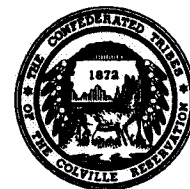




The Confederated Tribes of the Colville Reservation



Prepared Statement of the Honorable Brian Nissen, Council Member Confederated Tribes of the Colville Reservation

United States Senate Committee on Indian Affairs

Oversight Hearing on the Increase of Gang Activity in Indian Country

July 30, 2009

Good afternoon Chairman Dorgan, Vice Chairman Barrasso, and members of the Committee. My name is Brian Nissen and I am a member of the Colville Business Council, the governing body of the Confederated Tribes of the Colville Reservation ("Colville Tribe" or "Tribe"). I appreciate this opportunity to testify today on the increase of gang activity in Indian country. Specifically, I will discuss the Colville Tribe's challenges in addressing gang activity, provide examples of recent gang related incidents on the Colville Reservation, and provide recommendations on how the current situation can be improved. Accompanying me today is Matt Haney, the Chief of Police of the Colville Tribe, who will assist me in answering questions.

Before I begin, I would like to commend the members of the Committee and the Committee staff for their support for and continued work on the Tribal Law and Order Act of 2009. The Colville Tribe enthusiastically supports this important legislation and is grateful for the Committee's willingness to consider our suggestions and other recommendations from Indian country to make the bill even more effective.

GANG ACTIVITY ON THE COLVILLE RESERVATION

The Colville Indian Reservation encompasses approximately 2,275 square miles and is in north-central Washington State. Although now considered a single Indian tribe, the Confederated Tribes of the Colville Reservation is, as the name states, a confederation of 12 smaller aboriginal tribes and bands from all across eastern Washington. The Colville Tribe has nearly 9,300 enrolled members, making it one of the largest Indian tribes in the Pacific Northwest. About half of the Tribe's members live on or near the Colville Reservation.

The Colville Reservation is divided into four districts (Omak, Nespelem, Inchelium and Keller) that correspond to the population centers on the Reservation. The Omak district includes approximately half of the town of Omak, Washington, which is the largest town in Okanogan County. Although the Nespelem, Inchelium and Keller districts have seen an increase in gang activity, by far the highest incidence of known gang activity occurs in the Omak district.

Tribal gangs and predominately Hispanic gangs from Mexico are both attempting to assert control in the Omak area. The conflict between the rival gangs has progressed from threats to attempted murder. Much of the violence associated with gang activity on the Colville Reservation appears to be focused on the recruitment of new members and the gangs' defense of their prospective territory. These territories are important to the gangs in part due to drug distribution and gang recognition. The Tribe believes that at least six distinct gangs are active on the Colville Reservation, two of which are predominantly Hispanic gangs based outside the Reservation and the other four gangs predominated by tribal members.

Two recent incidents illustrate the severity of the gang problem on the Colville Reservation. One incident occurred on April 16, 2008, when the Tribe's police officers responded to an assault victim in the Moccasin Flat housing development outside the town of Omak. Moccasin Flat is one of the older Department of Housing and Urban Development communities in the Omak area. A Hispanic male was found lying in a ditch and had been beaten badly. The victim was well known to the Colville Tribal Police and to other tribal law enforcement as a member of the SUR 13 gang. SUR 13 stands for "Surenos 13," a gang affiliated with the Crips that originated in southern California in the 1960s.

The Tribe's investigation revealed that the victim had gone to a party in the Moccasin Flat HUD site that was mainly attended by younger tribal members between the ages of 15 and 25. Shortly after arriving, the victim was seen by a witness walking out of the house with several people. The witness saw that the victim had taken off his blue bandana, which signified that he was not seeking a confrontation. Upon going outside, the victim was attacked by several members of the party. Ultimately, he was left lying in a ditch with severe injuries.

Colville Tribal Police interviewed several individuals who attended the party, all of whom denied that they were gang members even though members of the tribal community and tribal law enforcement routinely observed them wearing gang colors, passing gang signs, and promoting their gang affiliation on websites such as My Space. None of these individuals, most of whom are Colville tribal members, were willing to identify the assailants. To date, no arrests have been made and the case remains open. The victim suffered permanent brain damage.

A second, even more disturbing incident occurred on May 4, 2009, within the city limits of the town of Omak on the Colville Reservation. The incident began as a fist fight between Hispanic members of SUR 13 and Colville tribal members of the Bloods, escalated when each side gathered reinforcements, and culminated in a shooting.

The victim, a Hispanic male, and his friends were in a car driving in east Omak when a tribal member, dressed in red, threw a rock at their car. As the victim exited the vehicle to confront the rock thrower, another car arrived and one of its occupants, also wearing red, retrieved a rifle from the car and opened fire. At least 18 rounds were fired, with the victim being struck once. Residents corroborated the victim's account and the suspect was later identified and arrested.

The suspect, a Colville tribal member, was a juvenile when the incident occurred and is currently facing federal charges for attempted murder.

LAW ENFORCEMENT CHALLENGES TO GANG ACTIVITY ON THE COLVILLE RESERVATION

As noted above, the Colville Reservation encompasses nearly 2,300 square miles. This area, while sparsely populated, generates a high demand for police services. The Colville Tribe has contracted law enforcement services from the Bureau of Indian Affairs (“BIA”) under a 638 contract. Because of BIA funding limitations, however, only three tribal officers are available on any given shift to respond to calls. To illustrate these funding limitations, this year the Colville Tribe’s contribution to the Tribe’s Police Department exceeds the amount the Tribe receives for law enforcement from the BIA under its 638 contract. This lack of funding for law enforcement personnel translates into response times that often exceed two hours for calls to the more remote areas of the Reservation.

In absence of agreements with local governments, our tribal officers are generally responsible only for calls involving tribal members. Both the Okanogan and Ferry County Sheriff’s Departments are severely understaffed, which has, for practical purposes, required the Colville Tribe to ensure that its officers are cross commissioned and can also enforce state laws within the boundaries of the Colville Reservation. To the extent that they are able, both Okanogan and Ferry counties assist the Tribe when they are called and the Tribe has a cooperative relationship with law enforcement from both counties.

Ideally, the Colville Tribe’s officers would have sufficient resources in the form of manpower and training to address the burgeoning incidence of gang violence. In most cases, our officers know the individuals involved and could make a dramatic impact on the proliferation of gangs on the Reservation by preventing gang membership by vulnerable tribal youth. As in many Indian communities, nearly everyone knows each other’s families. Tribal law enforcement leaders are constantly looking for opportunities to engage tribal members in “non-enforcement” situations in order to build relationships that will transcend traditional police officer stereotypes held by some in our community. This change cannot occur, however, until additional resources are available for tribal officers to allow for proactive, as opposed to reactive, policing.

EDUCATION AND INTERVENTION ACTIVITIES

Apart from law enforcement, the Tribe has also attempted to address gangs through education and intervention activities. The Colville Reservation is home to a BIA-funded school that has incorporated a variety of strategies to deter tribal youth from gang activity. Located just outside Omak, Washington, the Paschal Sherman Indian School (“PSIS” or the “School”) is a K-8 school that incorporates tribal culture into its curriculum. The School’s mental health professionals and teachers work with students in group settings to discuss a variety of issues related to gangs within the tribal community. The School has recognized that a group environment more

effectively fosters open discussion and awareness among the students of gang activity than other classroom methods.

PSIS staff have found that many of the School's students identify with the color red, a color associated with gangs, and tend to defend the importance of the color and how it represents a sense of pride. In conjunction with the group sessions, the School utilizes video programs to challenge the students' beliefs and to communicate the reality of gang life. An underlying theme in many of these sessions is how many families on the Colville Reservation have multiple generations that have been incarcerated for gang related criminal activity.

Many of the School's students feel, with these programs, they have a safe place to explore and discuss their concerns about peer pressure, gang violence, and the actual consequences of how their choices can and will impact their futures. As gang activity has increased on the Colville Reservation, the Tribe's members and law enforcement officers have observed some tribal youth openly rejecting tribal culture and values, such as respect for elders and family. In response, PSIS has expanded the group discussions to include cultural beliefs and how tribal elders would respond to the development of gangs in the community. The increase in the number of Colville tribal youth that are being held by the Okanogan County Juvenile Department in recent years for gang related criminal activity has also highlighted the negative impact of gang activity for the School's students.

RECOMMENDATIONS

Like many other Indian tribes, the Colville Tribe is hampered by insufficient funding, insufficient legal authority to fully punish offenders, and the reluctance of federal authorities to investigate and prosecute violent crimes that occur on the Colville Reservation. As the Committee is aware, when the United States declines to prosecute crimes in Indian country, tribal courts are only empowered to sentence perpetrators of any crime, regardless of its severity, to one year in jail. The May 4 gang shooting in Omak is illustrative of this predicament. Had the United States Attorney declined to prosecute, as is often the case, the only option for the Tribe would have been to prosecute the suspect for attempted murder under Colville Tribal law, with a maximum sentence of one year. The Colville Tribe is pleased that the tribal Law and Order Act of 2009 contains provisions that address many of these issues.

Based on our experience with gang activity on the Colville Reservation, we offer the Committee the following recommendations:

- Continue to emphasize at any given opportunity that United States Attorneys must perform their trust responsibility to investigate and prosecute violent crimes in Indian country, particularly major crimes;

- Continue to impress upon the Administration and the appropriators the need to increase funding for BIA law enforcement services and to ensure that any increases are used to put additional officers in Indian country;
- Authorize a new program (or augment existing programs) that would provide for grants to schools on or near Indian communities that have demonstrated gang problems to implement culturally appropriate education, intervention and prevention activities similar to what the Colville Tribe is currently doing at the PSIS;
- Ensure that existing gang prevention initiatives such as Police Activities Leagues and School Resource Officers are made available by the BIA to those Indian tribes that wish to implement these activities, including providing training to tribes that request it; and
- Identify and eliminate existing regulatory barriers that prevent the most effective use of tribal law enforcement resources. For example, the Colville Tribe has been working with the Committee to clarify in the Tribal Law and Order Act that Special Law Enforcement Commission Agreements should reflect the status of certified individuals as federal law enforcement officers for liability purposes when enforcing tribal laws. This technical change would relieve the Colville Tribe and other similarly situated Indian tribes from the need to purchase expensive umbrella liability insurance policies to cover instances where tribal officers might be sued in their individual capacities for good faith enforcement of tribal laws. Addressing this gap would allow tribes to use their resources for more critical purposes, such as paying for additional shifts or hiring new officers. This change also makes sense because in many cases, specifically where tribes have contracted law enforcement under P.L. 93-638, tribal officers by default investigate and enforce violations of both federal and tribal laws.

This concludes my statement. At this time, I would be happy to answer any questions the Committee may have.