

UNITED STATES SENATE COMMITTEE ON INDIAN AFFAIRS

OVERSIGHT HEARING ON

“Native Women: Protecting, Shielding, and Safeguarding Our Sisters, Mothers, and Daughters”

TESTIMONY OF
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ON BEHALF OF
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“A Nation is not defeated until the hearts of its women are on the ground. Then it is done, no matter how brave its warriors or how strong its weapons.”¹

Good afternoon Chairman Akaka, Vice Chairman Barrasso, and distinguished members of the Committee. My name is Donald Rodgers and I am Chief of the Catawba Indian Nation, located in South Carolina. On behalf of the United South and Eastern Tribes I would like to thank you for the privilege of testifying in front of the Committee today on the issue of violence against Native women.

The United South and Eastern Tribes, Inc. (USET), is an inter-tribal organization representing 26 federally recognized Tribes from Texas across to Florida and up to Maine. The USET Tribes are within the Eastern Region of the Bureau of Indian Affairs (BIA) and the Nashville Area Office of Indian Health Services (IHS), covering a large expanse of land and area compared to the Tribes in other Regions. USET Tribes can be found from the Canadian Border in Maine and New York, along the east coast to Florida, west into Mississippi and south into Texas. Due to this large geographic area, the tribes in the Eastern Region have incredible diversity. I offer this testimony on behalf of USET as well as on behalf of the Catawba Indian Nation.

Violence against women has been a serious concern for Indian tribes for hundreds of years. King Hagler, or Nopkehe, was a renowned Chief of the Catawba Nation from 1750-1763.² He is remembered not just for being an excellent leader of his people, but also for denouncing the evils of alcohol and how its abuse led to the victimization of all Catawba people, including women.³ It's a great tragedy that King Hagler's desire to see the eradication of

¹ Cheyenne Proverb, available at http://www.maliseets.com/domestic_violence.htm.

² James H. Merrell, *Minding the Business of the Nation: Hagler as Catawba Leader*, 33.1 *Ethnohistory* 55 (Winter, 1986) (Duke University Press).

³ *Treaty between North Carolina and King Hagler and the Catawba Indians North Carolina*, August 29, 1754, Colonial and State Records of North Carolina, available at <http://docsouth.unc.edu/csr/index.html/document/csr05->

violence against Native women has not yet been fully realized today. As women are revered within traditional Native societies, violence against women is contrary to Indian culture. It is the belief of many that one of the sources of this crisis is historical trauma coming from the effects of the arrival of Europeans. This notion is reflected in the art of the U.S. Capitol. At the end of this testimony, I have placed an image of a calculating Columbus pulling back the veil of a distressed “Indian Maiden,” which can be found on the Senate-side of the U.S. Capitol. In this eerie image, the artist has captured Columbus’ ill intent – a legacy that is still with Native peoples today. Accordingly, USET and its member tribes have taken a strong position against tribal domestic violence and the abuse of Native women and fully support increased funding for the protection of Native people under the reauthorization of the Violence against Women Act. USET also urges full funding and implementation of the Tribal Law and Order Act, which will strengthen the law enforcement component needed to address domestic and sexual violence.

Regrettably, violence against women in Tribal communities is all-too frequent.

Federal government studies have consistently shown that American Indian and Alaska Native women experience higher levels of sexual violence than other women in the United States. U.S. Department of Justice data shows that American Indian and Alaska Native women are more than 2.5 times likely to be raped or sexually assaulted than all other races,⁴ and one in three American Indian and Alaskan Native women will be raped during her lifetime.⁵ “Native American women living in some countries composed largely of tribal lands are murdered at a rate more than ten times the national average.”⁶

The unique relationship of the United States to Indian Tribes creates a federal trust responsibility to assist Tribal Governments in safeguarding the lives of Native women.⁷ Title IX, Safety for Indian Women, of the Violence against Women and Department of Justice Reauthorization Act of 2005 (VAWA) was passed by Congress to combat the high rates of domestic violence found in Indian country.⁸ Title IX recognized that American Indian and Alaskan Native women experience violent crime at a rate of 23.2 per 1,000 women, compared with 8 per 1,000 among Caucasian women.⁹

USET has been and continues to be a staunch supporter of increased funding for Title IX, including increased funding for the Grants to Tribal Governments Program and the

0061. Although King Hagler’s position against the victimization of Native American women is primarily based in oral accounts passed down through the years in the tribe, historical proof can be found in the story of how King Hagler executed a member of the Catawba tribe who killed the daughter of a settler while intoxicated. This event was particularly notable due to the traditional practice of excusing crimes that were committed when the individual was drunk. Merrell, *supra* note 2, at 62.

⁴ Steven W Perry, *American Indians and Crime – A BJS Statistical Profile 1992-2002*, Bureau of Justice Statistics, US Department of Justice, Office of Justice Programs, December 2004.

⁵ Patricia Tjaden & Nancy Thoennes, *Full Report of the Prevalence, Incidence, and Consequences of Violence against Women*, US Department of Justice, 2000.

⁶ *Proposed Legislation to Help Tribal Communities Combat Violence Against Native Women*, U.S. Dept. of Justice Framing Paper, Office of the Associate Attorney General, May 20, 2011.

⁷ USET Resolution No. 2009:064, Position on Violence Against Women Act Consultation Conducted By The U.S. Department of Justice, October 29, 2009.

⁸ Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, Title IX (2006).

⁹ *Id.*

Tribal Women's Coalition Program.¹⁰ Title IX provides valuable funding and support to American Indian and Alaska Native communities in their efforts to combat domestic violence, sexual assault, stalking and other acts of violence in tribal communities.¹¹ The United States response to violent crimes against Native women has been inadequate because perpetrators are rarely prosecuted.¹² Seventy-six percent of adult sexual assault crimes referred to federal prosecutors are declined.¹³ USET condemns violence against women and urges its member Tribes to formally act to eliminate this on Indian Country.¹⁴ The future of American Indians and Alaskan Natives rests in the capacity of tribes to preserve the safety, integrity, and well being of its members, including the right of women to live in a world free of violence.¹⁵

As Chief of the Catawba Tribe I have experienced firsthand the positive effect that VAWA grants can have. We use our VAWA grant to fund a counselor who provides therapy services for member victims of sexual assault. Our therapist also provides secondary counseling services to children affected by domestic violence. This therapy not only helps the individuals who are being counseled but also helps move the family into a more stable environment so that instances of domestic violence will not occur again in the future.

The Houlton Band of Maliseet Indians, also a member of USET, runs a Domestic Violence and Sexual Assault Program in order to effect change within its Tribal community so that equality, respect, and nonviolence may become the cornerstones of all relationships. The Maliseet Domestic Violence and Sexual Assault Program is dedicated to ending violence against Native women by assisting victims in regaining personal safety and control of their life, ensuring accountability of perpetrators of violence within the Tribal and non-tribal Law enforcements and judicial systems, and promoting peaceful relations in our Tribal families and Community. The Program offers crisis intervention, emergency shelter and related assistance, hospital accompaniment and legal assistance among many other things. Additionally, "[t]he Eastern Band of Cherokee Indians has developed a tribal justice system to provide safety to women within [its] jurisdiction, including [a] dedicated cod[e] to address domestic violence."¹⁶

Despite the successes that VAWA has helped enact, changes should be made in order to adequately address the safety and protection of women and allow tribal communities to effectively combat violence against native women. The creation of the Violence Against Women Federal and Tribal Prosecution Task Force by the Attorney General in January 2011 is only one step in the right direction. In her report to the United Nations on violence against Native women, Special Rapporteur Ms. Rashida Manjoo summarized the needed changes:

¹⁰ USET Resolution No. 2009:004, Support for Title IX, Safety for Indian Women Act, Pub. L. 109-162 (Oct. 16, 2008).

¹¹ *Id.*

¹² USET Resolution No. 2009:064, Position on Violence Against Women Act Consultation Conducted By The U.S. Department of Justice, October 29, 2009.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences*, Ms. Rashida Manjoo, Addendum, Mission to the United States of America A/HRC/17/26/Add.5, 25 (2011).

“Lacking the necessary criminal authority to prosecute non-native offenders, tribal courts have used civil laws and remedies to respond to cases of violence against women. These include civil contempt proceedings, banishment, suspension of certain tribal benefits, and issuance of tribal protection orders, monetary penalties, community service, and restitution, among others. Furthermore, Indian nations regularly issue civil protection orders to prevent future violence and award temporary custody of children, to both native and nonnative women in their jurisdiction. Tribal authorities enforce these protection orders on their land, but once women leave tribal land, they must rely on other jurisdictions, mainly at the state level, for their enforcement. . . . [M]any States do not recognize or enforce tribal protection orders. . . . [E]fforts made by Indian nations to address the problem of violence against women are diluted by a lack of essential resources. . . . [I]n many tribal communities, Indian women are disadvantaged by a lack of basic services and personnel to assist victims of sexual and physical violence. Many Indian nations have only a few police officers to cover their vast territories.”¹⁷

USET generally supports the recommendations of the NCAI National Task Force on Violence Against Women regarding the reauthorization of the Violence Against Women Act, including:

1. **Restore tribal criminal jurisdiction over all persons.** Without such jurisdiction it will remain extremely difficult to comprehensively address this issue within tribal communities. While not contingent on funding, the Federal government should provide additional funding for tribal courts, law enforcement and detention facilities to facilitate exercising that jurisdiction.
2. **Clarify tribal civil jurisdiction over non-Indians.** Clarification is especially needed in such areas as the issuance of protection orders.
3. **Create new federal offenses to combat violence against women.** In addition to the recommendations of the task force regarding new offenses, which one way or another are tied to tribal lands, USET would like to explore with the committee ways to bring Federal charges in the context of tribes that are land-less.
4. **Create services program for Native women.** The expansion of such programs is critically important, especially when the law enforcement response to acts of violence against Native women remains insufficient.
5. **Establish comprehensive funding streams to support sexual assault services for Native women.** Tribal sexual assault service providers have not always been able to take advantage of the Sexual Assault Services Program established by Congress in 2005 due to ambiguous language, which should be clarified to make tribes and tribal providers clearly eligible.
6. **Amend definition of “rural” under the OVW Rural Grant Program so that American Indian tribes are considered eligible entities.** When this program was amended in 2005, the new definitions did not include American Indian and Alaska Native tribes. This should be corrected.
7. **Increase support for Indian tribes sharing concurrent state criminal jurisdiction.** This is critical for tribes in Public Law 280 states, but also for certain USET tribes who have similar concurrent jurisdiction with the states, or who are landless and therefore

¹⁷ *Id.*

have no land over which to exercise jurisdiction. For the latter tribes, it is important to support relationship-building with state authorities; and

8. **Increase support for Tribal Domestic and Sexual Assault Coalitions.**¹⁸ These coalitions are the frontline of the effort to end domestic and sexual violence and yet they are inadequately funded. USET urges increased funding in support of these coalitions.

There are also several bills that have been introduced in the Senate to address sex trafficking. USET has not comprehensively reviewed these bills, but would like to note that sex trafficking is an issue in Indian country and there is a need to assure specific tribal inclusion in any legislation which addresses that issue.

Much of the effort to address domestic and sexual violence turns on jurisdictional issues. Because of this, it is important to address the Supreme Court's decision in *Carcieri v. Salazar*, which by putting in jeopardy the status of many Indian lands has the potential to overturn existing jurisdictional understandings in Indian country, making the prosecution of domestic and sexual offenders that much more difficult.

Conclusion. Although VAWA has resulted in many positive changes among Native communities, further changes are needed to ensure that each tribe has adequate resources to protect, shield, and safeguard Native women. Thank you for this opportunity to provide testimony on this critically important issue. USET stands ready to provide whatever further assistance or support the Committee may require to address this issue further and more effectively.

¹⁸ Letter from NCAI National Task Force on Violence Against Women to Associate Attorney General Perrelli, Office on Violence Against Women, U.S. Dept. of Justice, June 17, 2011 (on file with author).

“Columbus and the Indian Maiden”, U.S. Capitol

