to say this. I think, the word used is appropriate, I think this is shameful. If in fact anyone in any Administration in the Justice Department is spending time being critical of or threatening to fire U.S. Attorneys because they are spending substantial amounts of time dealing with some of the most gripping and difficult law enforcement issues we face in this Country, crimes committed against a population that is increasingly victimized, shame on those people who believe that it is not appropriate to spend substantial amounts of time on that.

I think there are three things here, and again, I hope to work with my colleague, the Vice Chair, Senator Murkowski and Senator Tester and others on developing an initiative that really does move. One, we do need more funding. That is just a fact. I understand funding isn't going to solve this problem by itself. But we do need more funding. Second, you need a will. You can have all the jurisdiction you want and all the resources. If there is not the will to

do the right thing and to be aggressive and pursue the right policies, then nothing is going to happen.

And third, you raised a question, Professor Washburn has raised the question, third is the issue of reform. That deals with the question of jurisdiction. President Garcia, this jurisdictional issue is obviously very important. But the chart that I put up at the front of this, about the jurisdiction, the fractionalization of all this jurisdiction, we need to find our way through this. Perhaps a commission is the right recommendation. Some way or another, we need to redefine this jurisdiction issue so that we have the opportunity to work on law enforcement that is effective and that gets the job done.

I would like to hear your comments on that, then I am going to turn to my two colleagues for questions and I will ask further questions at the end. President Garcia?

Mr. GARCIA. Yes, thank you, Mr. Chairman. I believe that if you look at just the chart, that is only one piece of it. But if you look at then the laws which drive the conditions that exist, we have different, a diverse group of operations, if you will, driven by legislation that was put forth in Congress. I will cite a few of them.

Tribes and Indian nations operate in different senses. One will be, if you are 280, if you exist in a 280 State, you have a set of rules. If you are a BIA law enforcement with direct services from BIA, you are in a different situation. And it varies from region to region, depending on the efforts of the Bureau itself.

The other difference is, if you are a 638 tribe, 638ing your law enforcement, then you are in a different arena in how you function and how you operate. Then there is the self-governance tribe, who have probably a better chance of developing their law enforcement accordingly. But the barrier there is the funding and the understanding from the funding agencies and it is not really Department of Interior, because the funding actually comes from the President and from the budget committees in Congress.

So when you add all those things, you end up with a result that looks like that. So I think the solution then is, we need to be sure that those root causes are looked at before we just proceed. Because if don't do that, there will be more solutions that are piecemeal and that will never, ever get to the heart of the problem. So I think it will take a lot more minds and a lot more concerted effort between Congress, the tribal entities themselves and then those Federal agencies or entities that have, are shareholders or stakeholders in the effort.

But we must do it now. I support the commission. But I think we need to go beyond the commission, because those steps need to happen immediately and the commission would have its own course of tasks that would be issued to it. But I believe that is the only way we are going to find solutions. It will take a lot more than what we are doing now, Senator.

The CHAIRMAN. We are scheduled to have a series of votes beginning in about 15 minutes. I want to call on my colleagues for inquiry, so that we are able to ask questions prior to those votes. Senator Murkowski.

Senator MURKOWSKI. Thank you. I truly appreciate not only the testimony but as the Chairman has indicated, your solutions, your

proposed solutions, to hear the resolutions that came from NCAI and President Garcia, I truly appreciate your leadership with that in identifying some specifics.

Professor Washburn, you have said if we leave with nothing else from this hearing other than this push for greater cooperation, greater collaboration, that is the message here. And Mr. Heffelfinger, I truly appreciate your very specific and very concrete proposals, the suggestion for a criminal justice commission.

In the State of Alaska, we commissioned our own rural justice commission study, a several year effort. I will tell you, I am a little disappointed that we are not seeing more concrete results, more action as a consequence of that study. We have identified the problem, we have identified some proposed solutions and those proposed solutions, quite honestly, all involve funding.

We are in the same position as we kind of hear this morning. The question is, how many Amnesty International reports, how many reports from how many commissions do we have to receive before we have that action plan? In the meantime, you still have an Indian Health Service facilities that don't have forensic rape kits, that don't have the sexual assault nurse examiners. And we just kind of let the problems be swept under the rug. Then that situation gets worse, the gang activity gets worse. And we say, gosh, we need to do more.

Well, there needs to be that concrete action plan. And the proposal from you, Mr. President Garcia, that you basically convened some kind of a summit with the Department of Justice to say, OK, how do we get off center with this. But from what I hear with the background on Department of Justice, perhaps, we don't have the support coming out from Justice. Usually people are dismissed because they are not doing enough in a certain area instead of doing too much. These are bad signs for us, very, very bad signs.

Let me ask you, Mr. Heffelfinger, based on your experience at DOJ and recognizing Professor Washburn's suggestion here that we have to have greater cooperation and collaboration and President Garcia's proposal that we convene something with DOJ, can we do it? Would it work?

Mr. HEFFELFINGER. Senator Murkowski, I fully endorse Professor Washburn's plan. There is no doubt that cooperative law enforcement is the most immediate and productive way to address a wide variety of crimes in Indian Country. The DOJ can take leadership in that through the Office of Tribal Justice and through the U.S. Attorneys if properly motivated to do so.

But ultimately, it comes down to this: you have a few sheriffs who may not be that interested in working with the adjoining reservation or the adjoining tribal police. There may not be the level of respect between the two pools of law enforcement officers. So, when you have confusing jurisdiction, it is easy to hide behind that. You say, well, if I am not in charge and I can't be in charge, then I don't want to get involved.

So what Congress could do, however, is to incentivize those reluctant law enforcement partners to enter into these cooperative task forces through funding. The funding may be limited solely to hardware like vehicles and radios and overtime reimbursement. But that kind of funding in tight funding times, which we have in law

enforcement generally, is the kind of incentivization that gets you past reluctance based on jurisdiction and lack of familiarity.

Senator MURKOWSKI. Let me ask you one more question, and this is a follow-on from my question to Ms. Clairmont. How many cases are actually prosecuted, as opposed to the sexual assault cases that are reported. There was an article in the Wall Street Journal that cited some DOJ statistics, that provided that only 30 percent of the crimes occurring on tribal lands referred to the U.S. Attorneys' offices were prosecuted. This is compared to 56 percent for all other cases.

Do these statistics sound about right based on what you understand, and can you explain the reason for the disparity? What happens? Why are these statistics so skewed?

Mr. HEFFELFINGER. First of all, I really can't comment on the statistics, other than to say that, to some degree that depends on the nature of the crime that is alleged. Frequently assaults and homicides, I am sure, my experience, the solution rate is on a parity with what it would be in a non-tribal community.

I think there is some truth in the area of sexual assault and child abuse. That is exactly why I recommended to you as one of my proposed specific solutions is the establishment of family violence centers.

The United States Attorneys' offices have one standard of evidence that they need to follow. Federal courts don't have a lower standard of evidence, a lower standard of proof when it comes to a crime on a reservation as compared to a crime out of Minneapolis or somewhere else. So what we have found, in areas of child abuse and sexual assault in particular, is that the kind of medical care and evidence gathering from SANE nurses, from trained physicians in the area of child abuse simply were not available to isolated tribal communities. Rather than drive a young child abuse victim 5 hours each way to St. Paul to see a trained physician, we built a center in Bemidji, which is a half an hour from the reservation border. It now serves 3 reservations and 17 non-Indian counties. We trained a SANE nurse, we have trained a doctor to deal with child abuse.

Now we are dealing with the medical impact on that child. We are trying to break the generational cycle of violence, but more importantly, or as importantly, those doctors and those nurses now develop the evidence that is necessary to successfully prosecute those very difficult cases. If there is a gap in the statistics regarding charging and successful prosecution, I can't address all the issues, but I know that is one of the solutions: give Indian Country the resources it needs so that those cases can be effectively prosecuted and investigated.

Senator MURKOWSKI. I appreciate that. Do you know how many family violence centers we have established? Not enough, really.

Mr. HEFFELFINGER. The one in Bemidji may be the first.

Senator MURKOWSKI. Really?

Mr. HEFFELFINGER. Because what we have done is taken three types of crime that generally have had separate standalone kinds of advocacy groups and put them under one heading. And number two, we made it medical based, not social services based. And the focus of that center, I am very proud of it, the focus of that center

is to try to break the generational cycle of violence, so that you treat the victim's mental and physical health as the first priority. Evidence gathering, et cetera, becomes second.

Senator MURKOWSKI. We might have more than we think, because we have one in Alaska, in Sitka. So between Sitka and Bemidji, there is a lot of room to add some more.

Mr. HEFFELFINGER. I heard there might be one in the upper peninsula in Michigan as well. But they are few and far between.

Senator MURKOWSKI. Thank you. Thank you all.

The CHAIRMAN. Senator Tester.

Senator TESTER. It goes without saying, I want to thank each and every one of you for being here, taking time out of your schedule. I appreciate your comments.

Before I get into my question, I do have to say something so I don't forget. I want to thank you, Mr. Heffelfinger, for your service as U.S. Attorney. I think that just by your comments and your answers to questions, you bring a certain level of reality and common sense to the job. I think it is unfortunate what has transpired over the last few months.

That being said, you folks are all, Mr. Washburn, you talked about unilateral law enforcement, how it would be nice, with your discussions with the mayor, which brings me to a question that we probably could spend the rest of the day on, maybe the rest of the week. That is Native American sovereignty, something that I believe in very strongly myself.

The question is, that being important on one level, is somewhat of an inhibitor on another level, in both directions, I might add. And how, as concisely as you can, like I say, we could spend days on this, but how can we overcome that kind of a situation, where we have inherent sovereignty in Indian Country, and so that becomes a jurisdictional issue there? Anybody can start, it doesn't matter. We can go from left to right.

Mr. GARCIA. I can speak for Okhay Owingeh, that is formerly San Juan Pueblo. I served as Governor for three terms, at least. We had some situations with non-Indians coming up on our lands. I made a pledge to my community when I was appointed that I would protect the well-being of our tribal members and any other members that exist or set forth on the tribal land base.

We tested the system. We said the law basically says, we have no jurisdiction over non-Indians. But we didn't sit still for that. If anybody came on our lands, we tested the system and we took hold of them and we turned them over to proper authorities. I think that is using your sovereignty to protect your people.

So if we can continue to do that, if it became a question of the people that were taken in, if they filed a lawsuit, I don't know where it would have gone, Senator. So I think we may have taken a chance, but we were looking for the well-being of our people. That in itself is what we are deterred to by a 280 State, the Public Law 280, and then other jurisdictional questions.

Senator TESTER. Professor, if they have a cooperative agreement, does that help withhold their ability and—I know you can't prevent lawsuits—but give them better standing in court?

Mr. WASHBURN. Absolutely. Tribal sovereignty is an opportunity, it is not an obstacle. It doubles our number of governments out

there that can address problems if we recognized tribal sovereignty. For a tribe to cross-deputize State police officers so that they can enforce tribal laws and come on the reservation is an act of tribal sovereignty. So I certainly don't see tribal sovereignty as an obstacle. I think whenever we have a crime that crosses State boundaries, a crime that crosses from Montana into North Dakota, we don't sway, well, maybe we should get rid of Montana and annex it to North Dakota so there is no jurisdictional problem.

Senator TESTER. Some would say that.

[Laughter.]

The CHAIRMAN. Your time is up, Senator.

[Laughter.]

Mr. WASHBURN. So this is something we deal with all the time in the United States with the Federal system. So I think we can deal with it with the cooperative agreements.

Senator TESTER. Real quickly, how often do we get the kind of cross-deputization, if that is the proper term, which it probably isn't, between county government and Native American government and vice versa?

Mr. WASHBURN. We get it a heck of a lot. On the National Congress of American Indian website, they have a list of them. So there are hundreds, hundreds of these agreements, maybe a hundred, I don't want to overstate it. But it is not systematic in any way. In some States, if you have a good county attorney and a good sheriff who gets along well with his tribe, he will do it and if the next guy that gets elected doesn't have that same relationship, it deteriorates and falls apart. That is what we have going on in Mille Lacs County right now. The county attorney is just sort of mad about the existence of the Mille Lacs Band of Ojibwa Indians and doesn't want to cooperate that much.

Senator TESTER. OK.

Mr. Heffelfinger, and I think Senator Murkowski probably was on this course and I wasn't paying good enough attention, so I apologize if it was. But you talked about two areas, violent crimes, occurrence of, and conviction of crimes. You were talking about the minor crimes. But as I look at it, if we are talking conviction of crimes, are you talking about a lack of conviction or over-conviction?

Mr. HEFFELFINGER. No, what I was commenting to Senator Murkowski about, Senator Tester, is the fact that there is one Federal legal standards for charging somebody with a crime and for convicting them. It is not different in Minneapolis as compared to Mille Lacs.

Some of the challenges that we have found, especially in areas involving child abuse and sexual assault, dealt with the fact that remote communities like the Red Lake Reservation, where I had Federal jurisdiction as U.S. Attorney, did not have available to it up until a year ago, about 2 years ago, a SANE-trained nurse any closer than St. Paul, Minnesota, or a physician trained to assess child abuse closer than St. Paul, Minnesota. By getting that kind of expert assistance brought close to the reservation, we have given the resources to Red Lake to increase the referrals, in other words, the prosecution and conviction of child abusers and rapists.

Senator TESTER. Yes, but yet when you look at the prison system, in Montana, for example, percentage-wise that are incarcerated versus percentage-wise of the population, it is probably six-fold.

Mr. HEFFELFINGER. Do you mean the Native American population as—well, as I said, in Minnesota, it is seven-fold. That is true. But that is all the more reason why I think a reform of law enforcement, a reduction of the violent crime rates in Indian Country is so important. One of the benefits of that is reducing that rate of incarceration of Native Americans.

Senator TESTER. Very good. I also want to echo the comments of my two comrades here. Very seldom do we get solutions, even if they aren't good ones. And I am not saying these aren't. Even though, the commission thing—but we have to get good minds together. That is a fact. If we get good minds together and represent the entities out there that are impacted, I think we can do some good things from a jurisdictional standpoint. Once again, I appreciate each and every one of your testimony. Thank you for being here.

The CHAIRMAN. Again, let me thank the witnesses from this panel and the previous panel. As I indicated, we intend to work diligently on a set of initiatives to begin to address this problem, both in the short term and also in the longer term. The short-term needs, I believe, are urgent, however.

Because the Senate is going to begin votes in about 2 minutes, this Committee will adjourn.

[Whereupon, at 11:44 a.m., the Committee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF SAMUEL N. PENNEY, CHAIRMAN, NEZ PERCE TRIBAL EXECUTIVE COMMITTEE

Honorable Chairman and Members of the Committee, thank you for the opportunity to submit testimony on an issue that affects all of Indian Country. The Nez Perce Tribal Executive Committee (NPTEC) would like to offer our support of the suggestions made by the Honorable Joseph A. Garcia, Professor Kevin K. Washburn, and Mr. Thomas B. Heffelfinger on law enforcement in Indian Country. The Nez Perce Tribe urges this Committee to draft legislation that addresses the jurisdictional gap that exists in Indian Country, by working with the tribes to gain a comprehensive approach that respects and protects tribal sovereignty, and then to pass the legislation in this session of Congress.

In order for the Federal Government to fulfill its trust obligations to tribes and to protect residents within Indian Country, Congress must clarify the criminal jurisdiction in Indian Country for all parties responsible for enforcement. Criminal jurisdiction in Indian Country is extremely complex and the responsibility is shared among Federal, tribal, and state authorities. Confusion over criminal jurisdiction for criminal offenses committed in Indian Country has a significant impact upon the ability of law enforcement and prosecutors to protect the public. This complexity requires a high degree of commitment and cooperation from Federal and state officials that is difficult to establish and maintain. Political ideologies can also adversely impact the precarious balance that is required to maintain effective law enforcement throughout an area.

Under the Major Crimes Act, 18 D.S.C. § 1153, and other Federal laws, Indian communities are completely dependant on the Department of Justice for investigation and prosecution of violent crimes and other felonies committed on Indian reservations. Despite these laws and the United States' trust obligations to protect Indian communities, the violent crime rate in Indian Country is alarming and significantly higher than the national average. Native American children suffer from neglect and abuse three times more than the national average. According to the Amnesty International Report "Maze of Justice," Native American and Alaska Native women are two and one-half times more likely to be sexually assaulted than other women in the United States, and Native Americans are victimized two and one-half times more than the national average, although legislation such as the Violence Against Women Act have been positive steps toward addressing such problems.

Many times, the Federal and state authorities do not prioritize their role in law enforcement on Indian reservations and the complexity of the jurisdictional issues makes it easy to avoid responsibilities and results in a system of no accountability. Thus, the victims of the crimes are often re-victimized by the system.

Unfortunately, the confusion over jurisdiction often results in jurisdictional battles or an unwillingness to assume responsibility by any party. For example, the Nez Perce Tribal Police recently responded to a battery situation between an Indian and a non-Indian. The Supreme Court, in *Oliphant v. Suquamish Tribe,*[1] held that tribes do not have inherent criminal jurisdiction over non-Indians, therefore the Nez Perce Tribal Police called the County Police to charge the non-Indian suspect. The County Police did not respond, and claimed that they did not have jurisdiction because the incident occurred on Tribal trust land. As a result, the non-Indian suspect was not charged, however, the Indian suspect was charged. Situations such as this lead to neglect and disregard for the law. The Nez Perce Tribal Police Chief, Leslie Hendrick, said that non-Indians often make comments similar to "you can't touch me, I'm non-tribal," when she responds to calls that involve non-Indians. This type of disrespect toward law enforcement would be abated if the jurisdictional issues raised were adequately addressed. In addition, the tribal law enforcement suffers greatly from lack of resources. There is a significant shortage in the personnel,

[1] 435 U.S. 191 (1978).

equipment, training and facilities that make up the criminal justice system in policing, investigation, prosecution, courts, and detention facilities.

Each of these factors creates a perception problem that encourages criminal activity and makes victims fearful in assisting law enforcement in prosecution. Criminal activity is encouraged when "routine" crimes such as domestic violence and drug and alcohol offenses are unaddressed. Congressional action to clarify jurisdiction and to provide adequate funding is imperative to the reform of law enforcement in Indian Country. The Nez Perce Tribe seeks to ensure public safety in Indian Country and is thankful for the opportunity to comment on this issue.

JOINT PREPARED STATEMENT OF DOROTHY SMITH AND JOAN HENRY, QUALLA WOMEN'S JUSTICE ALLIANCE

I. Qualla Women's Justice Alliance Is a Grassroots Community Based Organization That Is Dedicated to Ending Violence Against Native Women and Advocates for Systemic Governmental Reforms on the Qualla Boundary

For almost a decade the Qualla Women's Justice Alliance (QWJA) has advocated for the safety of women. It is a grassroots community based organization of Cherokee women dedicated to ending domestic violence, sexual assault and other forms of violence against women. The purpose of the QWJA is to increase the safety of Cherokee women through increased awareness and an enhanced response to domestic violence and sexual assault within the reservation boundaries of the Eastern Band of Cherokee Indians, properly known as Qualla Boundary. The Alliance does not receive funding from any Federal or state governmental agency. The Eastern Band of Cherokee Indians is a federally recognized Indian tribe located within North Carolina.

Within the reservation of the Eastern Band of Cherokee Indians (EBCI) domestic violence and sexual assault occur on a daily basis. The Qualla Boundary is located in a rural southern Appalachian area with one emergency shelter available to assist women and their children fleeing domestic abuse on the main Reservation tract and another shelter serving the Cherokee community located approximately seventy miles away in the Snowbird Community of Graham County, North Carolina. The Ernestine Walkingstick and Bonita Jumper Shelters (Shelters) are operated by the EBCI and provide emergency crisis shelter and related services. Victims of domestic violence and their children frequently face the harsh reality of few services, little support, becoming homeless, leaving their homeland or remaining with an abuser. Victims of sexual assault frequently do not report the rape or rapist to authorities because of the belief that nothing will be done and that the offender will commit further violence in retaliation. We have been in the beginning phases of providing sexual assault services within the Qualla Boundary.

Traditionally, Cherokee women were respected and held rights to the home and cultivation of the lands. The concept of a Cherokee woman being disrespected, abused or homeless did not exist. Unfortunately, this traditional belief system has eroded over time and domestic violence and sexual assault is occurring within our Qualla Boundary communities and homes. The erosion of the belief of respect for women and intolerance of physical abuse perpetrated against women threatens the safety and stability of the entire Eastern Cherokee Nation.

Recently, a young Cherokee mother after fleeing a situation of abuse with her children lived in her car for several weeks. She and her children used the bathroom facilities of the rest areas of the Great Smoky Mountains National Park to bathe herself and children. Fortunately, community resources came to her need for assistance. The Park lies adjacent to the west of the Qualla Boundary. Women and their children have sought refuge in the Park from their abusers. Unfortunately, for the same reasons of remote isolation it has been the witness to the abuse and murder of women. Many other examples of cases of the young mother exist.

Traditionally Cherokee women were held sacred. Tilling of the land was the realm of Cherokee women. Today, many Cherokee women maintain title to their original family lands. These women will not leave their homes and if the abuser will not leave, establishing safety for the woman and her children is extremely complicated. In addition, there are Cherokee women who do not have title to land or a home. In this situation, the woman must find alternative housing on Qualla Boundary or she is forced to relocate off the reservation. Many Cherokee women faced with these limited options remain in an abusive situation. In addition, there are women living on Qualla Boundary that have married a member of the EBCI and choose not to relocate and remain in an abusive situation. Frequently, the impetus for remaining on Qualla Boundary is that the woman has children who are tribal members and

prefer to remain within their cultural homeland. Relocation off of the Qualla Boundary frequently is not a viable solution for many Cherokee women. The relationship of Cherokee women to the land is a complicated aspect that is linked to the history of the Eastern Band of Cherokee Indians.

The Cherokee have lived in the southeastern United States and the mountains of North Carolina since the end of the last ice age. During the forced removal of the Cherokee to Okalahoma, commonly known as the Trail of Tears, almost all of the estimated 17,000 Cherokee were relocated to Okalahoma. In the winter of 1838–1839, approximately 14,000 Cherokee were marched 1,200 miles through Tennessee, Kentucky, Illinois, Missouri, and Arkansas without adequate shelter or food. It is estimated that 4,000 died from hunger, exposure and disease. Fortunately, some Cherokee escaped removal to hide in the mountains of North Carolina. The current members comprising EBCI are the direct descendants of those that refused to be relocated. From the original lands, that totaled over 250,000 square miles, the Eastern Cherokee trust lands of Qualla Boundary now consists of approximately 56,000 acres.

In addition, to this distinct historical relationship to the land known as Qualla Boundary other significant reasons prevent many Cherokee women from leaving an abuser and relocating. Cultural, familial, clan, Cherokee citizenship, and the complicated maze of Tribal-Federal Indian Law are reasons women in situations of abuse refuse to relocate off the Reservation. The details of these situations are extremely complicated and difficult to address off the Qualla Boundary. These and other reasons frequently result in those choosing to relocate becoming isolated and further destabilized, often resulting in a return to the abuser.

In 2005, domestic violence represented a significant portion of the Eastern Band Cherokee Indians tribal justice services case load. A total of 387 domestic violence cases were opened. Of this number 145 cases were civil and 242 were criminal. Most importantly, the actual statistics do not reflect the true number of women that are abused each year. Many survivors of domestic violence and sexual assault do not report because they believe that nothing will be done.

The challenges described above are great and much work must be done to create the cultural change needed to make our communities free from domestic violence and sexual assault. The QWJA is committed to bringing an end to such violence in our Cherokee communities and restoring respect for women. The QWJA is concerned that developing a strategy that will increase community awareness of domestic violence and sexual assault within Cherokee communities will require the full participation of tribal law enforcement services. Further, addressing violence against Cherokee women requires a high level of accountability and increased coordination between the Cherokee Indian Police Department (CIPD) and Federal justice agencies to improve their response to domestic violence and sexual assault.

The QWJA submits this testimony to provide written documentation to the U.S. Senate Committee on Indian Affairs of the urgent need to address the violence perpetrated against Cherokee women. It is the hope of the QWJA that the testimony will provide an overview and insight to the critical issues and questions essential to enhancing the safety of Cherokee women. The QWJA testimony specifically outlines urgent issues, questions and recommendations in the context of implementing Title IX. Safety for Indian Women contained within the Violence Against Women Act of 2005 (VAWA 05).

II. The Safety of Indian women Is Dependent Upon the Response of Indian Nations and the Federal Government to Crimes of Domestic Violence, Sexual Assault, Dating Violence and Stalking. Consultation Between the Department of Justice and Indian Nations is Essential to the Development of Respectful Effective Coordination and Management of Violent Crimes Against Native Women

Title IX. Section 903 of VAWA 2005, recognizes the importance of government-to-government consultation. Section 903 directs the Attorney General to use the consultation as an opportunity to solicit recommendations from tribal governments on three topics:

- Administering grant funds appropriated for tribal governments and programs created to benefit tribal governments by the original VAWA and subsequent legislation;
- Enhancing the safety of Indian women from domestic violence, dating violence, sexual assault, and stalking; and
- Strengthening the Federal response to crimes of domestic violence, dating violence, sexual assault, and stalking.

Annual consultation on a government-to-government basis is essential to the successful implementation of the historic reforms enacted by the U.S. Congress through VAWA 05 and Title IX.

The EBCI is recognized as a sovereign with authority over its reservation properly known as the Qualla Boundary. It is responsible for the safety and protection of women within Qualla Boundary. EBCI emergency medical personnel, law enforcement services, prosecutors, courts and services are charged with handling domestic violence and sexual assault cases. The EBCI is directly responsible for holding perpetrators of such crimes accountable. Implementation of VAWA 05, and specifically Title IX provisions on Qualla Boundary must be done through governmental consultation.

The unique legal relationship between the United States and Indian Tribes creates a Federal responsibility in safeguarding the lives of Native women. Native women are battered, raped and stalked at far greater rates than any other group of women in the United States. The Department of Justice estimates that:

- more than 1 of 3, 34.1 percent, American Indian and Alaska Native women will be raped in her lifetime and 3 of 4 will be physically assaulted; [1]
- about 9 in 10 American Indian victims of rape or sexual assault were estimated to have assailants who were white or black; [2] and
- 17 percent of American Indian women, at least twice that of other populations, are stalked each year. [3]

These statistics reflect the horrific levels of violence committed on a daily basis against Native women. While compounded by many social factors research links this level of violence to the vulnerabilities of American Indian women as a population. The lack of jurisdiction of Indian tribes over non-Indian perpetrators and the sentencing limitation placed upon Indian tribes by Congress enhances the vulnerability of Native women and the ability of predators to target Native women as a population. This jurisdictional void furthers the public perception that Native women do not have the same protections that non-Indian women are entitled to receive.

Section 903, provides the opportunity for consistent consultation on a government-to-government basis between the Department of Justice and federally recognized Indian tribes. The staggering statistics of violence against Native women requires that the highest levels of government act in coordination to address the escalating crisis in the lives of Native women. The prevalence and severity of violence would be treated as an emergency if committed against any other population of women. Given the crisis in the lives of Native women and the lack of adequate resources [4] more must be done at every level from funding through the Office on Violence Against Women, handling of cases by the FBI and United States Attorneys, and release of perpetrators by the Bureau of Prisons to improve efforts to create a more responsive criminal justice system. Federal agencies must work on a government-to-government basis with Indian tribes, specifically tribal law enforcement, to prosecute such crimes. This cannot be achieved without formal consultation with Indian tribal governments.

Questions:

- Will a representative of the Senate Committee on Indian Affairs observe the upcoming USDOJ—Tribal Governmental consultation scheduled for September 19th, 2007 at the Sandia Pueblo, New Mexico?
- Will the Committee review the recommendations, questions and concerns raised by Indian tribes during the upcoming 2008 annual consultation?
- Will the Committee review the implementation, progress and delays, of tribal provisions under the VAWA 2005?

Recommendations:

- Set the date for the annual consultation no later than 9 months prior to the scheduling of the consultation.
- Provide the opportunity for all tribal govemments to participate in the preparatory calls to develop the agenda for the consultation.

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[1] Patricia Tjaden and Nancy Thoennes, U.S. Dep't. of Justice, *Full Report on the Prevalence, Incidence, and Consequences of Violence Against Women* (2000).

[2] Lawrence A. Greenfeld and Steven K. Smith, U.S. Dep't. of Justice, *American Indians and Crime* (1999).

[3] *Stalking and Domestic Violence,* May 2001 Report to Congress, U.S. Dep't of Justice, Office of Justice Programs, NCJ 186157.

[4] *See A Quiet Crisis: Federal Funding and Unmet Needs in Indian* Country, U.S. Comm. On Civ. Rights, available at *http://www.usccr.gov/pubs/na0703/na0204.pdf.*

- Issue the agenda no less than 2 months prior to the consultation to allow for advance preparation of tribal governmental representatives and to provide questions to the Department on issues of concern to be addressed during the Consultation.
- Conduct the consultation on a government-to-government basis with the elected leadership or designated representatives of tribal government recognizing it is inappropriate to open a governmental consultation to the public.
- Release information regarding the allocation of tribal set-aside funds prior to the consultation including the amounts of FY07 tribal set-aside funds under each OVW VAWA grant program, the amount expended, and information regarding the allocation of any tribal set-aside funds to a non-tribal entity.

III. Research Is Necessary to Understand the Prevalence, Unique Particularities and Estimated Cost of Crimes of Domestic Violence, Sexual Assault, Dating Violence and Stalking Occurring Against Indian Women

To understand and address the crisis and threat of danger confronting Indian women specialized research is needed. Every race-based study that has been conducted consistently documents that American Indian women are at the highest rate of risk for violent victimization of any population of women within the United States. This research is also true of violence committed against Cherokee women.

Unfortunately, while the Department of Justice has issued several statistical reports on violence against women that were mandated by the VAWA Acts of 1994 and 2000 it has not conducted a specialized study on violence against Indian women. Research within these reports give minimal attention to crimes of violence against American Indian and Alaska Native women.

Title IX. Section 904 provides for the first time in United States history the mandate to research crimes of domestic violence, sexual assault, dating violence, stalking and murder of American Indian women. The unique circumstances created by the jurisdictional void, rural isolation, conflict between Indian tribes and states, and other social factors require such research. It is important to note that violence against Indian women occurs on a continuum of violence from simple assault to murder.

Department of Justice research indicates that the vast majority of Indian women victimized by such crimes knew their assailant. Unfortunately this continuum in many cases has resulted in the deaths of women. In addition, an increased number of American Indian women reported missing raises the concern that these reports should be investigated as homicide cases until the woman is located. A national baseline study reviewing the crimes of domestic violence, dating violence, sexual assault, stalking, and murder committed against Indian women is essential to analyzing and creating safety in the lives of Native women.

Of critical importance is the establishment of a task force, as provided by Sec. 903(A), of representatives from national domestic violence and sexual assault tribal organizations that have experience in assisting Native women. While OVW issued a request and received nominations for member of the taskforce no action has been taken to implement the task force.

Question:

- Will the Senate Committee on Indian Affairs inquire into the status of implementing the statutorily mandated task force to guide the national baseline study research project?

Recommendations:

- Immediately establish, as provided by Section 904(a)(3), the tribal task force from the nominations submitted to the Office on Violence Against Women over a year ago to develop and guide implementation of the study.
- Support the full funding of the unfunded tribal research section contained in VAWA 2005, Title IX. Safety for Indian Women Act in the Senate FY 2008 Commerce, Justice, Science Budget Request. A baseline study was authorized at $1,000,000 per year for 2 years.
- Recognize that the Federal justice agencies failure to adequately respond to domestic violence and sexual assault is demonstrated in the distinction between women seeking medical care at hospital emergency trauma centers and criminal cases reported, charged and convicted by the United States Attorneys.
- Recognize that to increase the response of tribal law enforcement to crimes of domestic violence and sexual assault of Indian women on Indian reservations requires understanding the past and current failure to respond to such crimes.

IV. The Involvement of the Deputy Director for Tribal Affairs Within the Office on Violence Against Women Is Critical to Effective Coordination on a Governmental Basis With Indian Nations Any Efforts To Improve the Response of Tribal Law Enforcement Agencies to Crimes of Domestic Violence and Sexual Assault

The unique governmental relationship between Indian tribes as the United States is long established by the Constitution, Supreme Court cases, Acts of Congress and Executives Orders of the President. Congress recognized this unique governmental relationship within the Violence Against Women Act by statutorily including tribal set-asides within specific Titles and also defining Indian Tribes as eligible applicants for other grant programs. The administration of funds under these programs to tribal governments must be in the context of the long history of Federal-tribal relations and law. The development of policies and grant program guidelines according to state-based models is not only inappropriate, but also, ineffective in the creation of an enhanced response to domestic violence, sexual assault and stalking. Recognizing this complex legal relationship is a necessary component in the proper administration of tribal set-aside funds. It is also essential in the development of model codes, protocols, public education awareness materials, research, and training.

The QWJA understands that Federal Indian Law has far reaching implications on the safety of Indian women and the ability of law enforcement to appropriately and effectively respond to domestic violence, sexual assault, abduction and homicides of Indian women. VAWA 2005 statutorily created a new position of Deputy Director for Tribal Affairs within the Office on Violence Against Women to safeguard the proper implementation of the tribal provisions contained in VAWA 2005. Lorraine Edmo was hired as the first person to serve in this position. QWJA is extremely pleased with the expeditious hiring of Ms. Edmo.

The newly created Deputy Director for Tribal Affairs is statutorily created to fulfill responsibilities essential to enhancing the systemic response of tribal and Federal agencies to domestic violence and sexual assault. The position as described by statute is not primarily a grant administration position, but is designed to fulfill an important policy development role on such matters. The statute for example directs the Deputy Director to: coordinate development of Federal policy, protocols, and guidelines on matters relating to violence against Indian women; advise the Director of the Office on Violence Against Women concerning policies, legislation, implementation of laws, and other issues relating to violence against Indian women; represent the Office on Violence Against Women in the annual consultations under section 903 of Title IX; provide technical assistance, coordination, and support to other offices and bureaus in the Department of Justice to develop policy and to enforce Federal laws relating to violence against Indian women, including through litigation of civil and criminal actions relating to those laws; maintain a liaison with the judicial branches of Federal, State, and tribal governments on matters relating to violence against Indian women; support enforcement of tribal protection orders and implementation of full faith and credit educational projects and commitee agreements between Indian tribes and States; and ensure that adequate tribal technical assistance is made available to Indian tribes, tribal courts, tribal organizations, and tribal nonprofit organizations for all programs relating to violence against Indian women. Clearly, the new Deputy position is a critical link in the coordinated effort of Federal agencies to increase the law enforcement response to domestic violence and sexual assault of Indian women, specifically the FBI, BIA and United States Attorneys.

The QWJA would like to highlight several examples of the need for increased coordination and urge the Committee to examine these areas. First, the areas surrounding the issue of Federal-tribal concurrent jurisdiction over violent crimes committed against Native women such as sexual assault. The U.S. Department of Justice has general jurisdiction over felony crimes[5] by or against Indians in cases of sexual rape assault. A coordinated tribal-Federal response is absolutely essential because of the sentencing limitation placed upon tribal courts of "imposing no more than 1 year per offense or $5,000 fine.[6] This sentencing limitation is inappropriate in cases of sexual assault. Thus unless the rape is prosecuted by a U.S. Attorney the defendant is not appropriately held accountable for the crime. Second, the areas surrounding emergency medical care of sexual assault victims. The primary healthcare agency handling rape trauma emergency is the Indian Health Services of the Department of Health and Human Services. This agency does not have a formal protocol for sexual assault or conducting forensic sexual assault examinations.

[5] 18 U.S.C. § 1152 and 1153 (2004).
[6] 25 U.S.C. § § 1301–1303 (2000).

The lack of such a protocol is a glaring and telling sign of the differential treatment Indian women receive on reservations. The lack of such evidence in many sexual assault cases hinders the role of law enforcement investigations and convictions of perpetrators.

Increasing the response of tribal law enforcement to domestic violence and sexual assault requires understanding the complexity of the jurisdictional maze created by Federal Indian Law. The newly statutorily created Deputy Director for Tribal Affairs must be involved with any Federal initiatives to address and enhance the response of law enforcement to crimes of domestic violence and sexual assault. Further, the Tribal Unit administered by the Deputy to implement the tribal policy initiatives and grant programs must be adequately staffed. Failure to fully staff the Unit threatens the successful implementation of the initiatives and grants programs. The authority, responsibilities and expertise of the Deputy Director will be essential to the success of tribal law enforcement initiatives to increase their response to such crimes.

Questions:

- Will the Senate Committee on Indian Affairs inquire why the statutorily created position of the Deputy Director for Tribal Affairs does not appear on the Office on Violence Against Women organizational chart?
- Will the Committee inquire into the adequate staffing of the OVW Tribal Unit?
- Will the Committee inquire why the Indian Health Services of the Department of Health and Human Services does not have a formal national protocol for responding to sexual assault and conducting forensic sexual assault medical examinations?
- Will the Committee request that the Indian Health Services of the Department of Health and Human Services coordinate its efforts with the Deputy Director for Tribal Affairs, OVW, to develop a protocol for responding to sexual assault and conducting forensic medical examinations?
- Will the Committee request that the Department of Justice involve the Deputy Director in any initiatives to enhance the Department's response to domestic violence and sexual assault of Indian women?

Recommendations:

- Field hearings be immediately conducted on crimes of domestic violence and sexual assault in coordination with the OVW and involving the OVW, Deputy Director for Tribal Affairs, Lorraine Edmo.

V. The Lack of Full Implementation of Title IX. Safety for Indian Women Contained in the Violence Against Women Act of 2005 Hinders the Response of Law Enforcement on Indian Reservations to Domestic Violence and Sexual Assault

Passage of VAWA 2005, represents landmark legislation that aims to protect victims of domestic violence, dating violence, sexual assault, and stalking, yet, guidelines have not been issued on implementation of key sections impacting tribal law enforcement. In addition, no training or consultation has occurred between tribal and Federal law enforcement agencies on coordinating efforts to implement the amendments to the Federal criminal code.

V. A) VAWA SEC. 905(a). Tracking of Violence Against Indian Women

Section 905(a) amends the Federal code to require the Attorney General to permit Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into, and obtain information from, Federal criminal information data bases.

This amendment addresses a tremendous gap that reduces the ability of tribal law enforcement to respond to domestic violence and sexual assault on Indian reservations. Prior to the amendment tribal law enforcement access to the Federal criminal data bases was dependent upon access granted or denied by the state agency. The ability of Indian tribes to enter information regarding order of protections and convicted sex offenders is a matter of life or death. Access to the Federal data bases is an officer safety issue and essential to the day-to-day services provided to tribal communities. It is also a matter of life and death for Indian women that have obtained an order of protection or prosecuted their rapist to have that information accessible to tribal law enforcement.

On January 5, 2006, President Bush signed VAWA into law. One year and five months later no steps have been taken to implement this life-saving provision enacted by Congress. Implementation of this provision requires the Department of

Justice to issue guidelines and a directive to appropriate personnel to allow tribal law enforcement to access the Federal criminal justice data bases.

The Section specifically provides:

(a) Access to Federal Criminal Information Data bases.—Section 534 of title 28, United States Code, is amended—

(1) by redesignating subsection (d) as subsection (e); and
(2) by inserting after subsection (c) the following:

"(d) Indian Law Enforcement Agencies.—The Attorney General shall permit Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into Federal criminal information data bases and to obtain information from the data bases."

Question:

- Will the Committee request that the Department of Justice release the process by which Indian law enforcement can enter into and obtain from the Federal data bases information regarding domestic violence, sexual assault, dating violence, and stalking cases?

Recommendation:

- Tribal governments be provided guidelines on the implementation of this section to immediately enter and access information regarding domestic violence, sexual assault, dating violence, and stalking cases.

V. B) SEC. 908. Enhanced Criminal Law Resources

Sec. 908(a) amends the Federal criminal code to expand the Firearms Possession Prohibition to include tribal law convictions. It amends the Federal criminal code to include under the term "misdemeanor crime of domestic violence" any offense that is a misdemeanor under Tribal law.

Prior to passage of this amendment perpetrators of domestic violence convicted in tribal court could continue to possess firearms. This important amendment by Congress recognizes the danger that Indian women faced because of this legal loophole. Unfortunately, no training or guidelines have been issued by the Department of Justice for implementation of this life-saving provision.

The Section specifically provides:

(a) Firearms Possession Prohibitions.—Section 921 (33)(A)(i) of title 18, United States Code, is amended to read: "(i) is a misdemeanor under Federal, State, or Tribal law; and".

(b) Law Enforcement Authority.—Section 4(3) of the Indian Law Enforcement Reform Act (25 U.S.C. 2803(3) is amended—

(1) in subparagraph (A), by striking "or";
(2) in subparagraph (B), by striking the semicolon and inserting, "or"; and;
(3) by adding at the end the following:

"(C) the offense is a misdemeanor crime of domestic violence, dating violence, stalking, or violation of a protection order and has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who cohabitating with or has cohabited with the victim as spouse, parent, or guardian, or by a person similarly situated to a spouse, parent or guardian of the victim, and the employee has reasonable grounds to believe that the person to be arrested has committed, or is committing the crime;".

Question:

- Will the Committee request that the Office on Violence Against Women and appropriate components of the Department of Justice conduct training on the amendment to the Firearms Possession Prohibitions to include tribal court convictions regarding domestic violence, dating violence, stalking, or violation of a protection order?

Recommendation:

- Training be developed and offered on the implementation of this section to tribal governments, BIA, FBI and Offices of the United States Attorneys.

V. C) SEC. 909. Domestic Assault by an Habitual Offender

Section 909 amends the Federal criminal code to create a new Federal felony for habitual offenders of domestic violence and sexual assault. It imposes criminal penalties upon any person who:

(1) commits a domestic assault within the special maritime and territorial jurisdiction of the United States or Indian country; and

(2) has a final conviction on at least two separate prior occasions in Federal, state, or tribal court for offenses that would be, if subject to Federal jurisdiction, an assault, sexual abuse, or serious violent felony against a spouse or intimate partner, or a domestic violence offense.

This Section was enacted by Congress to address the reality that domestic violence is a pattern of violence that is repeated over time. Domestic violence increases in frequency and also in the severity of the violence committed by the abuser. The pattern of domestic violence might begin at a misdemeanor level and escalate to a felony level of violence. Tribal law enforcement report that domestic violence is one of the largest categories of crime they respond to on Indian reservations. Domestic violence, however, is rarely prosecuted by the United States Attorneys Offices. One reason for the lack of prosecution is that the single incident of domestic violence may not rise to the requirements of a Federal felony. This amendment addresses this gap between tribal and Federal law. This new law will allow United States Attorneys to prosecute perpetrators of misdemeanor domestic violence that are repeat offenders and have two prior conviction in tribal court. It addresses an outstanding concern of tribal law enforcement, prosecutors and courts that domestic violence perpetrators are not being held accountable for violence committed against Indian women.

Unfortunately, no training or guidelines have been issued by the Department of Justice on implementation of this very important Section that directly impacts the safety of Indian women. Coordination of investigation efforts between tribal and Federal law enforcement will be essential to the successful prosecution of cases under this Section.

The Section specifically provides:

Chapter 7 of title 18, United States Code, is amended by adding at the end the following:

"Sec. 117. Domestic assault by an habitual offender

"(a) In General.—Any person who commits a domestic assault within the special maritime and territorial jurisdiction of the United States or Indian country and who has a final conviction on at least 2 separate prior occasions in Federal, State, or Indian tribal court proceedings for offenses that would be, if subject to Federal jurisdiction—

"(1) any assault, sexual abuse, or serious violent felony against a spouse or intimate partner; or

"(2) an offense under chapter 110A, shall be fined under this title, imprisoned for a term of not more than 5 years, or both, except that if substantial bodily injury results from violation under this section, the offender shall be imprisoned for a term of not more than 10 years.

"(b) Domestic Assault Defined.—In this section, the term 'domestic assault' means an assault committed by a current or former spouse, parent, child, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, child, or guardian, or by a person similarly situated to a spouse, parent, child, or guardian of the victim."

Questions:

- How will the Offices of the United States Attorneys track offenders with multiple tribal, state and Federal convictions?
- Will the Committee request that the Office on Violence Against Women and appropriate components of the Department of Justice conduct cross training of tribal and Federal justice personnel responsible for handling domestic assault and sexual assault cases under the new Domestic Assault by an Habitual Offender Code?

Recommendations:

- Tribal governments, BIA, FBI and Offices of the United States Attorneys be provided training on the implementation of the Domestic Assault by an Habitual Offender Section.

- Tribal governments be provided guidelines on the implementation of this section, specifically the standards and process for referring Domestic Assault by an Habitual Offender cases to Offices of the United States Attorneys.

V. D) SEC. 906. Grants to Indian Tribal Governments

The purpose of the single grant program is to enhance the response of Indian tribal governments to address domestic violence, sexual assault, dating violence, and stalking. The newly created Grants to Indian Tribal Governments Program will:

1) increase access of *Indian tribes* to tribal set-aside funds by streamlining the administration of the set-asides into one program; and

2) allow tribal governments to design tribally based responses to crimes of domestic violence, dating violence, sexual assault and stalking reflective of their respective systems of tribal governance, customs, and practices.

This new tribal grant program recognizes that Indian tribes are under resourced and will provide basic funding for important tribal justice programming. To successfully implement a coordinated governmental response to such crimes law enforcement training is needed at the tribal and Federal levels. Such training should be both tribally relevant and locally accessible. Specifically, the training provided by the Bureau of Indian Affairs, USDOI, should be reviewed and revised to include responding to domestic violence and sexual assault cases.

In addition, addressing domestic violence and sexual assault requires that Indian women have confidence that such crimes will be taken seriously. In short, a common belief that nothing will be done if you report a crime of sexual assault can only be changed if Federal agencies change the pattern of not charging such cases. The standard response of "such cases are charged" falls short in the face of reality. The fact that the Department of Justice has never released the number of sexual assault cases prosecuted of adult women adds weight to the argument that nothing will be done. We acknowledge the attention the Department has given to child sexual assault cases, however, Native women experience multiple victimization from birth to death. Sexual assault offenders prey on the most vulnerable populations and unfortunately the lack of Federal prosecutions is well known.

Questions:

- Will the Committee request that Bureau of Indian Affairs coordinate with the Deputy Director for Tribal Affairs, OVW, to develop, revise and expand training on domestic violence and sexual assault and implement such training on a regional basis; including the new amendments to the Federal Code contained in the VAWA 2005?
- Will the Committee request that Bureau of Indian Affairs coordinate with the Deputy Director for Tribal Affairs, OVW, to develop protocols for responding to domestic violence and sexual assault cases?
- Will the Committee request that the Department of Justice release the number of sexual assault offenders of adult Indian women charged and convicted by the Offices of United States Attorney.

Recommendations:

- The Bureau of Indian Affairs and Deputy Director for Tribal Affairs, OVW, begin the development of training on domestic violence and sexual assault and implement such training on a regional basis; including the new amendments to the Federal Code contained in the VAWA 2005.
- The Bureau of Indian Affairs coordinate with the Deputy Director for Tribal Affairs, OVW, to develop protocols for responding to domestic violence and sexual assault cases.
- The Department of Justice release the number of sexual assault offenders of adult Indian women charged and convicted by the Offices of United States Attorney.

VI. Adam Walsh Child Protection and Safety Act of 2006 Further Complicates the Tribal-Federal Jurisdictional Maze That Hinders the Ability of EBCI Tribal Law Enforcement to Respond to Sexual Assault of Indian Women

Over the last 10 years almost every study on the rate of sexual assault which has included race or ethnicity as a factor have concluded that American Indian and Alaska Native women suffer a rate of sexual violence at least 2–3 times higher than any other group of women in the United States. Tribal governments face numerous challenges in responding to sexual violence including jurisdictional restrictions and

limited resources. One of the greatest barriers is a systemic failure and a lack of immediate response to the sexual assault of Indian women. The inaction of Federal and state government officials in the aftermath of a sexual assault causes many women to feel unprotected and sends a message to perpetrators that Native women are easy targets for sexual victimization.

The Qualla Women's Justice Alliance respectfully requests the Senate Committee on Indian Affairs review and take immediate action to amend the Adam Walsh Child Protection and Safety Act of 2006. The Act while intended to enhance monitoring of sex offenders only increases the jurisdictional maze preventing tribal justice agencies from holding sex offenders accountable within Qualla Boundary. It was enacted without consultation with the EBCI, or any Indian tribe, and clearly lacks any understanding of the unique legal circumstances impacting the monitoring of sex offenders on tribal lands. The Act is written in a way that will prevent the vast majority of tribal governments from becoming registrant jurisdictions.

The EBCI passed Resolution No. 726 exercising the authority of the Nation under the Act to participate in the National Registry and notify the U.S. Attorney General of the intent of the Tribe to maintain its own Sex Offender Registry Program. The Resolution (see attached) is explicitly clear in expressing the concerns of the Nation about the Act and its commitment to holding sex offenders accountable. It states, "the future of the Eastern Band of Cherokee Indians rest in the capacity of the tribe to preserve the safety, integrity and well-being of its members, and the sovereign powers of the Tribe and its people, especially the sacred status of Cherokee women and children, to live free from or fear of sexual assault."

The EBCI enacted this resolution despite a long list of unanswered questions concerning implementation and administration of the new National Registry due to an arbitrary deadline for Indian tribes to opt-in by passage of a tribal resolution before July 27, 2007. This deadline will prevent many Indian tribes from exercising their authority under the Act. Tribes failing to submit a tribal resolution and letter opting-in by the deadline will be treated as having transferred their authority under the Act to the state. This transfer of authority includes granting the state right of access to tribal lands to enforce the Act. The QWJA expresses our concern that the Act fails to recognize the authority of Indian tribes located in PL 280 jurisdictions and transferred the tribal authority under the Act to state governments.

The VAWA 2005, Title IX, Sec. 905(b), created a Tribal Order of Protection and Sex Offender Registry in consultation with and allowing for the full participation of Indian tribes. Sex offenders typically move from reservation to reservation. Having a national registry available to all Indian tribes to enter and access information regarding sex offenders is essential for tribal law enforcement to monitor offenders on tribal land. The safety of Cherokee women is directly linked to the ability of EBCI law enforcement to access information regarding convicted sex offenders from tribal, state, and Federal systems. It is reaching beyond the realm of reality to expect that state governments will effectively monitor convicted sex offenders on tribal lands.

Questions:

- Will Department of Justice conduct consultation on the monitoring of sex offenders within tribal jurisdiction occur?
- Will consultation with Indian tribes on the implementation of the Adam Wash Act be conducted?
- How will Indian tribes implement the unfunded programmatic mandates under the Adam Walsh Act?

Recommendations:

- Remove the July 27, 2007 deadline established under the Act for Indian tribes to opt-in and operate a sex offender registry.
- Allow all Indian tribes the option of participating in the National Registry under the Act.
- Remove the provisions delegating tribal authority to the states.
- Support the full funding of the National Tribal Sex Offender Registry authorized under VAWA 2005 in the Senate FY 2008 Commerce, Justice Science Budget Request authorized at $1,000,000 for each of Fiscal Years 2007 through 2011.
- Consult with Indian Tribes on the monitoring of convicted sex offenders within tribal jurisdiction.
- Fund Indian Tribes to implement sex offender registries.

VII. Conclusion

Cherokee women historically were protected by what is known today as the Blood Laws of the Cherokee. Today the Blood Laws may be perceived as harsh and inhumane, however, the relatives within the clan structure of the Cherokee Nation enforced strict social codes that served to regulate unacceptable social behavior against women. James Mooney, a 19th century anthropologist, wrote about an incident of sexual assault. The story goes. . .there was once a society or clan of priests who were given much latitude in their actions and behavior. The Nation feared offending them, so no one challenged their actions. One day, a young, married man went on a hunting party. While he was gone, one of these priests became enamored of the young wife. Mooney writes, the priest attacked her, "bothering" her to her great shame. Upon the young man's return, and hearing of this offense he pulled the clans together and lead a party to kill every priest in that clan, essentially obliterating the clan from the earth. From then until now, the Cherokee have never let one group of its People become so lofty in societal stature. This is an example of an extreme measure and not all offenses were settled so harshly. We share this history with Members of the Committee as a statement that as a Nation our traditional morals and beliefs protected the right of women to be honored and to live free from the threat of violence. This example highlights that the code was enforced at the individual level, as the individual's actions are measured against the actions of the whole. One is never greater than all. The thought of facing one's own mortality for bad behavior is a powerful deterrent to bad behaviors such as the battering, rape, torture and murder of women.

The Qualla Women's Justice Alliance expresses its heartfelt appreciation to the U.S. Senate Committee on Indian Affairs. The very lives of American Indian women rest in the authority and action you take to end the violence committed on a daily and hourly basis against American Indian and Alaska Native women. We offer our prayers and ask that the Committee consider the concerns and questions outlined above and act upon them expeditiously. We live in a wonderful time in which we are hopeful that violence against Cherokee women will end and all women will once again enjoy safety within Qualla Boundary and the United States. We offer the Committee our future assistance and an open invitation to visit us at Qualla Boundary.

Attachments

PASSED—CHEROKEE COUNCIL HOUSE, CHEROKEE, NORTH CAROLINA (NOVEMBER 4, 1999)—RESOLUTION NO. 68 (1999)

WHEREAS, approximately 4 million women are abused in their home each year; and

WHEREAS, it is commonly known throughout Indian Country that 90 percent of Indian women in chemical dependency treatment are victims of rape and childhood sexual abuse, and that an estimated 30 percent of all rape victims are battered women, and 100 percent of all Indian women in those treatment programs are victims of domestic violence; and

WHEREAS, the under reporting of the incidence of violence against women cases on the Qualla Boundary is such that lives of Indian women and children are at risk; and

WHEREAS, there is a need for community education and awareness of these situations.

NOW, THEREFORE BE IT RESOLVED by the Eastern Band of Cherokee Indians in Council assembled, at which a quorum is present, that in an effort to end violence against EBCI Women, the Tribal Council hereby recognizes the Qualla Women's Justice Alliance and sanctions their efforts to end violence against women on the Qualla Boundary.

PASSED—CHEROKEE COUNCIL HOUSE, CHEROKEE, NORTH CAROLINA (MARCH 1, 2007)—RESOLUTION NO. 726 (2007)

WHEREAS, the U.S. House of Representatives and Senate passed the Adam Walsh Child Safety and Protection Act of 2006 ("the Act"); and

WHEREAS, the Act requires that federally recognized Indian Tribes review the Act and exercise their powers of sovereignty and either establish a Sex Offender Registry Program that complies with the terms of the Act or in the alternative enter into a cooperative agreement with the State within which the Tribe is located; and

WHEREAS, the failure of a Tribe to take any action will indicate to the Federal Government that the Tribe desires the State to maintain and manage the Sex Of-

fender Registry Program and remove the Tribe from monitoring sex offenders within their jurisdiction; and

WHEREAS, the time for exercising this notification has been set by the Federal Government as occurring on July 27, 2007 and as of the date of this resolution there has been no indication from the Eastern Band of Cherokee Indians as to the intent of the Tribe regarding compliance with and election under the Act; and

WHEREAS, the time for compliance with the Act is fast approaching and failure of the Tribe to elect to implement the provisions of the Act within the jurisdiction and control of the Tribe will result in the State of North Carolina assuming permanent jurisdiction and control of a Sex Offender Registry Program that may or may not consider or be applicable to those offenders residing within the boundary of the Tribe.

WHEREAS, the current tribal programs like Heart-to-Heart Child Advocacy Center, Center For Family Services' Family Support, and the tribal Domestic Violence program provide direct services to abused children and children who witness violence, and, the Qualla Women Justice Alliance, a grassroots community based group whose efforts to end violence against women is recognized by Tribal Council in Resolution No. 68 (1999), have expertise in their respective areas and can provide input to the development of such a registry.

WHEREAS, it is estimated by the United States Department of Justice that one of three American Indian women will be sexually assaulted in their lifetime.

WHEREAS, sexual assault offenders frequently prey on their victims and have a high rate of recidivism.

WHEREAS, the future of the Eastern Band of Cherokee Indians rest in the capacity of the tribe to preserve the safety, integrity and well-being of its members, and the sovereign powers of the Tribe and its people, especially the sacred status of Cherokee women and children, to live free from or fear of sexual assault.

WHEREAS, it is in the interest of the Eastern Band of Cherokee Indians to be informed of and monitor the presence of registered sex offenders residing, employed or attending school within Qualla Boundary as required by the Act.

NOW THEREFORE BE IT RESOLVED, by the Eastern Band of Cherokee Indians, in Annual Council assembled, at which a quorum is present, that the Tribe shall establish and maintain a Sex Offender Registry Program that is in compliance with the terms and requirements of the Act.

BE IT FURTHER RESOLVED, that the Tribe shall notify the U.S. Attorney General and any and all other appropriate agencies of the intent of the Tribe to maintain its own Sex Offender Registry Program.

BE IT FURTHER RESOLVED, that representatives of the Heart-to-Heart Child Advocacy Center, Cherokee Domestic Violence Program, Family Support Services, and Qualla Women's Justice Alliance be involved with the development and implementation of the Sex Offender Registry.

BE IT FURTHER RESOLVED that the Tribal Council and Chief shall appropriate sufficient funds through grant applications or Tribal budget to maintain the Sex Offender Registry.

BE IT FINALLY RESOLVED, that the Principal Chief shall carry out the intent of this resolution.

U.S. HOUSE OF REPRESENTATIVES
Washington DC, May 22, 2007

Assistant Attorney General Wan J. Kim,
Civil Rights Division,
U.S. Department of Justice,
Washington, DC.

Dear Mr. Assistant Attorney General:

I am writing to request a review by the Justice Department of a matter involving the potential violation of the civil rights of an 11-year-old American Indian child from Minnesota. The disturbing conduct of Mille Lacs County with regard to this child's basic human and civil rights merits a complete investigation by your office.

The attached media reports indicate the following:

On April 10, 2007, Mille Lacs County Attorney Jan Kolb had a warrant for failure to appear as a witness issued against, then arrested and detained, *an 11-year-old child who was the victim of a crime.* The child was removed from Nay Ah Shing School on the Mille Lacs Indian Reservation on April 10 by a tribal police officer who was notified by the county that a warrant had been issued for "contempt of court." Up until the time of his incarceration the child had a "perfect attendance record at school."

Upon being transferred into the custody of Mille Lacs County, the child was handcuffed, processed at the county jail, and transferred to a juvenile detention facility several miles away, where he was detained overnight. *Prior to appearing in Mille Lacs County Court the following day, the child was restrained with handcuffs, shackles, and forced to wear a jail-orange jumpsuit.* The 11-year-old was reportedly cooperative throughout the process and made no attempt to resist. After waiting over two hours in a holding cell with a 16-year-old juvenile and then more time in a courtroom, the boy was sent home with the admonition to make sure he was present at the next court date.

Mr. Kim, as you well know, Title 42, U.S.C., Section 14141 of the Crime Control Act of 1994, authorizes the Attorney General to initiate a civil action in any instances where there is "reasonable cause to believe" that "any governmental authority [is] engag[ing] in a pattern or practice of conduct by law enforcement officers or by officials or employees of any governmental agency with responsibility for the administration of juvenile justice of the incarceration of juveniles that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States." (Title 42, U.S.C. Section 14141, Pattern and Practice)

In light of the fact that an 11-year-old Native American crime victim has now been victimized again, this time by the criminal justice system charged with defending his rights, I strongly encourage your office to conduct a full investigation of the circumstances surrounding this case. I view this incident as serious, as does Minnesota Governor Tim Pawlenty who stated in the attached letter, "the treatment of this 11-year-old boy raises significant concerns that warrant further review."

I appreciate your full consideration of this request.

Sincerely,

BETTY MCCOLLUM,
Member of Congress.

Attachments

STATE OF MINNESOTA OFFICE OF GOVERNOR TIM PAWLENTY
Saint Paul, MN, May 15, 2007

Ms. MELANIE BENJAMIN,
Chief Executive,
Mille Lacs Band of Ojibwe,
Onamia, MN.

Dear Chief Executive Benjamin:

Thank you for your letter regarding the treatment experienced by a young witness who was taken into custody in Mille Lacs County. Based on news accounts and information provided in your letter, I agree that the treatment of this 11-year-old boy raises significant concerns that warrant further review.

It is my understanding that the Attorney General's Office and the Mille Lacs County Board of Commissioners have initiated investigations into the conduct that occurred and the policies and procedures in place in Mill Lacs County for taking witnesses and juveniles into custody. In light of the pending investigations, it seems the best course of action is to await the results of those investigations.

As you may be aware, the Governor's Office does not have any authority in law to direct the action of individual counties, their elected county officials, or their employees. Governors previously had the authority to review conduct of county attorneys, but the Legislature expressly removed that authority in the 1980s.

Assuming these investigations confirm problems in relation to the treatment of juvenile witnesses and detainees, the County should correct those problems quickly so that similar issues do not arise in the future. Furthermore, if the investigations reveal problems in our laws as they relate to the handling of juvenile witness, we would be happy to review potential legislative changes with you, law enforcement representatives, and other interested parties that would resolve those problems.

In addition, your letter states that the child may have been treated in a discriminatory manner due to his race. If the child's family believes that the treatment he received was related to his race, the Minnesota Department of Human Rights has the power and authority to investigate charges of discrimination. The family can contact the Department of Human Rights to obtain more information about filing a complaint of discrimination.

Thank you for your concern regarding this matter. I am confident the apparent problems will be fixed promptly. If they are not, we are willing to pursue legislative action.

Sincerely,

TIM PAWLENTY,
Governor.

Star Tribune, May 02, 2007

BOY, 11, JAILED AND SHACKLED EVEN THOUGH HE WAS VICTIM

THE MILLE LACS BAND IS ASKING THE STATE TO GET ANSWERS FROM THE COUNTY ABOUT WHY IT HAPPENED.

By Richard Meryhew

Tribal leaders for the Mille Lacs Band of Ojibwe are asking state officials to investigate the handcuffing and shackling of an 11-year-old band member who was detained by police last month after he failed to appear in court to testify as a crime victim.

The boy, who had been assaulted by an older boy, was taken to Mille Lacs County jail April 10, kept overnight in a juvenile detention center and taken to the county courthouse the next morning handcuffed, shackled and wearing an orange jail jumpsuit.

Mille Lacs Chief Executive Melanie Benjamin sent a letter Wednesday to the state attorney general saying that the county's treatment of the boy is "inexcusable" and violated his civil rights.

"Was there any common sense even considered by anybody making this decision?" she asked.

Mille Lacs County Attorney Jan Kolb said it's standard for everyone taken into custody to wear hand and leg restraints and jail suits for security reasons.

Kolb said that policy was put in place by county judges in 2004 because "we had too many people getting away from the jailers as they were going back to jail."

Kolb said the courthouse is old and security is not up to date. Sometimes, she said, defendants, particularly juveniles, would flee while walking from the courthouse to the jail across the street.

"And if they were in plain clothes, they could blend in with people [after running off]," she said.

Rjay Brunkow, the band's attorney, said Wednesday that the tribe has had trouble getting information from the county about the incident because it involves a juvenile. However, he said the band has been told that the 2004 order "was the justification for the [11-year-old boy's] treatment. Even if it was a judge's order," Brunkow said, "I think some more thought should have gone into it to prevent a situation like this. And I'd be curious to see if a judge's order required handcuffs and shackles and a jumpsuit. I can see if that was for a defendant, but this particular boy was a victim of a crime."

Brunkow said the boy's parents told him that they didn't want to talk to reporters Wednesday.

September Assault

According to Benjamin, Brunkow and Kolb, the 11-year-old allegedly was assaulted in September 2006 as he walked home from the Nay Ah Shing School on the Mille Lacs Reservation. Kolb said a 13-year-old boy kicked, punched and tripped the younger boy, pushing him to the ground.

Later that afternoon, the victim's mother, Kristie Davis-Deyhle, confronted the 13-year-old and a friend, and allegedly ran them off the road with her car, according to court records. She was later charged with second-degree assault, a felony.

Kolb said that over the next several months the county sent five letters to Davis-Deyhle and her son to keep them abreast of the 13-year-old's case and to tell them that a failure to appear in court could result in a warrant for their arrest. Kolb said she believes the family received the letters because none were returned. What's more, she said, the boy and his father, George Deyhle, showed up for the 13-year-old's trial in February.

When the trial was postponed, Kolb said, one of her assistants spoke with George Deyhle and told him that the family would be notified about a new trial date. Kolb said another letter was sent to the family confirming a trial date of March 29 and "reminding them they were still under the power of subpoena."

When the boy and his mother failed to appear, warrants were issued for their arrest. The trial has not been rescheduled.

Disputed Subpoena

Brunkow, the band's attorney, said the family was never personally served with a subpoena nor did it receive one via certified mail. He also said George Deyhle told him that he and his son were never told they had to return to court.

Kolb said that's not true.

"It's our position they acknowledged receipt of that first subpoena by showing up at the first court date," she said.

Kolb said Davis-Deyhle was arrested in early April for failing to appear in court, but posted bail and was released.

On April 10, a day or two later, Brunkow said, the 11-year-old, who had a perfect attendance record at school, was picked up at school by a tribal police officer and transferred to the custody of Mille Lacs County, where he was handcuffed and later transferred to a juvenile safe house in St. Cloud for his protection.

The next morning, he was handcuffed, shackled, forced to wear an orange jail jumpsuit and detained in a cell for 2 hours before appearing in court, Benjamin said. Once there, a judge instructed him to attend future court dates, Brunkow said.

No charge was filed against the boy.

"If you've arrested the mother, and gave her notice, why then do you still need to arrest her son and hold him overnight and bring him into court shackled and handcuffed?" Brunkow asked. "It seems to be extremely heavy-handed discipline."

Kolb, the county attorney, said arrest warrants also were issued for two other witnesses to the alleged assault who did not show up for the trial.

She said the 11-year-old boy also failed to appear in court on an unrelated matter where he was victimized by another assailant.

"Our concern is that people keep not getting him to court and he keeps getting victimized," Kolb said. "At some point, we need to step in as a county and state and protect this kid."

Help Like Punishment

But Brunkow said the treatment in this case "seems more like punishment" and "as far from protection as you could possibly get."

Benjamin also said the boy was one of two children taken to court that day by authorities, but the only one who was handcuffed and shackled. She said a girl, who was not a band member, was not detained. "We need to find out what happened and why," she said.

Meanwhile, the Mille Lacs Band has placed the tribal police officer who arrested the 11-year-old on paid administrative leave pending the outcome of the investigation.

"It appears the officer did not mistreat the child and was carrying out his legal obligations to serve what he thought was a valid arrest warrant," Benjamin said in her letter.

Star Tribune, May 03, 2007

EXPERTS SAY PUTTING SHACKLES ON YOUNG VICTIM IS POLICY FLAW

AN OVERLY BROAD PLAN THAT APPLIES THE SAME RESTRAINTS TO VICTIMS AND OFFENDERS IS BOUND TO CREATE SITUATIONS LIKE THAT OF AN LLOLD VICTIM FROM THE MILLE LACS BAND, THEY SAID.

By Richard Meryhew

When Mille Lacs County judges issued an order 3 years ago requiring everyone taken into custody by county officers to wear hand and leg restraints, they did so with the hope of shoring up courthouse security.

But it's likely the judges never envisioned a scenario like the one that played out last month, when an 11-year-old boy from the Mille Lacs Band of Ojibwe was handcuffed, shackled and held overnight for failing to appear in court to testify as a crime victim.

Approved by Mille Lacs County Judges Steven Ruble and Michael Jesse in September 2004, the policy states that prisoners escorted to and from court be secured with handcuffs, waist restraints and leg irons.

"These procedures are for adults and juveniles charged with a criminal offense," according to a memo to jail staff from Jerry Brown, the assistant jail administrator.

But the judges' order said the policy applies to all "custodial defendants," and Mille Lacs County Attorney Jan Kolb said the 11-year-old boy "was most certainly in custody."

The boy was picked up on a warrant for failing to appear in court. He was not charged with a crime.

Ruble wouldn't comment on the recent incident or whether the policy should be reexamined. But, he said, "I think anybody can initiate further review of the policy."

Sheriff Brent Lindgren, who oversees security at the jail, did not return phone calls Thursday.

"I've never heard of a policy like that," said Richard Frase, a University of Minnesota law professor. "It's so incredibly overbroad, it's bound to produce problems like this. Anything you do that treats a witness or victim with the identical severity to what you do to a defendant has got to be questionable."

Looking Into It

Two attorneys from the state attorney general's office traveled to Mille Lacs County on Thursday to talk with tribal officials, county officials and individuals involved in the case.

Mille Lacs Chief Executive Melanie Benjamin had sent a letter to Attorney General Lori Swanson asking her to intervene. Swanson's office needs to decide whether it has jurisdiction in the matter, according to Brian Bergson, her chief spokesman.

"When we first heard of this, we thought: 'How could this be?'" said Rjay Brunkow, the attorney representing the Mille Lacs band. "We started calling around to county attorneys. . .and, to a person, every county we talked with said, 'Are you kidding me?'"

Hennepin County Attorney Mike Freeman said prosecuting cases where victims or witnesses are unwilling to cooperate can be difficult.

"Somebody comes in and complains about an assault, the sheriff investigates and the county attorney gets involved and we talk with the victims," he said. "And if they don't show up for trial, you have to dismiss the case, and that gets real frustrating."

However, Freeman added, "I don't think the answer is arresting kids and holding kids in a juvenile facility overnight and fitting them in a jumpsuit. I think these things can be handled a little bit better, frankly."

Freeman said that the county could have set a hearing date, notified the boy or his family a day ahead of time, then sent an officer in an unmarked squad car to the boy's house or school to take him to court.

Ruble, the Mille Lacs County judge, said the policy, created with help from the sheriff's office, was implemented after "a number of people" fled the courthouse in Milaca—an aging facility across the street from the jail—while being transported to and from the jail.

In 2004, Ruble said a defendant pushed his attorney after a hearing, running from the courthouse into a nearby alley. He was found hiding behind a trash can about a block away.

The judge added that others have tried to flee while being taken across the parking lot between the jail and courthouse.

Ruble said that from what he can tell, the policy has made a difference. "I haven't heard of anybody fleeing since we've instituted the policy," he said.

Rural Setting Can Be Challenge

Chuck Samuelson, executive director of the American Civil Liberties Union of Minnesota, said the organization sent letters Thursday to Gov. Tim Pawlenty and Swanson asking them to investigate the matter "to make sure it doesn't happen again."

Samuelson said that even if the Mille Lacs policy holds up to scrutiny, "It's just crazy. The boy already has been a victim once."

Cass County Attorney Earl Maus said rural communities often have more difficulties in maintaining security, in part because courthouses and jails are small, and staff is limited.

"I know there are some problems there," Maus said. "It's a question of 'Where's the line with the force?' Certainly you don't want to do anything that is excessive to anybody. You want to use what's least restrictive, but still keep people safe."

Frase, the university law professor, said that in many instances juveniles are more vulnerable than adults and "more likely to be traumatized" by being handcuffed or shackled.

"It did seem pretty excessive," he said of the Mille Lacs case. "That's the problem with any kind of mandatory policy. But you can see where they are coming from."

"They just want to say there is no discretion here, no picking and choosing, everybody gets treated the same way."

U.S. DEPARTMENT OF JUSTICE OFFICE OF LEGISLATIVE AFFAIRS

July 11, 2007

Hon. BETTY MCCOLLUM,
U.S. House of Representatives,
Washington, DC.

Dear Congresswoman McCollum

This responds to your letter, dated May 22, 2007, to Wan J. Kim, Assistant Attorney General for the Civil Rights Division, concerning your 11-year-old constituent in Mille Lacs County, Minnesota, who was arrested and detained for failing to appear in court as a witness.

The Department of Justice's Civil Rights Division, Special Litigation Section, has the authority to investigate law enforcement agencies that may be engaging in a pattern or practice of conduct that deprives persons of constitutional or other Federal rights, pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141. The Section is further authorized under the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997, to investigate systemic complaints concerning conditions in public institutions. These institutions include prisons, jails, juvenile facilities, mental health and retardation facilities, and publicly-operated nursing homes. However, our statutory authority precludes us from taking action in isolated incidents or actions involving a single individual.

Although we cannot pursue your constituent's individual allegations of misconduct, we will evaluate the information you provided to determine whether a "pattern or practice" investigation may be warranted at this time. We will also keep the information on file and will consider it, along with other available information, in determining whether a pattern or practice investigation may be warranted in the future. To that end, we encourage you to continue to forward any additional information about these or any other allegations, as we continue to look into this matter.

Thank you for bringing this matter to our attention. If we can be of further assistance with this or any other matter, please do not hesitate to contact this office.

Sincerely,

BRIAN A. BENCZKOWSKI
Principal Deputy Assistant Attorney General

COMMENTARY FROM THE JUNE 1, 2007 EDITION OF THE NATIVE AMERICAN PRESS/ OJIBWE NEWS, SUBMITTED BY WILLIAM J. LAWRENCE, OWNER/PUBLISHER

Federal Indian Policy Is the Problem not the Solution

Senator Byron Dorgan (D–ND) and Senator John McCain (R–AZ) this week announced the passage in the Senate of S. 398, amendments to the Indian Child Protection and Family Violence Prevention Act of 1990. The bill, according to Senator Dorgan's testimony, is "virtually identical to legislation which the Senate adopted last year. . .."

The Senator continued, "The primary goals of that Act were to reduce the incidence of child abuse, and mandate the reporting and tracking of child abuse in Indian Country." Additionally the bill authorizes "a study to identify impediments to the reduction of child abuse. . .as well as require[s] data collection and annual reporting to Congress concerning child abuse. . .."

According to a press release issued by Senator Dorgan's office, the bill "will provide treatment programs" for victims. "background checks for employees who work with Indian children," as well as "training in suicide prevention and treatment for professional staff at. . .Indian Child Resources and Family Service Centers." The bill will also "involve FBI and Attorney General in. . .tracking of data involving incidents of child abuse."

Since many victims of child abuse attempt or succeed in suicide, the bill includes a provision for assuring that trained behavioral health professionals, particularly those who have training in suicide prevention be on staff at Indian Child Resources and Family Service Centers.

Late last month Amnesty International (AI) published a report: *Maze of Injustice: the failure to protect Indigenous women from sexual violence in the USA. The press release announcing the report says, statistically more than 1 in 3 native (meaning American Indian and Alaska Native) women will be "raped in their lifetimes." This figure is 2.5 times more than the probability of this happening to U.S. women in general.*

Because of the magnitude ot the problem, AI asserts that this fact amounts to more than a criminal or social issue, and that it constitutes a human rights abuse.

AI contends that government figures "grossly underestimate the" incidence "because many women are too fearful of inaction [on the part of law enforcement officials] to report their cases."

The report indicates that jurisdictional issues "allow perpetrators to rape with impunity." A support worker for Native American survivors of sexual violence, is quoted in the report, "Before asking 'what happened,' police ask: 'Was it in our jurisdiction?'"

Another support worker, in Oklahoma, told AI, "When an emergency call comes in, the sheriff will say 'but this is Indian land.' Tribal police will show up and say the reverse. Then, they just bicker and don't do the job. Many times, this is what occurs."

Law enforcement, according to AI, does not regard rape as a high priority assignment. The mother of a victim, in seeking justice after an assault on her daughter, was told her only recourse was through the FBI, located 125 miles away. When she asked questions of an agent as to what they were doing to apprehend the suspect, she was told, "This case isn't on the top of our list."

Victims are often reluctant to report the assault because they know from the experiences of other women that the assault will often not be taken as a serious issue. An episode described in the report details how a 16-year-old female from Grand Forks, North Dakota, psychologically damaged by a sexual assault, stole a car. Her sentence for this offense was greater than that given to the person who raped her.

In addition, law enforcement personnel are frequently ignorant of how to handle evidence and rape kits are frequently, and it's suggested—conveniently, mishandled or lost, making it impossible for a victim of sexual assault to prove her case.

Both the Senate Bill and the Amnesty International report are important. These documents point out the problems that exist and suggest solutions.

The AI report is especially valuable in its explicit information, *e.g.* giving reasons why native women are at risk, stating why victims/survivors of rape don't report the assault, why victims/survivors are denied justice, and why perpetrators are not apprehended and punished.

However, in my view, the recommendations presented in these two documents are not appropriate. The efforts are laudable, but (as my friend Jody Crowe would ask) are they asking the right questions? Are they proposing the right solutions? I think not.

The suggested remedies in both documents call for action at the Federal level. With all due respect, how could anyone expect to turn to the Federal Government for a solution when the Federal Government is responsible for the situation in the first place.

In the case of the Senate bill, I believe there are already mechanisms in place that will do what the bill is proposing. Both the Senate bill and the AI report call for more money from a number of different agencies—for health services, for education and training of relevant personnel, more money for law enforcement, for cleaning up jurisdictional problems, for new positions, for support of tribal courts, etc.

How can anyone justify the appropriation of more money when the Federal Government allocates $12 billion annually to at most 600,000 enrolled tribal members living on reservations? Add to that, these same "needy" people control a gaming industry that produces $23 billion a year.

How much money is it going to take? But is that the right question?

Additionally, AI would like to see the Federal Government boost the authority of tribal governments. This is a gross error in judgment.

The problem here lies with the on-going failure of Federal Indian policy. It began in the 1700s and the tragedies that have resulted for the Indian people, as a result of these policies, are still perfectly visible today. The outward appearance has changed since earlier time, but the effects are manifest today in modern form, and are just as devastating.

Some of the more recent attempts by the Federal Government to address the "Indian problem" have been the Indian Self-Determination Act, the Indian Education Act, and the Indian Gaming Act.

Indians have been managing their own governmental affairs, educational systems, health services, businesses and economic development programs for over thirty years now as a result of these acts and the results have been astonishingly ineffectual. Reservation Indians today are further removed from self-sufficiency than they were 200 years ago.

It is probably true that many Indians want to be government Indians, *i.e.* those who are satisfied to live on the government dole, and that is unfortunate. Proportionally, I believe there are more such persons today than there were when I was a boy.

Since the enactment of the Indian Self-Determination Act (ISDA), the state of affairs on reservations has grown exponentially worse. Self-determination has allowed tribal governments to control the courts, the police force, economic development, jobs, services, policies and procedures.

There is no separation of powers, no checks and balances against misuse of authority. The executive branch, Tribal Council, holds all powers. In third world nations this form of government is called dictatorship. In America it is referred to as "tribal sovereignty."

The concept of tribal sovereignty is inherent in all these acts. Because of this myth, despite being citizens of the United States as well as tribal members, reservation residents are consistently denied the protections and guarantees of the U.S. Constitution. Traditional guarantees, protections and liberties apply to Native Americans only when they live off reservation. Constitutional violations are prevalent on reservation because tribes are not required to uphold individual rights, and officials determine what rights the people will have.

Sovereignty is the Number One cause of corruption and poverty on reservations. Dominant society erroneously thinks tribal sovereign immunity is the right thing to do. Federal officials do the ingratiating dance of publicly acknowledging "the right" of tribal sovereignty, and, at the same time, continue the paternalistic practices that have undermined legitimate law and order.

In addition to routinely suppressing human rights, corrupt tribal officials take license to pay themselves and their political favorites enormous salaries. There is a terrible disparity between the income of elected officials and their appointees, who enjoy the privilege of high position and pay based on political favoritism or family connection while members live at subsistence or poverty level.

The problems so visible on the reservations—governmental, social and familial dysfunction, poverty, alcohol and drug abuse, lack of housing and employment, oppression, hopelessness and in general a lack of basic necessities to meet human needs—are traceable back to Federal Government policy and tribal sovereignty.

The litany of problems translates into the perfect formula to turn people to crime, drugs and violence in protest of the perceived and felt inequality. Drug use and traffic—and their partners, crime and violence—are overwhelming Indian reservations everywhere.

The number of tribal individuals affected by fetal alcohol effects is incredibly high and continues to rise. There are now three generations of fetal impaired individuals living on reservations. This fact contributes significantly to the over-all dysfunction of Indian communities.

Ironically, the people that are trying to address these issues are turning to the government for a solutiou when in fact that is the source, the fountainhead, of the problems. In addition to the Indian Self-Determination Act, the Indian Education Act, and the Indian Gaming Act were enacted by the Federal Government. The effects of these two acts have been as disastrous as was the Self-Determination Act.

Since the tribes have taken control of the education system, over 30 years ago, the situation has deteriorated visibly each decade. School attendance, test scores and graduation rates are at all time lows. A great number of those who do receive a high school diploma receive what is essentially a worthless piece of paper stating the student has completed an "alternative" school program.

Illiteracy is on the increase, children are not prepared to earn a living and become responsible, productive members of society. This is unavoidable given the fact that the numbers of special education kids, including those with fetal alcohol effects (who unfortunately remain largely undiagnosed), have increased to the point where they make up anywhere from 50–100 percent of the school population.

At the same time, because of poor attendance, athletics and extracurricular activities are decreasing, leading to a decline in children's health. Obesity and diabetes are the result.

The Indian Gaming Act was intended to give Indian people the means to create jobs and improve living standards. Part of the rationale for approving the Act was the concept that jobs would increase self-sufficiency and productivity. It would produce revenue that could be used to support needed programs and services and tribes would begin to pay their own way.

But that has not happened. Tribal gaming has improved life for an elite few. For the majority of tribal members, things have not gotten better. They have gotten progressively worse. The presence of a casino has been demonstrated to be a magnet for criminal activity. Crime rates in neighborhoods where a casino has opened have grown at a minimum by 10–12 percent.

Revenue from tribal gaming should be available to offset these costs. Tribes should be capable of paying the costs associated with the crime and violence that comes in the wake of a casino opening. But that is far from actuality.

Gaming, like the other enactments, have contributed to making matters worse.

The tribes under the authority extended by the Indian Self-Determination Act administer Indian Health Service. Local agencies are prone to exploitation by tribal officials. In a center located on a local reservation, we've been told 17 members of the same family hold jobs.

In addition to funds from the government through the Indian Health Service, tribes receive money separately. This system has led to duplication of services, mismanagement and fraud. It has not however led to improved health conditions for tribal members.

When you look at the costs of drug abuse and treatment, the health care issues associated with drug related violence, I concede that money is an issue. It costs a great deal to rehabilitate drug users and restore health to those banned through criminal activity. What is the cost of transporting a victim who's experienced beating, shooting or stabbing from the reservation to an urban hospital by helicopter for emergency care?

What were the costs incurred as a result of the Red Lake School shooting? No one has publicly asked the question, nor has anyone stated the amount. The figure is, I'm sure, astronomical.

How much do the poor life style choices, made by Indians, cost in terms of money, of discomfort, in lost productivity and missed chances for a better life.

What are the costs of investigating, apprehending, prosecuting, jailing and rehabilitating the 19 Red Lakers recently charged with drug trafficking. And finally, how much harm (and how does that translate into monetary values) has been caused our members and our children from these 19 persons, and others, who made money by bringing drugs to the reservation.

Revenue from tribal gaming should be available to offset these costs. Tribes should be capable of paying the costs associated with the crime and violence that comes in the wake of a casino opening. But that is far from actuality.

The government's idea of managing Indian Affairs is primarily the Bureau of Indian Affairs. Over the many years of its existence, BIA officials and employees have built an elaborate structure to deal with the various Indian problems as they arose. They are entrenched and ineradicable. The Bureau now exists for its own benefit. It is run on the basis of self-interest by civil servants whose careers have been sustained by "Indian problems."

This feat was easy enough to accomplish because there is so much confusion about what is going on. There are enumerable authorities, each responsible for a whole spectrum of services and administrations. There is confusion about how much is owed to the Indians and what the burden of guilt should require in restitution.

The BIA is the epitome of self-interest and politics of the worst sort. It is insensitive and unresponsive. In an example close to home, over 600 lawful petitioners at Leech Lake submitted their case to the BIA for an opinion. More than 18 months have passed and the BIA has yet to deliver it.

Tribes are isolated by geography and by a lack of intelligent attention and proper oversight by the relevant governmental agencies.

How could anyone expect law and order to prevail when the very source—the Federal Government—is unresponsive, inattentive and inept.

The Indian Health Service (IHS) is culpable as well. Both agencies use inflated numbers to justify their budgets and the number of jobs authorized to each. They include Indians who live near reservations as well as actual reservation residents. This practice creates a fiction as to the monetary need of the actual number of persons eligible for services.

Although fewer than 600,000 Indians live on America's reservations, the BIA and IHS reported to Congress that they had service populations of 1.5 million and 1.6 million respectively for their Fiscal Year 2006 budget justifications.

Our two starting points for this commentary, S. 398 and the Amnesty International report, are correct in one fundamental way. Congress must be forced to do something. Unfortunately, the solution to the problems they expose does not lie in business-as-usual processes. The answer lies in radically changing present policy.

Many Indians, including myself, believe the reservation system is beyond salvage. Most Native Americans do not want to be wards of the government, aka government Indians. They have demonstrated this fact by going away to school and to decent jobs.

The failed principles and policies of the feds are responsible in large part for the deplorable conditions that AI and the U.S. Senate are hoping to address. To turn to the Federal Government for solutions is simply a ridiculous premise.

PULL QUOTES: The [Amnesty International] report indicates that jurisdictional issues "allow perpetrators to rape with impunity."

The problems arise from the on-going failure of Federal Indian policy.

Sovereignty is the Number One cause of corruption and poverty on reservations.

Tribal gaming has improved life for an elite few. For the majority of tribal members, things have not gotten better.

Congress must be forced to do something different.

○