

**Testimony of Honorable Theresa M. Pouley,
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Before the United States Senate Committee on Indian Affairs

**Oversight Hearing on Tribal Courts &
the Administration of Justice in Indian Country
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Mr. Chairman and members of the Committee, I appreciate the opportunity to provide testimony on the vital role that tribal courts play in the effective administration of justice in Indian Country. I speak from my experience as a long time Judge serving tribes in the Northwest and the President of the Northwest Tribal Court Judges Association. Currently, I serve as a judge in the Tulalip Tribal Court and the Northwest Inter-Tribal Court System (NICS) and an Associate Justice of the Colville Court of Appeals. The tribes I have had the honor to serve in Washington State range from urban to rural, and vary in size from small communities with a greatly diminished land base to tribes with expansive reservations. Although the governmental services and needs vary for these tribes, I have found they all share a core commitment to fairness and justice for their communities. No government has a greater stake in effective criminal justice systems in Indian Country than the tribes themselves.

A quality justice system is a central component of the right of a people to make their own laws and be ruled by them. Congress has expressly recognized the importance of tribal courts in enacting the Indian Tribal Justice Act, ("ITLA"), 25 USC §3601 et. seq., "to assist in the development of tribal justice systems." S. Rep. No. 103-88, 1993 WL 304728 at 1 (July 15, 1993). In enacting this law, Congress recognized that "tribal justice systems are an essential part of tribal governments and serve as important forums for ensuring public health and safety and the political integrity of tribal governments."

The findings of Congress, however, are often at odds with the actions, or inaction, of federal agencies vested with a trust obligation to provide public safety in Indian Country. While the Indian Tribal Justice Support Act promised \$58 million for tribal court systems per year, tribal courts have yet to see any funding under this Act. The vast majority of tribes continue to struggle to meet basic public safety needs based on lack of federal support. The ITLA did result in the creation of the 2000 Report of Tribal Justice Systems prepared for the Bureau of Indian Affairs. The report confirmed the competency of tribal courts, found that tribal justice systems are severely underfunded, and recommended base funding levels for tribal courts.

Although the federal government has fallen far short in addressing the critical public safety problems in Indian Country, Tulalip and other Indian tribes fortunate enough in recent years to raise revenues through gaming and new business enterprises have started taking on the primary role of law enforcement on the Reservation. Since taking on this responsibility, Tulalip and other Northwest Tribes have seen crime rates begin to drop, and the quality of life on the Reservation improve. Taking a lead role in criminal justice has gone hand in hand with steady gains in economic development and employment opportunities on the Reservation. Tulalip recognizes, however, that these gains are fragile, without reliable funding sources that traditionally fund government justice systems

The Tulalip Tribes, NICS and the Northwest Tribal Court Judges support provisions in the proposed Tribal Law and Order Act of 2008 which seek to hold the federal government more accountable for addressing the serious crime problems in Indian Country. The Tribes believes that the federal government must do a better job of supporting and empowering tribal justice systems. Toward this end, we strongly support the extension of criminal sentencing authority as necessary in certain cases to protect the Reservation community from dangerous offenders.

I encourage the Committee to identify further measures to support and fund strong Tribal law enforcement and court operations. More direct funding to tribal courts is drastically needed. The Tulalip Tribes wholeheartedly supports the additional authorization of Tribal justice system funding that was recently added to S. 2731. In addition to federal funding, Congress has a role to play in authorizing an expansion of

Tribal government taxing authority to raise revenues for tribal justice systems – justice systems that benefit both Indians and non-Indians who reside in and around Reservation communities.

The Tulalip Tribes

The Tulalip Tribes consists of a confederation of several Coast Salish Tribes signatory to the 1855 Treaty of Point Elliott. The Tulalip peoples originally occupied a large area of western Washington that extended from the crest of the Cascade mountains to the islands of Washington's marine waters. Salmon have always been of central importance to Tulalip subsistence and culture, and many Tulalip families still depend on fishing for their livelihood.

Today, the Tulalip community is located on a 22,000 acre Reservation bordering the Puget Sound 40 miles north of Seattle. This area has recently experienced rapid population growth and development. Tulalip has 4000 enrolled members, but the majority of Reservation residents are non-Indian. This is due to a history of allotments on the Reservation, which resulted in most Reservation land falling out of tribal ownership. This created a checkerboard of Indian and non-Indian land ownership that is common to most Reservations in Washington State. The Tribe has in recent years re-acquired a great deal of its Reservation land, and today the Tribe or Tribal members hold approximately 60% of the Reservation lands with the balance held in non-Indian ownership.

Tulalip Justice System – Background

The Tulalip Tribes is organized under a Constitution and Bylaws adopted by the Tribes and approved by the Secretary of Interior in 1936 pursuant to the Indian Reorganization Act. The Tribe is governed by a seven member Board of Directors, who are elected to three year terms. The Tulalip Constitution provides authority for establishment of a tribal judiciary, empowering the Tribes governing body to provide for the maintenance of law and order and the administration of justice by establishing a court system.

Despite the federal government's stated commitment under the Indian Reorganization Act to foster tribal self-determination, the goals of the policy went largely

unfulfilled due to lack of federal support and little economic opportunity for tribal members residing on the Reservation. In the years following the IRA, there were simply no funds to carry out the basic functions of tribal self-government.

PL 280- State Assumption of Criminal Jurisdiction Not the Solution

In order to address the problems associated with inadequate federal criminal justice resources, the Tulalip Tribes requested the State of Washington in 1958 to assume criminal jurisdiction under PL 280. However, Tulalip soon found out that State assumption of criminal jurisdiction was not an effective remedy for the public safety problem. The county failed to dedicate adequate police resources to the Reservation, in part because the county received no tax revenues from tribal trust lands. As a result, little improvement was made in crime rates or public safety on the Reservation.

During this period of the 1950's through the mid 1990's, Tulalip was failing to provide the most basic of services to its community--police and criminal justice. The Reservation remained a difficult place to live, and job opportunities were limited. Law enforcement and criminal justice on the Reservation was at best inadequate, and at worst non-existent. Older tribal members often speak of the harsh conditions on the Reservation during most of this time, when serious crimes such as murder, rape and aggravated assaults often went uninvestigated and perpetrators were not prosecuted or punished.

Building an Effective Tribal Justice System at Tulalip

The Tulalip Tribal justice system has made great strides in the last decade. Tribal law enforcement has gone from a single part time officer to a full service police department of 47 officers and staff protecting the community seven days a week. The Tribal Court has evolved from part time operations in an old trailer to a large modular facility with two full service court rooms and a complement of court staff operating 5 days a week. Crime rates have dropped and the quality of life in the community is improving. The Tulalip Tribes has taken on this responsibility to build its own criminal justice system on the Reservation largely because the federal government has failed to fulfill its responsibility, and the state criminal authority proved ineffective.

The Tribes recent success in criminal justice is attributable to two key factors— (1) retrocession of state criminal jurisdiction under PL 280, and (2) new tribal economic development on the Reservation generating much needed revenues and creating new jobs.

Retrocession -Tulalip Assuming Primary Law Enforcement Responsibilities

The Tulalip Tribes began the process of seeking retrocession of State criminal jurisdiction in 1996. Navigating the retrocession process under current federal law proved to be an arduous task. Indian tribe's had not petitioned the Department of Interior for some time which meant that there were few in the Interior accustomed to the process of retrocession. Also during this time, as is true with the Justice Department's current opposition to S.2731, the Tribes found out that the U.S. Attorneys Office in Seattle was not supportive of the Tribes request for retrocession because they perceived retrocession as adding responsibilities to that office and other federal law enforcement agencies. The Tribes held numerous meetings with Justice and argued persuasively that an increased tribal law enforcement presence would actually lower crime rates and eventually decrease the demand for federal law enforcement services. Gradually, the U.S. Attorney warmed to the idea and sent a letter of support to the Attorney General. With the Governors support and the letter of support from Justice, Tulalip officials were finally successful in obtaining retrocession of state criminal jurisdiction on the Reservation.

After retrocession, the Tribes took on the responsibility of primary law enforcement on the Reservation. The Tulalip Police Department grew to a full service police department with 47 officers and staff. The department is currently headed by a police chief with 27 years of experience. The Tribal police department responds to all police calls on the Reservation, from both the Indian and non-Indian community. Incidents range from simple misdemeanors to major crimes such as murder and rape. In 2006, the Tulalip Police Department responded to 13,493 distress calls.

Last year, the State of Washington passed legislation which strengthened the agreement by authorizing statewide cross-commissioning of Tribal officers, providing Tribal officers meeting specific qualifications with Washington State peace officer arrest authority. Currently, 20 Tulalip officers, all with qualifications that meet or exceed that required of state officers, are cross commissioned as both Tribal and state officers. In

addition, two Tulalip police officers hold federal law enforcement commissions. This cross-commissioning provides for seamless law enforcement arrest authority over crimes committed by all persons on the Tulalip Reservation.

Assumption of Primary Tribal Law Enforcement Coincides with Dramatic Improvements in the Reservation Economy

During the same period Tulalip assumed primary law enforcement authority, tribal economic development increased exponentially. It was during this period that the Tribes incorporated Quil Ceda Village to promote Reservation based business development, including a casino, retail outlet mall, and most recently, a brand new 400 room hotel. The success of Quil Ceda village has created thousands of new jobs, brought in millions of new visitors to the Reservation and much needed revenues to the Tribal government.

It was these initial gains in Reservation economic development that provided funds to establish a police force and further develop the Tribal court system. Tribal leaders immediately recognized the important relationship between continuing successful economic development and a strong, quality justice system. The Tulalip Tribes recognized that to continue to be successful with growing the Reservation economy, the Tribes would need to invest in a first rate justice system. The type of crime that was rampant on the Reservation as recent as 10 years ago would need to improve if the Tribe was going to be successful in attracting visitors to its economic enterprises on the Reservation and lifting its membership out of poverty.

Although the Tribes' new gaming revenues were in great demand to fund unmet housing, health care and education needs, the Tribe knew it could not neglect its justice system. The Tulalip Tribes have gradually increased its law enforcement and tribal justice system budget to more than five million dollars annually. These increases have come almost entirely from Tribal sources, with the federal government's share of the total budget declining.

This Tribal investment in criminal justice is starting to pay off. Tulalip criminal statistics demonstrate improvements in law enforcement and the justice system are starting to lower crime rates:

TULALIP CRIMINAL STATISTICS 2003-2007*

Year	2003	2004	2005	2006	2007
Criminal filings	1172	679	563	493	435

- The 2007 figure is through the 3rd quarter.

The criminal statistics show a steady decline in crime from 2003 thru 2007. In 2007, the number of infractions has almost doubled, from 140 in 2006 to 260 in 2007. Thus, excluding traffic, criminal cases declined about 12%.

The Tulalip Tribal Court

The Tulalip Tribes operates its court through a contract with the Northwest Intertribal Court System. The Tribal Court currently employs two full time Judges, utilizes multiple pro tem judges, and is staffed by a Court clerk supervising four court support staff. The Tulalip Court judges have distinguished backgrounds with decades of experience as jurists and as licensed attorneys practicing in tribal, state and federal courts.

The Court operates under criminal and civil rules adopted by the Tribes governing body. Criminal laws are enforced under a comprehensive criminal code, and the Tribes regulates Reservation activities under environmental, fish & wildlife, land use, gaming and other regulatory codes. The Tribes also has enacted child dependency, domestic relations and employment codes that generate additional caseload for the Tribal Court. The Tribal Court adjudicates a wide variety of civil matters, from child dependency cases and domestic relation cases to complex civil torts between private litigants, involving both Indian and non-Indian parties. Attorneys practicing before the Tulalip Tribal Court must pass a Tribal Bar exam and be licensed to practice in the Court.

The Northwest Intertribal Court System: The Tulalip Tribes operates its court through The Northwest Intertribal Court System (NICS). NICS is a consortium of seven western Washington federally recognized tribes and is the oldest continually existing intertribal court system in the country. NICS serves as a cost-effective way for tribes to deliver high quality court services. Last year alone, seven NICS tribal member courts

heard over 2,400 civil and criminal cases, including appeals. To meet the needs of member tribes, NICS maintains a roster of judges, including lawyers in private practice, law professors, and tribal court judges from non-NICS member Indian tribes. Appellate opinions issued by NICS administered courts are published in a NICS reporter.

As the Tulalip government grew, NICS began to play a much larger role in the Tulalip community and government. Today NICS administers the Tulalip Tribal Courts, the Appellate Court, the Tulalip Prosecutor's Office and some probation services under a contract and budget supplied by the Tulalip Tribes. Tulalip appoints one member of the NICS Board of Directors and is the largest jurisdiction within the NICS system.

One of the benefits Tulalip realizes in operating its court through this contract is that NICS provides the Tribal Court with structural separation from the Tribes elected political branch of government. Although judicial independence does not require an arrangement of this type, the Tulalip Tribes long time participation with NICS has worked well in developing a quality court system. The Tulalip Tribes prides itself on maintaining an independent judiciary providing for the impartial administration of justice on the Reservation.

Tulalip Public Defender: In expanding its criminal justice system, the Tulalip Tribes quickly realized that many defendants could not afford criminal defense attorneys. The Tribal government made a decision that, although costly, it would provide defense counsel to Tribal members meeting low income thresholds. In order to meet this need, the Tulalip Tribes developed an institutional relationship with the University of Washington Law School to develop the Tribal Law Criminal Defense Clinic. Through the Clinic, the Tribes provides all indigent defendants with representation through clinic lawyers, and law students working under lawyer supervision. In addition, the Tulalip Tribes also provides attorneys to indigent parents in child dependency proceedings.

Tulalip Appellate Court: The Tulalip law and order code provides for a right of appellate review for all criminal and civil cases. The Tulalip appellate judges, under contract with NICS, are paid by the Tulalip Tribes for their services on a case by case basis. Currently, there are seven appellate justices- they include distinguished law professors, lawyers and jurists, all with long experience in federal Indian law and tribal

government. Decisions of the Tulalip Court of Appeals are published in the Indian Law Reporter and the NICS Reporter and are available to all litigants.

Tulalip Corrections: With the expansion of the police department and the court system, Tulalip found it essential to address jail space needs. In 1994, the Tribes signed an Interlocal Agreement for Jail Services with Snohomish County which provided for the use of the County jail for the incarceration of Tulalip prisoners. The Tribes are currently exploring other options, including an intertribal facility to house tribal prisoners. Providing for an intertribal corrections facility would allow for more innovation in corrections programs, and would be more cost effective. As always, limited funding to operate a new facility is a major obstacle to meeting this need. Tulalip is supportive of provisions in the proposed Tribal Law and Order Act that will provide for greater support for construction and operation of detention facilities in Indian Country

Healing-to-Wellness (Drug) Court: An integral part of the Tribes justice program involves rehabilitation programs designed to reduce recidivism. The Tribal government is uniquely suited to designing programs that work best in the Tribal community. These programs, however, again require new sources of funding, and the Tulalip Tribes strongly support re-authorization of federal programs which contribute to the funding of these valuable programs.

In response to the growing problems of drug-related crimes, the Tribes established a Wellness Court, also known as a drug court. Typically, defendants must be charged with possessing or purchasing drugs; must not have a history of violent crime, or drug-trafficking arrest, or more than two previous non-drug felony convictions. Program participants must have regular drug tests and return to court regularly, often weekly, for a review of their progress. Participants also receive counseling, educational courses, and vocational services. The purpose of the Wellness Court is to approach crimes committed by the offender under the influence of drugs or alcohol in a holistic manner that supports and encourages traditional practices rather than punitively while ensuring that the offender is still held accountable. The Court's Alternative Sentencing approach was awarded the Harvard Honoring Nations Award presented by the Harvard Project on American Indian Economic Development in 2006 for demonstrating its excellence and

innovation in addressing the combined problems of substance abuse and crime in the criminal justice system.

Federal Role in Indian Country Justice

Despite the recent gains by Tulalip and other tribes in fighting crime, Indian tribes cannot solve the public safety problem on their own. Due to jurisdictional constraints, and lack of traditional funding sources, tribes must rely on the federal government to play an important role in addressing Reservation crime problems. Tribes rely on the federal government for prosecution of most, but not all, major crimes pursuant to 18 USC §1153. Tribes must also rely on federal and/or state prosecution of non-Indian criminal offenders on the Reservation.

Indian Country continues to face a crisis of violent crime. A Bureau of Justice Statistics Report covering the period 1992-2002 found that American Indians are victims of violent crime at a rate more than *twice* that of the national population. “*American Indians and Crime.*” (U.S. DOJ Publication No. NCJ 203097). Washington, DC: U.S. Department of Justice (2004). According the DOJ-BJS report, American Indians experienced an estimated 1 violent crime for every 10 residents over age 12. The figures are even worse for Native American women, who are the victims of rape or sexual assault at a rate more than 2.5 times that of American women in general. The DOJ- BJS study concluded that 34.1 percent of American Indian and Alaska Native women - more than one in three—will be raped in their lifetime. This level of violence against native women is tragic and unacceptable. The majority of perpetrators of violent crime against Indians were non-Indian. Because tribes have been stripped of jurisdiction over non-Indian offenders, tribes need the assistance of federal law enforcement. The Department of Justice must work cooperatively with Tribal law enforcement and dramatically step up its efforts to combat this crisis.

Tulalip has shared in this experience of unacceptable levels of violent crime, and has worked hard to forge a relationship with federal law enforcement. In recent years, Tulalip has built a good relationship with the U.S. Attorneys Office on major crimes enforcement on the Tulalip Reservation. However, as president of the Northwest Tribal Court Judges Association, I know many Indian tribes do not share the same positive

relationship with federal law enforcement. Tribes in more remote locations have experienced problems getting federal support and assistance in investigating and prosecuting crimes. These problems have worsened in recent years with the reallocation of federal law enforcement resources to foreign terrorism matters.

We welcome and support the provisions of the proposed Tribal Law and Order Act which call for reporting by the FBI and Justice Department regarding Indian Country criminal investigations and prosecution declinations. We would urge the Committee, however to strengthen the bill by **requiring** the timely transmission of evidence and case files to tribal justice officials when a federal investigation is closed or case declined.

Another important responsibility of the federal government in Indian Country is the provision of support for courts and justice systems through funding, technical assistance and training. It is in these areas that the federal government is falling woefully short of fulfilling its trust responsibility. Where tribal justice systems have been developed, the systems have been funded by the tribes themselves. These limited tribal funds are in great demands for other essential government functions such as health care and education, areas which are equally vital to improving crime rates in Indian Country. The current 2008 budget for the Tulalip Tribal Court is over one million dollars (including prosecutorial services), of which \$30,000 is funded by the federal government (3%). For the Tulalip police department, the annual budget is now 4.3 million, with only \$212,000 coming from federal funds (5%).

Because tribal justice systems are the most effective means of addressing the public safety problems on Reservations, federal funds used to support tribal justice systems are funds well spent. Tulalip has demonstrated that if sufficient resources are dedicated to tribal justice systems, real gains can be made in addressing the serious public safety problems in Indian Country. We urge the Committee to authorize increased federal funding to what works best – building quality tribal justice systems.

Compounding the problem of lack of federal funding is the constraints on tribal governments raising revenues for public safety in the same manner as state and local governments — through taxation. Washington State funds public safety through taxes on retail sales, real property and business activity. On the Tulalip Reservation, (which contains many non-Indian residents and businesses), the Tribe is effectively precluded by

recent Supreme Court decisions from imposing these same taxes to fund this basic government service.

The Tulalip Tribes request that this Committee strengthen the proposed legislation by directing that the funding shortfalls for tribal criminal justice systems be examined and addressed. In addition, legislation should provide additional funding avenues for Tribal justice systems by removing impediments to tribal taxation of all persons and activities on Indian Reservations that reap the benefits of effective tribal justice systems.

Tribal Law and Order Act—Proposed Provisions for Expanding Criminal Sentencing Authority of Tribal Courts.

The Tulalip Tribes strongly supports the proposed legislation's extension of tribal court sentencing authority from one to three years. At Tulalip, the Tribal Court is the primary forum for criminal prosecutions on the Reservation involving Indian offenders. The effective administration of justice benefits the entire Reservation community, both Indian and non-Indian. The Tribe's criminal justice system is often the first and last line of defense in protecting the community from violent offenders. Many serious crimes, including those involving dangerous offenders, end up falling to the tribal justice system for prosecution.

Since September 11, 2001, federal resources have been reallocated. According to data released by this Committee, federal criminal investigations on Indian lands in Washington State declined by 55% since 2001. This has left a gap not only in the prosecution of major crimes, but the serious crimes that fall into the gap between misdemeanors and Major Crimes Act felonies. The reality on the ground is that Tribal Courts are often responsible for prosecuting felony crimes.

In sentencing serious criminal offenders, I have long been concerned that the one year sentencing limitation was placing the safety of the tribal community at risk. Although the need to impose longer sentences is not a common occurrence in my courtroom, in those situations where the court is faced with prosecuting serious violent crimes, it is important for the Tribal Court to have appropriate sentencing authority. During my tenure as a judge, I have presided over cases involving charges of rape, child sexual assault, drug trafficking, aggravated assault and serious domestic violence.

Increasing sentencing to three years will provide Tribal Courts with the authority necessary to protect the Reservation community.

I do not believe that Tribal Courts will need to use this authority often. At Tulalip, our focus has been on alternatives to incarceration aimed at promoting behavioral changes, healing and preventing recidivism. However, there are times when the Tribal Court is faced with violent offenders in which longer incarceration periods are necessary and vitally important.

Competency of Washington Tribal Courts and Response to the Concerns of the Departments of Justice and Interior

At the hearing last month on the draft Tribal Law and Order Act, representatives from the Departments of Justice and Interior expressed concerns to this Committee regarding the extension of tribal court sentencing authority. DOJ and BIA expressed concerns as to whether tribal courts would adequately protect the rights of criminal defendants. DOI expressed similar concerns, and also raised issues regarding increased costs of longer detentions and possibly an increase in habeas petitions.

With regard to the rights of the accused, I can personally attest that all of the tribal courts that I have served as a judge, or practiced in as an advocate, have a strong commitment to protecting the rights of criminal defendant that is equal to that of the state and federal courts. Although tribal courts may differ in size and scope (some tribal governments rely on state rather than tribal criminal law enforcement), an ITJA survey published in 2000 reported that the vast majority of participating tribes had formal justice systems similar to state or federal court systems, and virtually all provided for appellate review. Washington State courts have adopted court rules which provide full faith and credit for Tribal Court judgments. *Washington State Civil Rule 82.5*

All NICS member tribes have developed tribal codes. The NICS member tribal codes are publicly available from court clerks and law libraries. Many are also available on-line. Most of these tribes have comprehensive civil court procedural rules like those at Tulalip. In addition, the other large tribes in Washington State including Colville, Lummi, Puyallup and Swinomish operate their own sophisticated court systems complete with indigent public defense services and all utilize comprehensive Tribal codes and

court rules. In one small NICS tribe, the tribal court held last month that the tribes' constitution required the appointment of public defenders for indigent defendants.

Similarly, most Washington tribes have developed a court of appeals. NICS provides appellate services to all of its member tribes as well as to non-member tribes in Washington, Oregon and California. The Colville Confederated Tribes has a constitutionally established Court of Appeals and appoints nine justices to serve six year terms. All the opinions are available and are maintained by the Court.

Tribal courts have now long been operating under the provisions of the Indian Civil Rights Act, which provides the same fundamental protections for the rights of the accused as the Bill of Rights provides under the U.S. Constitution. These substantive and procedural protections are embodied in the tribal criminal codes which incorporate the protection of defendant rights, including: the right to speedy trial, the right to a jury trial, the right to subpoena witnesses and evidence, the right to cross examination, the imposition of probable cause warrant requirements, and prohibitions on excessive bail, double jeopardy and compulsory self-incrimination. The Tulalip Tribes, as do most tribes in the northwest, also provides defendants with the right to seek habeas corpus relief in their Appellate Court.

It is difficult to understand the objections of federal officials in increasing tribal court sentencing authority from one year to three years. The reality is that many Indian tribes have been prosecuting the great majority of criminal offenses on their reservations, including serious crimes, for many years now. Sentencing an individual to one year in jail is a serious deprivation of liberty, and as a Tribal Court Judge, I can tell you the court takes this responsibility very seriously. After years of adjudicating criminal cases, we have a demonstrated track record. In my years presiding as a judge in the Tulalip and Lummi Nation courts, and other Northwest Indian Tribal Courts, I am unaware of any habeas petitions being granted to Indians incarcerated as a result of Tribal prosecutions. Furthermore, the ICRA provides habeas relief in federal court which insures due process protections for criminal defendants. These are the same claims made by federal officials when Tulalip requested retrocession and the concerns have proven unfounded then and remain unfounded now.

Although the commitment to protecting defendant rights is a shared value throughout Indian country, the ability to provide sufficient funding to justice systems varies greatly from tribe to tribe. I agree that the provision of criminal defense counsel to indigent defendants is an important aspect of prosecuting more serious crimes involving the potential for penalties that include extended incarceration. However, many Indian tribes have extremely limited governmental budgets and sufficient tribal funds are not always available for many essential government functions. While we do not object to the requirement to provide defense counsel as a condition to exercising longer sentencing authority, it is imperative for the federal government to provide a mechanism for funding this responsibility. If the serious public safety issues on many reservations are going to be addressed, the federal government must fulfill its trust obligation by providing funding, or funding mechanisms to provide for public defenders in Indian country.

Finally, I feel it is important to respond to Department of Justice objections to provisions in the proposed legislation which would require additional Justice Department emphasis and accountability in Indian Country. Apparently, current Justice Department officials believe that the status quo is sufficient and that there is no need for improvements in federal justice efforts in Indian Country.

The Department of Justice's own statistics demonstrate better than anything else the need for Congress to act to compel the Justice Department to re-prioritize its responsibilities to Indian Country. Despite statistic showing a crisis in violent crime rates, Justice Officials cited the filing in 2006 of **606 total cases in all of Indian Country** as evidence that it was effectively fulfilling its criminal justice responsibilities. This number is unacceptable in the face of the staggering statistics of violent crime in Indian Country. 606 total criminal cases filed for all of Indian Country — covering over 562 federally recognized tribes with a population of approximately 1.6 million amounts to little more than one prosecution per tribe per year. Contrast the Justice Department's 606 criminal filings with the 493 criminal cases filed in the Tulalip Tribal Court alone in 2006- - a single reservation with a population under 4,000; or the 9,973 criminal cases filed in Seattle-King County Superior Court in 2006 (just south of the Tulalip with a population of 1.8 million).

The Need for Greater Federal Support and Funding for Tribal Courts

The experience at Tulalip has demonstrated that, given adequate resources, tribal courts provide the most effective means of addressing the problem of crime in reservation communities. Tulalip has seen first hand the dramatic change in serious criminal behavior from a crisis situation a couple of decades ago to one in which crime are being steadily reduced. The difference has been the result of a comprehensive tribal police presence on the Reservation accompanied by an effective Tribal court justice system.

Tulalip has been able to step forward and make a difference due to recent gains in economic development brought about by its gaming and business enterprises. However, these business revenues are subject to economic cycles and other factors outside the Tulalip Tribes control. A business downturn could easily put the Tribes public safety gains at risk. Like all Tribal governments, Tulalips' public safety infrastructure needs a reliable source of government revenue.

The Tulalip Tribes urges this committee to enhance the Tribal Law and Order Act by not only authorizing an increase in sentencing authority, but by authorizing an increase in tribal justice system funding. No other governmental entity has a greater stake in reducing reservation crime than the tribal governments themselves. What tribal courts need to be successful is sufficient level of reliable support – in terms of training, technical assistance, and funding. The recent funding authorizations for Tribal justice and law enforcement included in S.2731 are a step in the right direction. I urge the Committee to press for passage of the tribal justice funding included in S. 2731 and continue to authorize greater investments in tribal courts as the most effective use of federal resources to combat the problem of crime in Indian Country.

An increase in direct Tribal funding should be complemented by legislation that empowers tribal government to raise revenues themselves to meet their public safety needs. Recent Supreme Court cases which limit taxation powers of tribal governments create serious obstacles for tribes struggling to fund public safety needs. Taxation provides a steady and reliable source of revenue that is now effectively foreclosed to tribal governments due to land status and de facto limits on taxation of persons and businesses operating in Indian Country.

I thank the Committee for this opportunity to provide testimony on these important issues of tribal criminal justice and I would be glad to provide additional information and assistance in support of the Committee's efforts to strengthen tribal justice systems throughout Indian Country.

Additional Comments of the Tulalip Tribes On the Proposed Tribal Law and Order Act of 2008

FTCA Coverage for Tribal Law Enforcement. – This is an issue that has been in dispute in recent years, and several courts have found the FTCA did not cover tribal police for many law enforcement related torts, even though the tribal police departments at issue were operating under PL 638 contracts. 28 USC 2680 (h) provides that the FTCA covers assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution of investigative or law enforcement officers *of the United States*.

When a Federal Tort Claim is brought against a tribal police officer for assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution, the United States currently points to 2680 (h) and says that tribal officers are not covered if they do not carry a commission from the BIA as a law enforcement officer under 25 CFR 12.21. This interpretation has left Tribal police department operating under 638 contracts without FTCA coverage for their tribal law enforcement officers.

Insurance coverage and costs are major issues for tribal police departments. Insurance coverage is also important in securing cross-deputization agreements with surrounding jurisdictions. The Tribal Law and Order Act presents an opportunity to clear up this problem by authorizing FTCA coverage for Tribal police officers operating under 638 contracts. We propose the following amendment be added to the bill:

Amending Indian Self Determination and Education Assistance Act of Nov. 5, 1990 (codified at 25 USC 450f notes) by adding the following language:

Provided further, that any tribal law enforcement officer deemed to be covered under the Federal Tort Claims Act shall not be excluded from coverage for assault, battery, false imprisonment, false arrest, abuse of process, malicious prosecution because of the lack of commission or other appointment by the Bureau of Indian Affairs under 25 CFR 12.21 or other federal agency.

Section 2. Purpose. We suggest that a reference be added that Tribal law enforcement is frequently responsible for responding to distress calls for both Indian and non-Indian residents of their reservations.

Title I, Sec. 102. We support the provisions directing federal law enforcement and the U.S. Attorney to report to tribal justice officials with regard to termination of criminal investigations or declination of cases. We request that the language be amended to ensure that if a tribal justice officials request case files and evidence after a federal declination, that the transmission of such files be mandatory rather than permissive.

Title II, Sec. 202. We support assistance and funding for inter-governmental cooperative law enforcement agreements between tribes and other jurisdictions. We request that the authority for support and funding be revised to include support for implementation and development of *existing* joint programs, as well as for new programs. Tulalip has an existing program, but continuing assistance and funding is necessary to ensure the continued viability of its Tribal-County cooperative Law enforcement agreement program.

Title III, Sec. 304. As explained above, the Tulalip Tribes supports the extension of Tribal Court Sentencing authority. We request that the legislation additionally include authorization for funding tribal public defender programs.

Title IV, Sec. 401, 402, 403. The Tulalip Tribes support re-authorization of provisions of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1896, the Indian Tribal Justice Act, and the Tribes COPS program(Omnibus Crime Control and Safe Streets Act).

Title IV, Sec. 404. We urge the Committee to authorize additional funding for construction and operation of tribal and inter-tribal regional detention facilities.

Title IV, Sec. 406. Tribal juvenile justice is a huge unmet need that is unaddressed by this legislation. The Tulalip Tribes urges the Committee to add authorizations for federal support and funding of tribal juvenile justice systems. If congress is serious about reducing the serious public safety problems present on many reservations, it must invest in tribal juvenile justice programs.

Title V, Sec. 502. The Tulalip Tribes supports improvement in Tribal data collection systems, which is a big need in Tribal justice systems today. We request, however, that the legislation add a requirement for the Office of Justice Services to consult with Tribes in advance as to the development of grant program requirements. In the past, certain grant program requirements, such as mandating the sharing of fingerprints with outside agencies, caused many tribes to forgo grant opportunities.