



Department of Justice

STATEMENT

OF

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DISTRICT OF NORTH DAKOTA

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

HEARING ENTITLED

“INDIAN LAW & ORDER COMMISSION:
A ROADMAP FOR MAKING NATIVE AMERICA SAFER”

PRESENTED ON

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**Statement of Timothy Q. Purdon
United States Attorney, District of North Dakota
Department of Justice**

**Before the
Senate Committee on Indian Affairs**

**At a Hearing Entitled,
Indian Law & Order Commission:
*A Roadmap for Making Native America Safer***

**Presented on
February 12, 2014**

Chairwoman Cantwell, Vice-Chair Barrasso, and Members of the Committee:

Thank you for the opportunity to provide the perspective of the Department of Justice on the Indian Law and Order Commission's thorough, thoughtful, and incisive report, *A Roadmap for Making Native America Safer*, and to discuss the Department's ongoing efforts to ensure public safety in Indian Country. The Department shares the commitment of this Committee and the Indian Law and Order Commission to this important issue, and we congratulate the Commission on the hard work that has culminated in its final report and recommendations. Like the Commission, we at the Department have long been concerned about the high rate of crimes occurring in Indian Country, in particular violence against women. That's why, early in this Administration, Attorney General Eric Holder launched a Department-wide initiative to improve public safety in Indian country. Since 2009, the Department has been engaged in focused and energetic efforts alongside our tribal law enforcement partners to help stem this tide.

As the United States Attorney for the District of North Dakota and Chair of the Attorney General's Native American Issues Subcommittee, I am honored to appear before you to discuss the work of the Department to improve public safety in Indian Country. Since 2009, the Department has made fighting crime in Indian Country a top priority and has pursued an aggressive strategy consisting of law enforcement action, prosecution, grant funding, training, technical support, and collaboration with tribal partners that is already showing success. For example, the Department's renewed commitment to the vigorous prosecution of federal crimes in Indian Country has increased the number of Indian Country prosecutions by United States Attorney's Offices nationwide by more than fifty percent over the past four years.

Nonetheless, the Department recognizes that an increase in federal arrests and prosecutions alone cannot solve all the public safety challenges on the reservations. Accordingly, we have augmented our enhanced focus on law enforcement and prosecutions with additional support for tribal criminal justice institutions. In 2010, the

Department answered a call from tribal leaders for a more streamlined, holistic approach to its tribal-specific grant programs by establishing the Coordinated Tribal Assistance Solicitation (CTAS). CTAS helps tribes secure critical federal assistance on a wide array of criminal justice issues, including preventing violence against women, protecting at-risk children, improving community policing, and exploring alternatives to incarceration. Through CTAS, we have awarded nearly \$440 million in federal grants to tribes in the past four years. These funds work to directly strengthen the criminal justice system in Indian Country, creating opportunities for increased collaboration with our tribal partners and increased tribal self-determination.

The Department recognizes the unique challenges to public safety in Indian Country created by varied jurisdictional schemes and varying tribal cultures. It is against this backdrop that the *Roadmap* presents a broad array of recommendations in issue areas as diverse as criminal jurisdiction and juvenile justice. We are carefully studying the recommendations and will be reaching out to stakeholders to seek additional input on solutions that can address the difficult public safety issues confronting tribal communities. Meanwhile, we will continue to use our existing authorities to meet our responsibilities and to strengthen capacity at every level of the criminal justice system.

Establishing Unprecedented Levels of Cooperation

Since taking Office, Attorney General Holder has consistently emphasized that combatting violent crime in Indian Country and fostering safe communities is a top priority of the Department of Justice. Attorney General Holder has stated that when it comes to this challenge, we must “recommit ourselves to collaboration on an unprecedented scale.” To this end, the Department took steps in early 2010 to ensure that each United States Attorney’s Office with responsibilities in Indian Country implemented a district-specific operational plan to formalize its strategy for consulting and working with tribal, state, and local law enforcement, prosecutors, and other leaders, to improve public safety in Indian Country. For example, in North Dakota, our operational plan took the form of an Anti-Violence Strategy that combines enhanced enforcement of federal criminal laws with support for viable crime prevention programs and efforts to build a sustainable offender reentry program. Our plan has now been in place for almost three years and has resulted in unprecedented levels of communication and collaboration between the U.S. Attorney’s Office and the tribes in North Dakota as well as a large increase in the number of Indian Country cases being prosecuted by our Office.

The Department’s renewed focus nationwide on leveraging partnerships with tribal, local, state, and federal partners to address violent crime has led to concrete results, not just in North Dakota, but across the rest of the country. In just the last four years, U.S. Attorneys’ offices with responsibility for Indian Country have seen the number of prosecutions for crimes committed on tribal lands increase by more than 54 percent. This increase was reported to Congress in our *Indian Country Investigation and Prosecution Report (ICIP)* for calendar years (CYs) 2011 and 2012.¹ Specifically, Indian Country caseloads nationwide have increased overall:

¹ www.justice.gov/tribal/tloa-report-cy-2011-2012.pdf

- 1,091 criminal cases filed in fiscal year (FY) 2009;
- 1,138 criminal cases filed in FY 2010;
- 1,547 criminal cases filed in FY 2011; and
- 1,677 criminal cases filed in FY 2012.

This increase in prosecutions is due to many factors, but efforts by U.S. Attorneys to enhance investigative and prosecutorial coordination with tribal partners have been critical to this improvement.

A great example of how collaboration improves law enforcement can be found in Montana. In 2010, Montana United States Attorney Mike Cotter began convening bi-monthly meetings involving the federal prosecutors assigned to each reservation, the tribal prosecutors for the reservation, and tribal and federal law enforcement officers. During these meetings, cases arising on a particular reservation during the preceding two-week period are discussed and a decision is reached collaboratively concerning which jurisdiction – Federal or tribal or both – will prosecute a particular case. This close communication ensures that serious Indian Country crimes are appropriately investigated and that the decision whether a matter will be charged in federal court or tribal court is an informed one.

An important tool contributing to improved collaboration is the Department's enhanced Tribal Special Assistant U.S. Attorney (SAUSA) program. Tribal SAUSAs are tribal prosecutors who are "cross-deputized" and able to prosecute crimes in both tribal court and federal court as appropriate. These Tribal SAUSAs serve to strengthen a tribal government's ability to fight crime and to increase the USAO's coordination with tribal law enforcement personnel. Since its inception, the program blossomed, with dozens of Tribal SAUSAs serving in districts across the country.

To increase the use of Tribal SAUSAs in cases involving violence against Native women, in 2012, the Office on Violence Against Women (OVW) initiated its Violence Against Women Tribal SAUSA Pilot Project, making awards to four tribes in Nebraska, New Mexico, Montana, North Dakota and South Dakota to fund cross-designated tribal prosecutors. The goal of the Tribal SAUSA Pilot Project is that every viable crime of domestic violence, dating violence, sexual assault, and stalking will be prosecuted in federal court, tribal court, or both. We have an OVW-funded SAUSA working in my Office and for the Standing Rock Sioux Tribal Prosecutor. She has tried domestic violence cases in tribal court and has secured prison time in domestic violence cases in federal court as well.

The work of Tribal SAUSAs can also help to accelerate a tribal criminal justice system's implementation of the Tribal Law and Order Act of 2010 and the Violence Against Women Reauthorization Act of 2013. The use of Tribal SAUSAs is expanding and, consistent with the *Roadmap's* Recommendations 3.3 and 3.4, the Department supports strengthening the work of Tribal SAUSAs by improving access to law enforcement sensitive information and witnesses where such access does not exist already.

The SAUSA program is one area that the *Roadmap* acknowledges has the potential to address the broader need for skilled, committed prosecutors working on the ground in Indian Country. To help meet this demand, Attorney General Holder announced last November the Attorney General's Indian Country Fellowship. This fellowship, which will be part of the Attorney General's Honors Program, will inspire and train the next generation of prosecutors to serve in Indian Country. It will create an opportunity for highly qualified law-school graduates to spend three years – primarily in U.S. Attorneys' Offices – working on Indian Country cases and thereby creating a pool of attorneys with deep experience in Federal Indian law, tribal law, and Indian country issues.

The commitment of the U.S. Attorney's Offices in Indian Country has been supported by Department components that have provided much-needed training to law enforcement and prosecutors who are working in Indian Country. For example:

- National Indian Country Training Initiative (NICTI). Prosecutors working in Indian Country need specialized training. The NICTI has answered that call. Launched in 2010, it works to ensure that AUSAs and Tribal SAUSAs, as well as state and tribal criminal justice personnel, receive the training and support needed to address the particular challenges relevant to Indian Country prosecutions. For example, in January 2013, the NICTI partnered with the National Strangulation Training Institute to deliver the first-ever national Indian Country training on the investigation and prosecution of non-fatal strangulation and suffocation offenses. The training, held at the National Advocacy Center in Columbia, South Carolina, drew attendance from 17 tribes, U.S. Attorney's Offices, the FBI, and the Bureau of Indian Affairs and provided an in-depth examination of the mechanics of strangulation and suffocation from a medical, legal, and law enforcement perspective.
- Access to Justice (ATJ). Since 2011, ATJ has partnered with the U.S. Department of the Interior's Bureau of Indian Affairs, Office of Justice Services, to host a series of tribal court trainings known as the Tribal Court Trial Advocacy Training Program. This free, three-day trial advocacy course is designed to improve the trial skills of judges, public defenders, and prosecutors who appear in tribal courts. All trainings are staffed by experienced tribal prosecutors, defenders, judges, Assistant United States Attorneys (AUSAs) who prosecute Indian Country cases, and Assistant Federal Public Defenders.

Finally, the Department is also working to ensure that, in our work in Indian Country, we remain focused on providing critical services to the victims of crime. Since 2009, the Office for Victims of Crime (OVC), within the Office of Justice Programs, has provided over \$2.6 million to the BIA to support victim assistance positions in Montana, South Dakota, Arizona, and New Mexico and has helped to build the capacity of sexual assault services in Indian Country through such innovative partnerships as the Department and the Indian Health Service working together to establish the American Indian/Alaska Native Sexual Assault Nurse Examiner-Sexual Assault Response Team

(SANE-SART) Initiative, which addresses the comprehensive needs of tribal victims of sexual violence.

As the *Roadmap* recommends and as detailed above, the Department is embracing intergovernmental cooperation and coordination. In an effort to further strengthen the government-to-government relationships between the Department and sovereign tribes, the Department is in the process of adopting a new Statement of Principles to guide all the actions we take in working with federally recognized Indian tribes. This proposed Statement will codify our determination, as the Attorney General has remarked, to serve not as a patron, but as a partner in fighting crime and enforcing the law in Indian Country. It will also memorialize our commitment to Indian tribes and provide a foundation for reinforcing relationships, reforming the criminal justice system, and aggressively enforcing federal laws and civil rights protections. The Department has now begun the process of formal and informal consultation with tribal leaders on the Statement of Principles.²

Combating Domestic Violence

The fight against domestic violence in Indian Country has been an especially important priority for the Department of Justice. The Department applauds Congress for passing the bipartisan Violence Against Women Reauthorization Act of 2013 (VAWA 2013), which the President signed into law last March. This important Act, most of which has already taken effect, improves the ability of federal and tribal authorities to respond to domestic violence offenders and protect victims in three crucial ways. First, it strengthens federal domestic violence offenses and the federal assault statute – a statute frequently used in Indian Country intimate-partner violence crimes. Second, the Act recognizes the tribes’ inherent power to exercise “special domestic violence criminal jurisdiction” over those who commit acts of domestic violence or dating violence or violate certain protection orders in Indian Country, regardless of their Indian or non-Indian status. Finally, it contributes to tribal self-determination by recognizing that tribes have full civil jurisdiction to issue and enforce protection orders involving any person (Indian or non-Indian) in matters arising anywhere in the tribe’s Indian country or otherwise within the tribe’s authority. These provisions, which help hold Indian and non-Indian perpetrators accountable, were first proposed, and have long been championed, by the Department.

While the new law’s tribal criminal jurisdiction provision takes effect on March 7, 2015, VAWA 2013 also authorizes a voluntary “Pilot Project” to allow tribes to begin exercising special domestic violence criminal jurisdiction sooner. The Department received the first set of requests from six tribal governments to participate in the Pilot Project and last week three tribes – the Pascua Yaqui Tribe of Arizona, the Umatilla Tribes of Oregon, and the Tulalip Tribes of Washington – were granted Pilot Project approval by the Department. They will be the first tribes in the nation to exercise special criminal jurisdiction over crimes of domestic and dating violence, regardless of the defendant’s Indian or non-Indian status, under VAWA 2013.

² <http://www.justice.gov/tribal/>

The *Roadmap* offers a recommendation for another step forward in Alaska as well. It urges the repeal of Section 910 of VAWA 2013. VAWA Section 910 renders the restored tribal jurisdiction provisions of Sections 904 and 905 of the Act generally inapplicable in Alaska. The Department supports the repeal of Section 910. Permitting application in Alaska of VAWA Section 905, which provides that tribes have full civil jurisdiction to issue and enforce domestic violence protection orders, would be a meaningful change that could help protect Alaska Native victims of domestic violence. Unlike VAWA Section 904 (which recognizes tribal criminal jurisdiction over certain crimes committed in a tribe's Indian country), VAWA Section 905 expressly covers not only matters arising anywhere in the tribe's Indian country but also matters that are "otherwise within the authority of the Indian tribe." So the impact of repealing Section 910 will likely have its greatest direct effect on the application of Section 905, which would then recognize Alaska tribes' civil jurisdiction to issue and enforce protection orders involving Natives and non-Natives alike.

Protecting Our Children

Providing safe, secure, and healthy communities for children is perhaps the most important priority for all stakeholders in Indian Country. In that regard, the *Roadmap* makes numerous recommendations relating to myriad criminal justice issues impacting tribal youth and juvenile justice.

The Department agrees that few issues are more critical to the long-term improvement of public safety in Indian Country than working with young people to break the cycle of violence and hopelessness we have come to see on some reservations. Recognizing the importance of this issue, the Department is working to improve juvenile justice in Indian Country.

- In South Dakota, my colleague U.S. Attorney Brendan Johnson has implemented a process of collaboration with tribal prosecutors on some reservations that formalizes efforts to work together towards ensuring justice for juvenile offenders. While remaining committed to the federal prosecution of juveniles who commit the most serious offenses and those involved in gang activity, the South Dakota U.S. Attorney's Office program recognizes that, where appropriate, tribal prosecution may be the most effective method of handling juvenile misconduct. The hope is that keeping these young offenders under the supervision of the tribal court for as long as possible will provide an opportunity for rehabilitation, allow the youth to remain in his community surrounded by his family and culture, and keep federal prosecution – and a federal record – as a last resort.
- In North Dakota, in the fall of 2012, we launched a pilot program aimed at reaching young people on the Standing Rock Reservation. An AUSA in our office, who is himself an enrolled member in a North Dakota tribe, spearheaded the program. During the 2012-2013 school year, he organized a series of presentations to the student bodies of Standing Rock High School

and Standing Rock Middle School designed to educate the students on protecting their personal safety and on the legal and physical/psychological hazards associated with certain conduct. The Standing Rock students were receptive to these presentations and we believe the program increased trust of the law enforcement presenters. Indeed, the Bismarck Tribune editorialized that “[t]o have an assistant U.S. attorney making his or her presence felt on the Standing Rock Indian Reservation — not in the courtroom but in the lives of young Native Americans — has to make a positive difference.”³ We agree.

Finally, the Department recently established the American Indian and Alaska Native Children Exposed to Violence Task Force as part of the Department’s Defending Childhood Initiative. The Initiative is designed to prevent and reduce children’s trauma from experiencing violence as victims or witnesses. Research funded by the Department demonstrates that a majority of America’s children – more than 60 percent – are exposed to some form of violence, crime, or abuse.⁴ While this study was not specific to tribal communities, our own experiences and reports from tribal leadership tell us that American Indian and Alaska Native children experience high degrees of unmet needs for services and support to prevent and respond to extreme levels of violence on some reservations.

The Task Force is made up of an Advisory Committee of tribal members and national experts – in academia, child health and trauma, and child welfare and law – and a Working Group that, along with me, includes U.S. Attorneys Amanda Marshall from Oregon, Brendan Johnson from South Dakota, and Barry Grissom from Kansas, as well as other top officials from the Departments of Justice, the Interior, and Health and Human Services. More specifically:

- The Task Force’s Advisory Committee, co-chaired by former U.S. Senator and former chair of the Senate Committee on Indian Affairs Byron Dorgan and Iroquois composer and singer Joanne Shenandoah, has been appointed to examine the scope and impact of violence facing American Indian and Alaska Native children and make policy recommendations to Attorney General Holder on ways to address this issue.
- The Working Group was formed to support the Advisory Committee because the Department recognizes that there are things we can do right now that can have a direct and immediate impact in children’s lives. These efforts are already making a difference. Since its inception in August 2013, the Working Group of federal officials has taken action to improve educational and programmatic services in youth detention facilities in Indian Country. Contracts have been secured for teachers who will provide educational services to Native youths held in Bureau of Indian Affairs’ detention facilities.

³ “Reaching out on the Reservation,” Bismarck Tribune, May 3, 2012.

⁴ <https://www.ncjrs.gov/pdffiles1/ojjdp/227744.pdf>

The Advisory Committee held its first hearing on December 9, 2013, in Bismarck, North Dakota. We were honored to have Senator Heitkamp participate. Over this next year, the Advisory Committee will continue to travel throughout the country, holding hearings and listening sessions. The Advisory Committee will explore existing research and consult with experts to obtain a clearer picture of the incidence of violence among native children, and help identify ways to prevent it. The Advisory Committee's work will culminate in a final report – a strategic plan of action that will guide practitioners and policymakers at all levels. Similar to the work of the Defending Childhood Task Force, the recommendations of the Advisory Committee will serve as a blueprint to guide us into the future.

The work that is done in Indian Country United States Attorney's Offices across this nation every day is critical to the improvement of public safety on the reservations. As a United States Attorney who has prioritized this work in my District, I am incredibly grateful to my colleagues throughout the Department and to Attorney General Holder for their unwavering commitment to the mission in Indian Country. The United States Attorney community and the Department as a whole are proud of the work we have done thus far, but know there is much more to do. As the Attorney General has declared, we must and we will, recommit ourselves to collaboration with our tribal partners on an unprecedented scale.

Thank you for the opportunity to appear before you today to reiterate the Department's strong commitment to working with Congress, and especially this Committee, and with our tribal partners to achieve the core goals that animated the Indian Law and Order Commission and its dedicated members and staff: to build safe, sustainable, healthy, and resilient American Indian and Alaska Native communities. We praise the Commission for its hard work and devotion to strengthening and securing public safety for tribal nations, and we thank the Commission for its thoughtful and comprehensive recommendations.

I look forward to answering any questions you may have.