

TESTIMONY
OF
PRESIDENT DIANE ENOS
SALT RIVER PIMA MARICOPA INDIAN COMMUNITY
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
LAW ENFORCEMENT CONCEPT PAPER
MARCH 17, 2008
SALT RIVER PIMA MARICOPA INDIAN COMMUNITY
ARIZONA

Good afternoon! My name is President Diane Enos of the Salt River Pima Maricopa

Indian Community (SRPMIC). I would like to thank Chairman Byron Dorgan of the Senate Committee on Indian Affairs and members of the Committee for scheduling this hearing and I would also like to thank Senator Jon Kyl for his presence here today. What you've proposed through your Indian Country Law Enforcement Concept Paper is the first step and we look forward to its introduction, approval by the United States Congress and becoming law upon the President signature for this critical piece of legislation.

BACKGROUND

The Salt River Pima Maricopa Indian Community was established by Executive Order on June 14, 1879 by President Rutherford B. Hayes and is located in Maricopa County, aside the boundaries of the City of Mesa, Tempe, Scottsdale, Fountain Hills, and our neighbors to the east is the Fort McDowell Yavapai Nation. The population of the SRPMIC is approximately 8,000 with a land base of 53,600 acres and we maintain 19,000 acres as a natural preserve.

SNAPSHOT OF SRPMIC LAW ENFORCEMENT PERSONNEL

The SRPMIC is currently staffed by one hundred and seventeen (117) Police Officers with eleven more in the State Police Academy. In addition, we have thirty-nine (39) Civilian positions that provide staff support to our Police Officers.

Due to the surrounding municipal governments of Scottsdale, Mesa, Tempe and Fountain

Hills we have approximately one hundred thousand (100,000) persons and one hundred seventy-five thousand (175,000) vehicles that travel daily throughout the SRPMIC.

LAW ENFORCEMENT CONCEPT PAPER

I would like to address several components of your Concept Paper and I will also address our unique situation.

1. JURISDICTION

- **Restore criminal jurisdiction on a government-to-government basis**

Criminal jurisdiction over non-Indians should be restored to Indian Tribal governments. The intent in the passage of the Adam Walsh Act and the Violence Against Women Act both recognize tribal involvement and mandate tribes to comply with certain requirements, such as maintaining a sex offender registry of all offenders, yet tribes do not have the authority arrest/detain non-Indians. Major freeway systems and traffic congestion bring non-tribal members through our Community in large volumes. We need to equip our Police Officers with the necessary laws, tools, and protection to do their job in protecting our Community members.

RECOMMENDATION – JURISDICTION

1. To create a law making drive-by shoots a federal crime with commensurate sentencing.
2. To share Indian Crime Data Reporting with states and other tribes.
3. To establish and fund a Law Enforcement Pilot Project

INDIAN COUNTRY LAW ENFORCEMENT PILOT PROJECT

The viciousness and frequency of crimes committed today, by both non-Indians and Indians has increased greatly since the *Oliphant*, *Wheeler* and *Duro* Era. Weapons have become more sophisticated and available; drug and alcohol use has become more prevalent and easily accessible; and society has become more mobile.

The intensity and repetition of crime and its after affects has hit hard in Indian Country and the Salt River Pima-Maricopa Indian Community (SRPMIC) is no exception. In fact, because the SRPMIC, is located within the Phoenix Metropolitan area that has a population of over three (3) million persons with three major freeways within the SRPMIC that bring traffic levels in excess of one hundred seventy-five thousand (175,000) vehicles and one hundred-fifty thousand (150,000) persons a day, we experience even more crime committed by non-Indians. Tribes are scrambling to provide adequate law enforcement services to the community as a whole. The glaring gap in those protections is the lack of criminal jurisdiction over non-Indians who are

free to enter the SRPMIC and who have become aware of the lack of criminal jurisdiction.

In earlier times, the common thought was that “Indian Country is no-man’s land; Indian people seek haven on the reservation.” Now, the tables have turned: Indian Country is perceived as a safe haven by non-Indian criminals.

Compounding the issue is the imposition of legislation such as the (almost-unfunded) Mandates of the Violence Against Women Act (VAWA) and the Adam Walsh Act (AWA). Tribes are placed in a position of having to police non-Indian activity without having enforcement authority. There are still the “less serious” crimes that pose safety, health and peace concerns.

A lack of criminal jurisdiction over the non-Indian criminal segment of the population places the lives and property of the SRPMIC and its members in jeopardy as well as the non-Indian population who are here as visitors, employees, residents, students and customers. The Scottsdale Community College is located within the boundary of the (SRPMIC). It also sends a clear message to the non-Indian criminal element: the morass of jurisdictional lines complicates, and frequently obstructs, adequate enforcement of law.

A dialogue has begun regarding the need for Indian tribes to have criminal jurisdiction over non-Indians. It is not a matter of wanting to take a political stance

and exercise sovereignty. Rather, it is the most basic matter of maintaining the peace, protecting people and their future.

While many tribes may not want, or are in no position to exercise such jurisdiction, there are some tribes that feel the *need* more than the *desire* to exercise criminal jurisdiction over non-Indians.

Towards that end, the Salt River Pima-Maricopa Indian Community proposes that a pilot project be considered for a certain number of tribes to exercise criminal jurisdiction over non-Indians. Criteria would be established on a government-to-government basis similar to self-governance statutes and regulations.

PILOT PROJECT PURPOSE

The Purpose of the Pilot Project is:

- To enhance the safety of SRPMIC members, visitors, employees, non-SRPMIC member residents and law enforcement staff; and
- To keep the peace within the boundaries of the SRPMIC.
- To protect the lives and property of SRPMIC and its members.
- To provide a continuum of law enforcement services with adjacent jurisdictions.

PILOT PROJECT NEED

The following examples provide for you a snapshot of gaps in Law Enforcement

Authority over non-Indians:

- **Domestic Violence** – Non-Indian (suspect) assaults American Indian victim who are or were in a relationship (standard domestic violence), the suspect cannot be charged with State crime of domestic violence since the victim is American Indian; even though all Salt River Police Officers are State Certified Police Officers. The suspect may be charged with a Federal Crime since all Salt River Police Officers now have the Special Law Enforcement Commission Cards (SLEC), but only if the injuries are very substantial. The suspect may now only be charged with only disorderly conduct.
- **Assault** – A non-Indian suspect assaults an American Indian victim and the suspect cannot be charged with State crime of assault because the victim is American Indian; even though all Salt River Police Officers are State Certified Police Officers. The suspect may be charged with a Federal Crime since all Salt River Police Officers now have the Special Law Enforcement Commission Cards (SLEC), but only if the injuries are very substantial in nature. If not, the suspect may be charged with only disorderly conduct.
- **Burglary** – A non-Indian suspect burglarized an American Indian residence and the suspect cannot be charged with a State crime of burglary because the victim is American Indian; even though all Salt River Police Officers are State Certified

Police Officers and the all of our Officers are federally certified with the SLEC cards, the Federal charges would not apply. The suspect may only be charged with trespass.

- **Stolen Vehicles** – A non-Indian suspect steals an American Indian’s vehicle, the suspect cannot be charged with a State Crime of Vehicle Theft (if apprehended within the SRPMIC) because the victim is an American Indian, even though all Salt River Police Officers are State Certified Police Officers and all of our Police Officers are federally certified with the SLEC cards. In the SRPMIC experience, federal charges would not apply. The suspect may not be charged with any crime.

All of the examples are compounded by the Salt River Police Department statistics and data, which include the following:

SRPMIC POLICE DEPARTMENT REPORTS

In 2007 a total of one hundred two thousand and six hundred seven (102,607) police reports have been filed. Based upon our 2007 Salt River Uniform Crime Reports (UCR), we know that domestic violence occurs every nineteen hours (19) for a total of four hundred fifty-one (451) crimes, Criminal damage occurs every nineteen (19) hours with four hundred fifty-two 452 crimes, a crime against a child occurs every seventy-one (71) hours for one hundred-twenty four (124) crimes and one accident occurs every seven hours (7) hours for one thousand two hundred eighty-one (1,281) accidents/crashes.

SRPMIC DOMESTIC VIOLENCE

2008: Thirty-two (32) crimes for January

2007: Four hundred fifty-one (451) crimes

2006: four hundred ninety-six crimes

Once case of interstate domestic violence VAWA was successfully prosecuted by the United States U.S. Attorney's Office (USAO) The Salt River Police obtained a Federal arrest warrant and located the suspect within seventy-two (72) hours and made an arrest. Subsequently, the defendant in the case was sentenced to thirty (30) months in the Federal Bureau of Prisons (BOP). The Salt River Police Department also provides Arizona Law Enforcement Academy (ALEA) Police Academy Instructors on domestic violence for full faith and credit. Part of our internal process is to send an Officer to the victim to Notify Upon Release of the perpetrator. We also require twenty-four (24) hour incarceration in our Salt River Department of Corrections (SRDOC).

VIOLENT CRIMES 2006-2007

In calendar year 2006 we had fifty-five (55) drive-by shootings and in 2007 we had a total of twenty-nine (29) drive by shootings of which eight (8) arrests were made and two (2) of these cases involved serious injuries.

SRPMIC VIOLENT CRIMES 2008

So far this year we've had twelve (12) drive-by shootings and one (1) walk up shooting occurred where the suspect was apprehended. In February 2008 a total of six (6) drive-by shootings occurred within one (1) hour on a Sunday morning. Fortunately, there were no fatal injuries. On this same day two (2) shots were fired at our Police Officers. Some of the firearms confiscated from the drive-by shootings include high powered rifles, AK47, SKS, shotguns and pistols.

STATISTICS FOR FY 2007-2008 FISCAL YEAR (OCTOBER 2007 – DECEMBER 2007)

- Eighteen thousand two hundred-twenty (18,220) calls for service
- Five thousand forty-one (5,041) Police reports
- Average response time for life threatening calls is three minutes (3) and fifty (50) seconds.
- Average response time for priority two, which is in progress, is four (4) minutes and ten (10) seconds.
- Eight thousand nine hundred-ninety (8,990) hours of training.
- Two hundred ninety-four (294) Accidents/Crashes.
- Two thousand two hundred-twenty-two (2,222) Citations were issues.
- One hundred-five (105) DUI arrests.
- Eighteen (18) Narcotic arrests.

- Detectives and Crime Scene Specialists were called out sixty-five (65) times.
- One thousand seven hundred twenty-eight (1,728) items of evidence were impounded for the quarter.
- Twenty (20) fire arms seized.
- Twenty eight thousand four hundred twenty-three (28,423) calls were received by the Salt River Police Department Communications Center. Three Thousand two hundred ninety eight (3,298) were 911 calls for service.
- One hundred fifty-one (1510) alarm signals received by the Salt River Police Department Communications Center.

PILOT PROJECT SCOPE

Jurisdiction would be over non-Indians who commit an offense within the exterior boundaries of the SRPMIC and for whom, had they been a Community member or non-Community member Indian, the SRPMIC would have criminal jurisdiction.

PILOT PROJECT DURATION

The Pilot Project would be in place for a three-year period, after which time it would be evaluated and determined whether it should continue.

A report, including the outcomes of such evaluations shall be reported to the United States Congress annually.

PILOT PROJECT CRITERIA

Criteria would be established on a government-to-government basis.

- a. Demonstrate Capability to Provide Adequate Law Enforcement Services.
- b. Enter into Intergovernmental Agreements.
- c. Have existing Special Law Enforcement Commission Cards (SLEC).
- d. Have above average record for past seven (7) years in providing police services.

PILOT PROJECT EVALUATION

Evaluation tools and schedules will be developed and implemented on a regularly scheduled basis, at the least, in one-year intervals.

PILOT PROJECT RETROCESSION

A process would be established to allow a tribe to retrocede jurisdiction to the federal government, it may do so.

PILOT PROJECT TERMINATION

Criteria would be established to determine when a tribe is no longer able to participate in the Project.

2. FINANCIAL

- **Restore Funding for Crime Labs**

FBI discontinued \$450,000 funding to Arizona Dept of Public Safety for processing tribal and state case evidence. This decision created an inability for Arizona Tribal Police Departments to effectively process and prosecute cases due to the absence of funding. Arguably, this federal trust responsibility was previously met for years and for reasons unknown, has since been abandoned. SRPMIC had to enter into a costly Intergovernmental Agreement one hundred fifty thousand dollar (\$153,000) Agreement with the City Scottsdale in order to ensure that law enforcement services would continue. We recognize that not all tribes have that close proximity, or the finances available. We would request funding be made available to assume cost for lab cost(s). The Federal Bureau of Investigation's response is "It's a budgetary matter."

- **Increase and make permanent adequate funding for law enforcement services**

The SRPMIC is fortunate to have the necessary resources and partnerships to support our law enforcement personnel and programs. However, other tribes are in desperate need of revenue.

- **Increase funding for Detention Centers, but more importantly, for Operations and Maintenance for both adult and juvenile facilities.**

The SRPMIC is fortunate to have our own newly built adult and juvenile Correctional facility, however, maintenance costs is still needed to Ensure we provide upkeep to our facility.

- **Clarify and strengthen review of declinations from the US Attorney's Office**

Working hand in hand with the U.S. Attorney for the District of Arizona, Funding for training of Officers and ways to secure and maintain evidence is critical for victims who often times have no voice.

3. EDUCATION

- Federal staff should be educated on the trust responsibility and the various levels of jurisdiction throughout Indian Country. In negotiating agreements with federal agencies, it can take extra time to try to get federal representatives to understand that
 - a. the relationship of the tribe to the federal government differs. For example, the BIA Manual does not apply to tribes that have entered into a self-governance compact

4. INTERGOVERNMENTAL RELATIONS

- Special Law Enforcement Commissions cards

For years, some tribes have held such commissions without need for an IGA.

The Agreements developed were imposed on tribes who have taken on a federal responsibility, and have successfully fulfilled the responsibility. Yet, the Agreements did not totally meet the needs, nor were they “negotiated”.

SRPMIC began “negotiating” in Fall 2003 and finalized our negotiations

In Winter 2007 with the Bureau of Indian Affairs to enter into an Agreement that meets the needs of our community and follows the terms of the Compact.

Six years is much too long a timeframe to wait for Special Law Enforcement Cards (SLEC) when our people and law enforcement personnel are being violated.

- Since 1994, the SRPMIC currently has Intergovernmental Agreements and Contracts with the Arizona Department of Public Safety (AZDPS) Highway patrol. AZDPS is the primary law enforcement investigator of motor vehicle collisions involving non-Indians that occur on the freeways within the SRPMIC. These include SR Loop 101, SR 202 and SR 287 Beeline. If SRPMIC members or Indians are involved, the SRPMIC Police department will investigate the incident. We also contract with the City of Scottsdale Police Department Crime Lab to process our evidence. This after the Federal Bureau of Investigation (FBI) refused to continue this service for Arizona tribes. Indian Country evidence is now processed in Quantico, Virginia.

- Since 1995 we've had a contract with the City of Mesa Police Department, Center Against Family Violence (sexual assault and domestic violence assaults).

- **Consultation—Not done in Adam Walsh Act**

The Act, specifically the sections which affect Indian Country, were done without consultation with Indian Tribes. Tribes were also given a unilateral choice to comply by opting in to develop and coordinate a registry, or have state law imposed. Tribes under PL 280 jurisdiction were not even given an option.

- Lack of Communication of Matters

From time to time changes in personnel and programming require notification to the tribal government leaders and Police personnel.

5. HOMELAND SECURITY

- An overarching principle is that Indian tribes have throughout the years, practiced "Homeland Security" both amongst the tribes and currently through development of governments, legislation and the judicial system.
- The United States political borders are not always the same as tribal cultural

borders, yet we are bound and current practices are now being thwarted, by such legislation as the Patriots Act and the REAL ID Act.

- Tribes should be exempted, or at least allowed to opt-out of legislation aimed
- at advancing national security and fighting terrorism against the United States.

6. PASSAGE OF THE INDIAN HEALTH CARE IMPROVEMENT ACT

The physical and mental health of individuals is a crucial component to reducing recidivism. We are grateful for the Senate Committee On Indian Affairs and your efforts to ensure the passage of the IHCIA. We look forward to its passage on the House side and being signed into law by the President.

Thank You for the opportunity to testify on such a critical matter that involves the health, safety and peace of not only our Community members but the lives all those who are not members of the SRPMIC. We look forward to success passage and implementation of this legislation and I commend the Senate Committee on Indian Affairs for your exemplary work and commitment towards restoring the federal responsibility in Indian Country.