S. HRG. 112–489

S. 1763, S. 872, AND S. 1192

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

ON

S. 1763, STAND AGAINST VIOLENCE AND EMPOWER NATIVE WOMEN ACT

S. 872, A BILL TO AMEND THE OMNIBUS INDIAN ADVANCEMENT ACT TO MODIFY THE DATE AS OF WHICH CERTAIN TRIBAL LAND OF THE LYTTON RANCHERIA OF CALIFORNIA IS CONSIDERED TO BE HELD IN TRUST AND TO PROVIDE FOR THE CONDUCT OF CERTAIN ACTIVITIES ON THE LAND

S. 1192, ALASKA SAFE FAMILIES AND VILLAGES ACT OF 2011

NOVEMBER 10, 2011

Printed for the use of the Committee on Indian Affairs

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S. 1763, S. 872, AND S. 1192

THURSDAY, NOVEMBER 10, 2011

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 3:00 p.m. in room 628, Dirksen Senate Office Building, Hon. Daniel K. Akaka, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. DANIEL K. AKAKA, U.S. SENATOR FROM HAWAII

The CHAIRMAN. The Committee will come to order.

Aloha, everyone. Today, the Committee will hold a legislative hearing on three bills. Two of these bills are designed to improve public safety in Native communities and improve the security of Native women and families.

I am so glad that Senator Feinstein is here, and following her, I will complete my opening remarks. Welcome Senator Feinstein to the Committee.

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

Would you like me to proceed?

The CHAIRMAN. Please proceed. Yes.

STATEMENT OF HON. DIANNE FEINSTEIN, U.S. SENATOR FROM CALIFORNIA

Senator FEINSTEIN. Mr. Chairman, this has to do with a bill that I have submitted that has been passed out of this Committee on prior occasions, and one has passed the Senate. And it goes back a substantial period of time. It has to do with a requirement that the Lytton Tribe of San Pablo follow all existing laws and regulations if it seeks to expand its casino.

Now, why is this bill necessary? The Tribe is currently exempt from critical oversight laws, particularly IGRA. The history of how this happened is important. The Tribe historically resided in Sonoma.

Until mid-century, the Lytton Rancheria in Alexander Valley was their homeland. The Tribe was wrongfully terminated in 1961 and it took until 1991 for a court to restore the Tribe to its rightful Federal status, but the decision didn't grant the Tribe any land and it forbade them from engaging in activities prohibited under the Sonoma County general use plan. Effectively, the court prohibited the Tribe from gaming in Sonoma County, which is a Bay Area county, but nonetheless not in the middle of an urban area.

Nearly a decade later in 2000, Congress passed the Omnibus Indian Advancement Act. A provision was air-dropped in the conference bill without consideration by the House or the Senate which allowed the Lytton Band to acquire trust land in San Pablo where they purchased an existing 70,000 square-foot card room. By all accounts, the Tribe deserved to be recognized and to have land taken into trust, but the manner in which the land was granted to the Tribe was both controversial and unprecedented.

The bill allowed the land to be taken into trust as if it were acquired before 1988, when in fact it had been acquired after 1988. IGRA prohibits Tribes from gaming on newly acquired land, except in very limited instances: (1) newly recognized Tribes; (2) Tribes who received land as a settlement for a land claim; (3) re-recognized or restored Tribes; (4) Tribes who have undertaken a two-part determination.

By treating the land as if it were taken into trust before 1988, the Tribe was able to avoid a two-part determination process. This statutory process, which requires the consent of both the Secretary of Interior and the Governor, would normally be required for this Tribe if Lytton expanded to a Las Vegas-style Class III gaming facility in San Pablo.

Now, Mr. Chairman, four years later, a 600,000 square-foot, 5,000 slot machine Class III Las Vegas-style gaming facility was what the Tribe proposed. Now, a casino of this size does not belong in San Pablo. When voters in California passed proposition 1(a), the law which authorized Indian casinos, they voted to allow gaming facilities on Indian lands. The proposal was sold to voters as authorizing casinos on "remote reservations." And the ballot arguments reflect that as well.

So later in 2004, I introduced legislation which would have stripped the provision that treats the land as if it were acquired before 1988. This would have prohibited the Tribe from conducting any gaming on their land unless they abided by the same law that the other 58 gaming Tribes in California do. The Committee considered the legislation in the 108th and 109th Congress. In the 109th, the Committee favorably reported the bill to the full Senate with a recommendation that the bill do pass.

Soon after, I met with the Tribe to see if we could come to some agreement. I spoke with Chairwoman Margie Mejia, who I believe is here today, and Tribal leadership. I was and I remain sympathetic to their concerns—poverty, healthcare, unemployment. In 2007, we reached a compromise. The Lytton Tribe would continue to operate their Class II gaming facility at Casino San Pablo, but if they wanted to expand to Class III gaming, they would abide by the two-part determination.

We put this compromise in legislation and it had the Tribe's support. That is the legislation being considered here today. The Lytton casino would be subject to the same rules and regulations as every other Tribe in the State, but these would apply only if the Tribe chose to expand. So if the Tribe chose not to expand to Class III, the additional rules and regulations did not apply. So they were secure at least in Class II.

The bill did not impact the Tribe's Federal recognition nor did it impact the trust status of their land. At the time, the Chairwoman

was quoted by the San Francisco Chronicle as saying legislation would allow the Tribe to "operate the casino for the long term without the threat of closure." It was viewed as a win-win proposal.

That is why the Lytton Gaming Oversight Act was favorably reported by this Committee in the 110th Congress, and why it passed the Senate by unanimous consent that year and the next. But now, the Tribe does not want to continue to uphold our agreement.

I met with the Tribe's lawyer yesterday and he told me that the situation had changed; that other Indian Tribes, Guidiville and Scotts Valley, may open casinos in Contra Costa County. And that the Lyttons needed the ability to expand to compete if these other casinos are approved. So, you know, one, two, three, four, five casinos, this is how it goes.

Well, the Guidiville proposal has already been rejected by the Department of the Interior, and the Scotts Valley proposal has been languishing at the department for years. But I am willing to work with the Tribe again. I understand that Chairwoman Mejia will testify today that they still have no plans to expand Casino San Pablo. I read her statement and I am grateful to hear that.

If we can find a way to achieve the goal of the Lytton Gaming Oversight Act without legislation, I am all for it. Because the bottom line is this: a Las Vegas-style casino does not belong in San Pablo. This is a small enclave of 29,000 people surrounded virtually on all sides by the City of Richmond. Richmond voters opposed by the ballot a new casino proposal last November; 58 percent of the electorate voted against the proposed casino at Point Molate, which is only seven miles from Casino San Pablo. I have a November 9th letter from the Mayor of Richmond, and I would like to put it in the record and read two paragraphs.

"The negative effects of casino gambling remain a real threat looming over the Bay Area. As the community is buffeted by crime, drugs, and abuse due to the casino and the dismal economy, this bill is critical to help stem the tide."

"Many citizens remain concerned that gambling at the site will be expanded and that the negative effects, including traffic, drunk driving, and crime, will proliferate."

And then she goes into proposition 1(a), and since I have done that, I will not bore you with it.

We have another problem. We have 59 Indian gaming permits in California. And inspection in California is conducted by only 157 gambling control staff. By comparison, there are 433 staff at the Nevada Gaming Control Board. The California budget is less than 25 percent of the Nevada budget for this.

So what is happening is that California is becoming bigger in Class III gaming than even Las Vegas. This is a problem if we can't provide the oversight staff. We know the skimming. We know what has been typically surrounding casinos in the history of Las Vegas. Candidly, it doesn't really belong in the metropolitan of the San Francisco Bay Area.

Some San Pablo residents are so concerned they filed suit against the Department of the Interior. The Board of Supervisors of Contra Costa County passed a resolution four years ago saying they do not want Las Vegas-style gaming in the county.

Now, this bill is a product of compromise, an agreement that I reached with Chairwoman Mejia. I think it protects the rights of the Tribe and it ensures the law is followed. What I say to you in conclusion, Mr. Chairman, I am really eager to continue to work with this Tribe. I think they are deserving. I think they got an unfair shot on their Native lands, but there is a problem.

We have a lot of mall space in this economy in cities that are not inhabited; that Tribes can do what this Tribe did. They bought an existing card room and the concern is that they expand it to Class III gaming in the heart of an urban area, right next to freeways to bring people in.

I see, Mr. Chairman, the buses pull up to housing projects in San Francisco, particularly on the nights that Social Security checks come out. The busses are loaded up with people and take them to games where most lose money. We have 59 Casinos already. What I am saying to you is, in my judgment, for the well being of my State, this is a problem.

Now, there are a number of Indian gaming compacts that have been done. I have tried to get the records of those Indian gaming compacts that were negotiated by our Governor, and I believe those compacts should be public. We should know what money is promised and to whom it is promised.

I cannot get those records. We are asking, under a Freedom of Information Act, to obtain those records. And there is so much money that is being passed on, and I understand cities have needs. The California budget is getting cut back. Everybody has wants that aren't filled. But 59 gaming permits in this State really is a substantial number.

So my view is if we can keep this to Class II and enable the Tribe to flourish with Class II, I am all for it. And I don't know whether there will be competition or not, but I will work with this Tribe.

And I thank you for your patience. Thank you.

The CHAIRMAN. Thank you very much for your testimony. And thank you. I know you have a busy schedule.

Senator FEINSTEIN. Thank you. I appreciate the courtesy. Thank you very much.

The CHAIRMAN. Thank you so much for being here.

I will continue to finish my statement, if it is okay by Senator Begich here on our first panel.

The Committee held an oversight hearing on the issues impacting Native women in July and another on implementation of the Tribal Law and Order Act in September. At both of these hearings, we heard that domestic violence and sexual assault against Native women is still an epidemic, and much work remains to be done to effectively address the issue.

In response, I introduced S. 1763, the Stand Against Violence and Empower Native Women Act or SAVE Native Women Act. In addition, Senator Begich introduced S. 1192, the Alaska Safe Families and Villages Act in June. This bill would establish a new demonstration project through the Department of Justice aimed at improving local public safety in Alaska Native villages. We are pleased to have Senator Begich here to provide testimony about the bill.

The other bill we will consider today is the Lytton gaming oversight bill, which was introduced by Senator Feinstein, who has discussed her proposal in her testimony. This bill would amend the Tribe's Restoration Act to ensure that any expansion of gaming or the physical structure of their gaming facility would be governed by the exemptions in the Indian Gaming Regulatory Act.

So I look forward to hearing from my Senate colleague Senator Begich on his bill and from Tribal representatives and other stakeholders. I encourage any other interested parties to submit written comments to the Committee. The hearing record will remain open for two weeks from today.

So again, I want to welcome Senator Begich to the Committee and say thank you so much for being here to provide us testimony. Will you please proceed?

STATEMENT OF HON. MARK BEGICH,
U.S. SENATOR FROM ALASKA

Senator BEGICH. Thank you very much, Mr. Chairman. And thank you, too. I know the folks in the room here are being patient while we have multiple votes to deal with, but thank you very much for the opportunity here to present the Alaska Safe Families and Villages Act to the Committee.

The bill, which is broadly supported by the Alaska Native community in my State, provides some of America's remote communities more tools to deal with their enormous challenges. These challenges include some of the highest rates of alcohol abuse, domestic violence, and suicide in the Nation. Life is truly tough in many of these villages that can be reached only by river boat, in some cases and airplane or snow machines.

Alaska Native culture is a rich one based on the common values of sharing, reverence for the land, and mutual respect for all peoples. But this culture in Alaska's most remote villages faces enormous pressure for sustainability and good health. That is what this bill is about.

I hear from Alaska's Tribal leaders every day about the need for more resources to address suicide, substance abuse, and domestic violence. So, I work with Tribal leaders for a solution that gives them more resources that are culturally relevant and address the public safety concerns in remote villages.

I have worked with Ralph Andersen, the CEO and President of the Bristol Bay Native Association and Co-Chair of the Alaska Federation of Natives, which you will hear from later in the hearing.

This bill will give communities the tools they have been asking for to bring stability and justice to their homes and villages. The stark statistics show Alaska is desperately in need of creative solutions; 95 percent of all crimes in rural Alaska can be attributed to alcohol; suicide rates in Alaska villages are six times the national average; alcohol-related mortality is 3.5 times higher than the general population; and more than three out of every four American Indian-Alaska Native women will be physically assaulted in her lifetime.

The sad reality is that many Alaska Native village perpetrators of domestic violence, sexual abuse, and the bootleggers are not always held accountable for their actions, so the cycle of abuse and

violence continues. Many of our remote villages lack adequate law enforcement. The nearest State trooper often is a long airplane ride away. If the weather is bad, I will tell you, as we have watched the news recently in western Alaska, it is really bad at this point. It can take days for the law to show up.

Today, some 80 villages have a single unarmed Village Public Safety Officer, which we call VPSOs, on duty all-day-every day. The VPSOs, as they are called, do a great job, but they need backup.

Later, you will hear from the Alaska Commissioner of Public Safety. I understand the State of Alaska does not support the bill, but I know they recognize the unique challenges in the rural communities.

I believe my bill doesn't preempt the State. It enhances it. Our State troopers do an excellent job, but they are spread too thin. My bill allows Tribes to create solutions that work for their communities. I strongly believe in community involvement and the solutions to support local control and innovation. This is consistent with the self-determination goals of Tribes, which the Obama Administration, and this Committee has advocated for. It recognizes the unique relationship between the U.S. Government and Tribes.

My bill will give Alaska Tribes the tools to stop domestic violence, alcohol and drug abuse, and suicides in their own communities. It is important to note that this bill will establish a demonstration project. If it is successful, we can talk later about expanding it.

Although the State of Alaska would maintain the primary role and responsibility in criminal matters, the demonstration project would allow participating Tribes to set up Tribal courts, establish Tribal ordinances, and allow them to impose sanctions such as community service on violators. Participants in the demonstration projects also would be eligible for village peace officer grants. This would help those communities without VPSOs who need them.

Dealing with the realities of crime in rural Alaska Native villages requires comprehensive and innovative solutions. This includes the ability to act as the resources and tools they need to promote the well being of these communities. It is time for real solutions. And I know the Alaska Safe Families and Village Act of 2011 can be part of that solution.

Chairman Akaka, I would like to briefly also address S. 1763, the Stand Against Violence and Empower Native Women Act. I am a cosponsor of this bill and will support improved Native programs under the Violence Against Women Act. Such a law would empower villages to step off the sidelines waiting for the troopers and to take action necessary to save one of their own.

Even if Alaska has no Indian Country per se, being authorized to take action will have the twin effect of both intervention and the role modeling that such violence will not be tolerated.

Again, I thank you for allowing me to present this important piece of legislation and for the people of Alaska before the Committee on Indian Affairs.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Begich. I know you have a busy schedule, but if your schedule allows you, I would

invite you to join us on the dais for the remainder of the testimonies.

Senator BEGICH. Thank you very much, Senator. If I can spend some time with you, I will be happy to join you.

The CHAIRMAN. Thank you.

And I am so glad to have Senator Murkowski be here. And I would like to ask her for any opening statement you may have.

STATEMENT OF HON. LISA MURKOWSKI,
U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Well, Mr. Chairman, I thank you for having this hearing this afternoon. I want to acknowledge my colleague, Senator Begich, and thank him for his good work on these issues. We are privileged this afternoon to have two Alaska witnesses before the Committee here: our Commissioner Joe Masters, who will be speaking on the second panel, I believe; and Mr. Ralph Andersen, who is a friend and truly a great individual that has been representing Alaska Federation of Natives for some time and has just recently been reelected as Co-Chair of the Alaska Federation of Natives. We really appreciate his leadership within the State on this issue and so many.

As Senator Begich has noted in his testimony, and I apologize, Mark, that I wasn't here for your whole testimony, coming over from the vote, I got waylaid. I know you can understand that.

But our statistics in Alaska as they related to domestic violence, to rape, physical abuse, murder, and these are statistics that I think, as an Alaskan, we all find chilling. And they are statistics that we deal with, but we know that they are not just statistics. These are our friends. They are our neighbors. They are family members.

And our inability to deal with some of the issues that face us is really very, very difficult to acknowledge. We are a State that is blessed in so many different ways, and yet sometimes the ugly side of what happens in our State are facts that are very difficult to reckon with. And I think when we realize these rates of violence and abuse that we see that are perpetrated against Native women and children, it is well past time that we make it a national priority.

There was an article in our local newspaper, the Anchorage Daily News, just on the 5th of November, just the day before yesterday. This was from the Director of the University of Alaska Justice Center and the principal investigator for the Alaska Victimization Survey. And she goes on to detail what we face in Alaska and our statistics.

In 2011, regional surveys were conducted in Anchorage, Fairbanks, Juneau, and Bristol Bay. And in her words, she says these results show that violence is an endemic problem throughout our State. It is essentially one of every two women have experienced intimate partner violence or sexual violence or both. To think that the statistics are as they are again compels us all to act.

As Senator Begich mentioned, the legislation that he has introduced has raised some concerns from the State. I think we will hear that addressed today. But I think all of us, as we deal with the aspects of violence that we face and the frustration that so

many have that we are limited in our ability to deal with that because we don't have the law enforcement, the protection that others in other parts of the Country would just assume is there, we know we have got to deal with these issues.

And so I would like to work with Senator Begich. We have discussed this with folks in the State how we can be just a little bit more creative. Our geography, the dynamics that we face, forces us to maybe think outside of the box. And I am going to urge us all to do that and more because we cannot leave our villages behind. We cannot leave our communities in fear. We cannot leave our families carrying the burden of the scourge of devastation and ruin that have come to them because of incidents that have been unchecked that we could have resolved.

So I thank you, Mr. Chairman, for bringing not only Senator Begich's bill forward, but the legislation that we have in front of us on the Standing Against Violence and Empower Native Woman Act, and I applaud you for your initiative there.

Thank you.

The CHAIRMAN. Thank you, Senator Murkowski.

At this time, I would like to call Mr. Tom Perrelli to be our second panel witness; Mr. Tom Perrelli, Associate Attorney General at the U.S. Department of Justice.

Welcome, Mr. Perrelli. Please proceed with your testimony.

STATEMENT OF THOMAS J. PERRELLI, ASSOCIATE ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. PERRELLI. Thank you, Mr. Chairman, Vice Chairman Barrasso, and Members of the Committee. Thank you for inviting me today on S. 1763, the Stand Against Violence and Empower Native Women Act, also known as the SAVE Act.

The SAVE Act addresses a critically important issue on which the Department of Justice has placed a high priority combating violence against women in Tribal communities. As you know, I testified before this Committee in July when I described the department's discussions, including formal consultations with Indian nations about how best to protect Native women from the unacceptable levels of violence we are witnesses in Indian Country and Alaska Native communities throughout the Country.

We are pleased today to see the introduction of the SAVE Act, and we commend you, Chairman Akaka, as well as the many colleagues who have joined you in cosponsoring this legislation.

As I think all of the Senators have indicated, violence against Native women has reached epidemic rates. Tribal leaders, police officers, and prosecutors tell us of an all-too-familiar pattern of escalating violence that goes unaddressed, with beating after beating, each more severe than the last, ultimately leading to death or severe physical injury.

Something must be done to stop the cycle of violence. And for a host of reasons, the current legal structure for prosecuting domestic violence in Indian Country is inadequate to prevent or stop this pattern of escalating violence. Federal law enforcement resources at too far away and stretched thin, and Federal law doesn't provide the tools and the types of graduated sanctions that are common in State laws across the Country.

Tribal governments, police, prosecutors, and courts should be in a central part of the response to these crimes, but under current law throughout the Country they lack the authority to be part of that response. Until recently, no matter how violent the offense, Tribal courts could only sentence Indian offenders to one year in prison.

Under the Tribal Law and Order Act, the landmark legislation enacted last year, in no small part due to the efforts of this Committee, Tribal courts can now sentence Indian offenders for up to three years per offense, provided defendants are given proper procedural protection, including legal counsel.

But Tribal courts have no authority at all to prosecute a non-Indian, even if he lives on the reservation and is married to a Tribal member. Tribal police officers who respond to domestic violence calls only to discover that the accused is non-Indian and therefore outside the Tribe's criminal jurisdiction often mistakenly believe they cannot even make an arrest. Not surprisingly, abusers who are not arrested are more likely to repeat and escalate their attacks. Research shows that law enforcement's failure to arrest and prosecute abusers both emboldens attackers and deters victims from reporting future incidents.

In short, the current jurisdictional framework has left many serious acts of domestic and dating violence unprosecuted and unpunished.

The SAVE Act addresses three key areas where legislative reform is critical. Title II in particular incorporates the Department of Justice's proposal and addresses the concerns of Tribal leaders and experts repeatedly expressed to us, and fills three major legal gaps involving Tribal criminal jurisdiction, Tribal civil jurisdiction, and Federal criminal offenses.

First, the SAVE Act recognizes certain Tribes' power to exercise concurrent criminal jurisdiction over domestic violence cases regardless of whether the defendant is Indian or non-Indian. Fundamentally, this legislation builds on what this Committee did in the Tribal Law and Order Act. The philosophy behind the TLOA was that Tribal nations with sufficient resources and authority will best be able to address violence in their own communities, and has offered additional authority to Tribal courts and prosecutors if certain procedural protections were established.

Second, the SAVE Act confirms the intent of Congress in the Violence Against Women Act of 2000 by clarifying that Tribal courts have full civil jurisdiction to issue and enforce protection orders involving any person Indian or non-Indian.

And third, Federal prosecutors today lack the necessary tools to combat domestic violence in Tribal communities. The SAVE Act provides a one-year offense for assaulting a person by striking, beating or wounding; a five-year offense for assaulting a spouse, intimate partner or dating partner, resulting in substantial bodily injury; and a ten-year offense for assaulting a spouse, intimate partner or dating partner by strangling or suffocating.

Together, by filling these three holes, the Act will take many steps forward in our ability to combat violence in Alaska Native and American Indian communities and we really applaud the Committee for moving forward.

With that, Mr. Chairman, I would be happy to answer any questions the Committee may have.

[The prepared statement of Mr. Perrelli follows:]

PREPARED STATEMENT OF THOMAS J. PERRELLI, ASSOCIATE ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Chairman Akaka, Vice Chairman Barrasso, and members of the Committee:

Thank you for inviting me to testify today on Senate Bill 1763, the Stand Against Violence and Empower Native Women Act, also known as the SAVE Act. The SAVE Act addresses a critically important issue on which the Department of Justice has placed a high priority: combating violence against women in Tribal communities. As you know, I testified on that issue before this Committee in July, when I described the Department's comprehensive discussions, including formal consultations with Indian Tribes, about how best to protect Native women from the unacceptable levels of violence we are witnessing in Indian country. We are very pleased today to see the introduction of the SAVE Act, and we commend you, Chairman Akaka, as well as your many colleagues who have joined you in cosponsoring this historic legislation.

The Epidemic of Violence Against Native Women

The problems addressed by the SAVE Act are severe. Violence against Native women has reached epidemic rates. One regional survey conducted by University of Oklahoma researchers showed that nearly three out of five Native American women had been assaulted by their spouses or intimate partners. According to a nationwide survey funded by the National Institute of Justice (NIJ), one third of all American Indian women will be raped during their lifetimes. And an NIJ-funded analysis of death certificates found that, on some reservations, Native women are murdered at a rate more than ten times the national average. Tribal leaders, police officers, and prosecutors tell us of an all-too-familiar pattern of escalating violence that goes unaddressed, with beating after beating, each more severe than the last, ultimately leading to death or severe physical injury.

Something must be done to address this cycle of violence. For a host of reasons, the current legal structure for prosecuting domestic violence in Indian country is inadequate to prevent or stop this pattern of escalating violence. Federal law-enforcement resources are often far away and stretched thin. And Federal law does not provide the tools needed to address the types of domestic or dating violence that elsewhere in the United States might lead to convictions and sentences ranging from approximately six months to five years—precisely the sorts of prosecutions that can respond to the early instances of escalating violence against spouses or intimate partners and stop it.

Tribal governments—police, prosecutors, and courts—should be essential parts of the response to these crimes. But under current law, they lack the authority to address many of these crimes. Until recently, no matter how violent the offense, Tribal courts could only sentence Indian offenders to one year in prison. Under the Tribal Law and Order Act of 2010 (TLOA), landmark legislation enacted last year in no small part due to the efforts of this Committee, Tribal courts can now sentence Indian offenders for up to three years per offense, provided defendants are given certain procedural protections, including legal counsel. But Tribal courts have no authority at all to prosecute a non-Indian, even if he lives on the reservation and is married to a Tribal member. Tribal police officers who respond to a domestic-violence call, only to discover that the accused is non-Indian and therefore outside the Tribe's criminal jurisdiction, often mistakenly believe they cannot even make an arrest. Not surprisingly, abusers who are not arrested are more likely to repeat, and escalate, their attacks. Research shows that law enforcement's failure to arrest and prosecute abusers both emboldens attackers and deters victims from reporting future incidents.

In short, the jurisdictional framework has left many serious acts of domestic violence and dating violence unprosecuted and unpunished.

The Department of Justice's Efforts to Combat This Violence

The Department of Justice has made, and is continuing to make, strong efforts to investigate and prosecute domestic-violence cases in Indian country, including, among other things:

- Deploying 28 new Assistant U.S. Attorneys whose sole mission is to prosecute crime in Indian country.

- Instructing U.S. Attorneys to prioritize the prosecution of crimes against Indian women and children.
- Establishing new domestic-violence training programs for law-enforcement officials and prosecutors alike.
- Creating a Violence Against Women Federal/Tribal Prosecution Task Force to develop "best practices" for both Federal and Tribal prosecutors.

But we believe that more needs to be done.

The Views of Tribal Leaders and Experts, and the Department's Response

The Department of Justice has consulted extensively with Indian Tribes about these issues, including at the Attorney General's listening conference in 2009, the Tribal consultations we held on TLOA implementation in 2010, our annual Tribal consultations under the Violence Against Women Act, and a series of Tribal consultations focused on potential legislative reforms in June of this year. These consultations—like the Justice Department's other work in this area, especially in the wake of the TLOA's enactment last year—have involved close coordination across Federal agencies, including the Departments of the Interior and of Health and Human Services.

The consensus that emerged from these Tribal consultations was the need for greater Tribal jurisdiction over domestic-violence cases. Specifically, Tribal leaders expressed concern that the crime-fighting tools currently available to their prosecutors differ vastly, depending on the race of the domestic-violence perpetrator. If an Indian woman is battered by her Indian husband or boyfriend, then the Tribe typically can prosecute him. But absent an express Act of Congress, the Tribe cannot prosecute a violently abusive husband or boyfriend if he is non-Indian. And recently, one Federal court went so far as to hold that, in some circumstances, a Tribal court could not even enter a civil protection order against a non-Indian husband.

Faced with these criminal and civil jurisdictional limitations, Tribal leaders repeatedly have told the Department that a Tribe's ability to protect a woman from violent crime should not depend on her husband's or boyfriend's race, and that it is immoral for an Indian woman to be left vulnerable to violence and abuse simply because the man she married, the man she lives with, the man who fathered her children, is not an Indian.

The concerns raised by Tribal leaders and experts led the Department to propose new Federal legislation on July 21 of this year. The response to the Department's proposal from persons of all backgrounds and experiences, including state, local, and Tribal law-enforcement officials, has been overwhelmingly positive.

The SAVE Act Addresses Three Key Areas that Are Ripe for Legislative Reform

The SAVE Act's Title II incorporates the Department of Justice's proposal and thus addresses precisely the concerns that Tribal leaders and experts have repeatedly expressed to us. Specifically, this title of the Act fills three major legal gaps, involving Tribal criminal jurisdiction, Tribal civil jurisdiction, and Federal criminal offenses.

First, the patchwork of Federal, state, and Tribal criminal jurisdiction in Indian country has made it difficult for law enforcement and prosecutors to adequately address domestic violence—particularly misdemeanor domestic violence, such as simple assaults and criminal violations of protection orders. The SAVE Act recognizes certain Tribes' power to exercise concurrent criminal jurisdiction over domestic-violence cases, regardless of whether the defendant is Indian or non-Indian. Fundamentally, this legislation builds on what this Committee did in the Tribal Law and Order Act. The philosophy behind TLOA was that Tribal nations with sufficient resources and authority will be best able to address violence in their own communities; it offered additional authority to Tribal courts and prosecutors if certain procedural protections were established.

Second, at least one Federal court has opined that Tribes lack civil jurisdiction to issue and enforce protection orders against non-Indians who reside on Tribal lands. That ruling undermines the ability of Tribal courts to protect victims. Accordingly, the SAVE Act confirms the intent of Congress in enacting the Violence Against Women Act of 2000 by clarifying that Tribal courts have full civil jurisdiction to issue and enforce certain protection orders involving any persons, Indian or non-Indian.

Third, Federal prosecutors lack the necessary tools to combat domestic violence in Indian country. The SAVE Act provides a one-year offense for assaulting a person by striking, beating, or wounding; a five-year offense for assaulting a spouse, intimate partner, or dating partner, resulting in substantial bodily injury; and a ten-

year offense for assaulting a spouse, intimate partner, or dating partner by strangling or suffocating.

Title II of the SAVE Act, which is the Act's core, fills these three holes in the law. In addition, Title I of the SAVE Act reforms grant programs aimed to help Native victims, strengthens the Department's consultation process, and ensures that our program of research includes violence against Alaska Native women. And Title III amends TLOA to provide a much-needed one-year extension for the Indian Law and Order Commission, which Congress created to conduct a comprehensive study of law enforcement and criminal justice in Tribal communities.

Tribal Jurisdiction over Crimes of Domestic Violence

Section 201 of the SAVE Act recognizes certain Tribes' concurrent criminal jurisdiction to investigate, prosecute, convict, and sentence both Indians and non-Indians who assault Indian spouses, intimate partners, or dating partners, or who violate protection orders, in Indian country. Without impinging on any other government's jurisdiction, this bill recognizes that a Tribe has concurrent jurisdiction over a tightly defined set of crimes committed in Indian country: domestic violence, dating violence, and violations of enforceable protection orders. To the extent those crimes can be prosecuted today by Federal or State prosecutors, that would not be changed by the SAVE Act.

Similar to TLOA, this additional Tribal authority under the SAVE Act would be available only to those Tribes that guarantee sufficient protections for the rights of defendants. Tribes exercising this statutorily recognized jurisdiction over crimes of domestic violence would be required to protect a robust set of rights, similar to the rights protected in State-court criminal prosecutions. This approach thus builds on the Indian Civil Rights Act of 1968, as amended in 1986 and 1990, and on TLOA. Tribes that choose not to provide these protections would not have this additional authority.

Not surprisingly, expanding Tribal criminal jurisdiction to cover more perpetrators of domestic violence would tax the already scarce resources of most Tribes that might wish to exercise this jurisdiction under the SAVE Act. Therefore, the Act authorizes grants to support these Tribes by strengthening their criminal-justice systems, providing indigent criminal defendants with licensed defense counsel at no cost to those defendants, ensuring that jurors are properly summoned, selected, and instructed, and according crime victims' rights to victims of domestic violence.

Tribal Protection Orders

Section 202 of the SAVE Act addresses Tribal civil jurisdiction. Specifically, it confirms the intent of Congress in enacting the Violence Against Women Act of 2000 by clarifying that every Tribe has full civil jurisdiction to issue and enforce certain protection orders against both Indians and non-Indians. That would effectively reverse a 2008 decision from a Federal district court in Washington State, which held that an Indian Tribe lacked authority to enter a protection order for a nonmember Indian against a non-Indian residing on non-Indian fee land within the reservation.

Amendments to the Federal Assault Statute

Section 203 of the SAVE Act involves Federal criminal offenses rather than Tribal prosecution. In general, Federal criminal law has not developed over time in the same manner as State criminal laws, which have recognized the need for escalating responses to specific acts of domestic and dating violence. By amending the Federal Criminal Code to make it more consistent with State laws in this area where the Federal Government (and not the State) has jurisdiction, the SAVE Act simply ensures that perpetrators will be subject to similar potential punishments regardless of where they commit their crimes. Specifically, the Act amends the Federal Criminal Code to provide a ten-year offense for assaulting a spouse, intimate partner, or dating partner by strangling or suffocating; a five-year offense for assaulting a spouse, intimate partner, or dating partner resulting in substantial bodily injury; and a one-year offense for assaulting a person by striking, beating, or wounding. All of these are in line with the types of sentences that would be available in State courts across the Nation if the crime occurred outside Indian country.

Existing Federal law provides a six-month misdemeanor assault or assault-and-battery offense that can be charged against a non-Indian (but not against an Indian) who commits an act of domestic violence against an Indian victim. (A similar crime committed by an Indian would fall within the exclusive jurisdiction of the Tribe.) A Federal prosecutor typically can charge a felony offense against an Indian or a non-Indian defendant only if the victim's injuries rise to the level of "serious bodily injury," which is significantly more severe than "substantial bodily injury."

So, in cases involving any of these three types of assaults—(1) assault by strangling or suffocating; (2) assault resulting in substantial (but not serious) bodily in-

jury; and (3) assault by striking, beating, or wounding—Federal prosecutors today often find that they cannot seek sentences in excess of six months. And where both the defendant and the victim are Indian, Federal courts may lack jurisdiction altogether.

The SAVE Act increases the maximum sentence from six months to one year for an assault by striking, beating, or wounding, committed by a non-Indian against an Indian in Indian country. (Similar assaults by Indians, committed in Indian country, would remain within the Tribe's exclusive jurisdiction.) Although the Federal offense would remain a misdemeanor, increasing the maximum sentence to one year would reflect the fact that this is a serious offense that often forms the first or second rung on a ladder to more severe acts of domestic violence.

Assaults resulting in substantial bodily injury sometimes form the next several rungs on the ladder of escalating domestic violence, but they too are inadequately covered today by the Federal Criminal Code. The SAVE Act fills this gap by amending the Code to provide a five-year offense for assault resulting in substantial bodily injury to a spouse, intimate partner, or dating partner.

And the SAVE Act also amends the Code to provide a ten-year offense for assaulting a spouse, intimate partner, or dating partner by strangling or suffocating. Strangling and suffocating—conduct that is not uncommon in intimate-partner cases—carry a high risk of death. But the severity of these offenses is frequently overlooked because there may be no visible external injuries on the victim. As with assaults resulting in substantial bodily injury, Federal prosecutors need the tools to deal with these crimes as felonies, with sentences potentially far exceeding the six-month maximum that often applies today.

Finally, section 203(e) of the SAVE Act simplifies the Major Crimes Act (which Federal prosecutors use to prosecute Indians for major crimes committed against Indian and non-Indian victims) to cover all felony assaults under section 113 of the Federal Criminal Code. That would include the two new felony offenses discussed above—assaults resulting in substantial bodily injury to a spouse, intimate partner, or dating partner; and assaults upon a spouse, intimate partner, or dating partner by strangling or suffocating—as well as assault with intent to commit a felony other than murder, which is punishable by a maximum ten-year sentence. Without this amendment to the Major Crimes Act, Federal prosecutors could not charge any of these three felonies when the perpetrator is an Indian. Under the SAVE Act, assault by striking, beating, or wounding remains a misdemeanor and is not covered by the Major Crimes Act.

Sections 201 and 203 of the SAVE Act work in tandem, enabling Tribal investigators and prosecutors to focus on misdemeanors (including protection-order violations) and low-level felonies, regardless of the perpetrator's Indian or non-Indian status, while Federal investigators and prosecutors focus on the more dangerous felonies involving strangling, suffocation, and substantial bodily injury, again regardless of the perpetrator's Indian or non-Indian status.

We believe that enacting the SAVE Act will strengthen Tribal jurisdiction over crimes of domestic violence, Tribal protection orders, and Federal assault prosecutions. These measures, taken together, have the potential to significantly improve the safety of women in Tribal communities and allow Federal and Tribal law-enforcement agencies to hold more perpetrators of domestic violence accountable for their crimes.

I thank the Committee for its long-standing interest in these critically important issues, and I especially thank Chairman Akaka for drafting and introducing Senate Bill 1763, the Stand Against Violence and Empower Native Women Act.

The CHAIRMAN. Thank you very much, Mr. Perrelli.

Mr. Perrelli, the SAVE Act clarifies Tribes' ability to issue and enforce protection orders over all offenders. Without this clarification, do you think Native women are at greater risk in their communities?

Mr. PERRELLI. Mr. Chairman, I believe they are. This is an issue that I believe that Congress thought it resolved in 2000. But because of at least one intervening court decision, there is uncertainty here. Protection orders are the basic fundamental aspect of years of work by advocates in the domestic violence community to ensure protection of women who are threatened by an abuser. Without the ability to issue and enforce protection orders and to

get full faith and credit for those protection orders, there is a real risk to Native women to be threatened again.

So as I said, I think Congress thought it had already done this, but we believe it is extraordinarily important to clarify it today.

The CHAIRMAN. Thank you, Mr. Perrelli.

The amendments to the Federal assault statute are an important part of the SAVE Act. Do you believe these provisions would help stop domestic violence at its earlier stages and prevent it from reaching its most severe levels?

Mr. PERRELLI. I do, Mr. Chairman. As I indicated before, the pattern of domestic violence is escalation. And there are any number of serious bodily injuries or homicides arising out of domestic violence where we know that there were probably 5, 10, 15 incidents prior to that. What the SAVE Act does it creates a set of graduated sanctions and a division of labor really between Tribal law enforcement and Tribal courts, and then Federal law enforcement and Federal courts. And in many cases, the States are a possible law enforcer as well, to ensure that all along that spectrum, there is a law enforcer who is present and able to bring the perpetrator to justice. So we think it will have a significant impact in improving the safety of Native women.

The CHAIRMAN. Thank you very much for your responses.

Senator Murkowski?

Senator MURKOWSKI. Thank you, Mr. Chairman.

Mr. Perrelli, last time you were before the Committee, I had an opportunity to bring up the issue of sex trafficking of Alaska Native young women and what we were seeing. I expressed my concerns about that. Since this intervening time period, can you give me any update in terms of what DOJ is looking at in terms of getting a better handle of what is going on with sex trafficking of not only Alaska Natives, but all Native women?

Mr. PERRELLI. One thing, and I think as we talked about a little bit last time, particularly in the context of Alaska where some of the sex trafficking allegations that we have seen, and as I think you know, there was one high-profile case not that long ago involved Native women who come to Anchorage, whether for health care or something else, and end up becoming victims of sex trafficking.

Since I was last here, we gave out our grant funds through our coordinated Tribal assistance solicitation, and this was a year where after a significant amount of outreach to Alaska Native groups and more training, we saw a significant increase in the funds that Alaska Natives received, including a lot of funds focused on helping victims, and in particular some of the victims' organizations based in Anchorage, in providing services for domestic violence, dating violence, and others.

And I think certainly it is our hope that some of those funds will go to help provide services for and help us to identify sex trafficking as it occurs.

Senator MURKOWSKI. Well, I appreciate the engagement. I think it is going to be important. Do you have a sense in terms of whether or not we are making a dent in the issue? Do we not have sufficient data to this point? What can you tell me?

Mr. PERRELLI. This is an area that is, I think, where an enormous amount of additional research needs to be done. We hear the horror stories from a number of regions throughout the Country, Alaska being one of them. But this is a trade that is very difficult to investigate and get a handle on. And currently, we don't have sufficient research. I think one of the things that Title I of the SAVE Act does is it includes research on, as well as grants towards addressing sex trafficking as an additional purpose area for our Office of Violence Against Women grants. We think that is tremendously important.

Senator MURKOWSKI. Is that a new area, the grants towards women and sex trafficking?

Mr. PERRELLI. It is an area where we felt it was important. We agree that it is important to add specific language.

Senator MURKOWSKI. Okay. Since you are talking about the grants that are out there, I have been hearing some good things about DOJ's implementation of the Coordinated Tribal Assistance Program and the efforts of the Tribal Justice Advisory Group.

But I do understand that the Tribal Advisory Group met in Alaska in December of 2009. There wasn't Tribal consultation at that time. So the question today is whether or not the Department of Justice is planning on doing any kind of a follow-up visit, whether it is to a rural community in the State or a Tribal consultation somewhere in the State? And if so, if you have a timeframe for that?

Mr. PERRELLI. Well, I will say since that time in August of 2010, we formed the Alaska Native Action Team. And we sent a team of officials, including some very senior officials, out to Native villages, as well as working in some of the urban areas, and tried to bring more training and technical assistance to Alaska.

We have done in the past regional trainings to assist people in applying for our grant programs. We brought training to Alaska and we saw the results, a significant increase in applications, as well as the quality of applications leading, frankly, to more grant funds to Alaska.

So I don't think we have a specific, and I can find out, check with my folks for more of a specific plan for a consultation in Alaska, but we are trying to very significantly increase our engagement because if we look two and three years ago, I think that the numbers told us that Alaska Native villages and some of the organizations that assist them, were not applying for grants and not receiving grants at the rate that one might have expected.

Senator MURKOWSKI. Let me ask one final question, if I may, Mr. Chairman.

You have indicated that certainly on the reservations, the concern that you have with current law, is that Tribes are precluded from prosecuting non-Indian offenders in the criminal cases. This is the *Oliphant* ruling.

So the question to you is whether or not you think an *Oliphant* fix, if you will, restoration of Tribal jurisdiction at least to a limited case when it comes to domestic violence cases. I am assuming that you clearly believe that that will improve the safety of Tribal members.

The question is whether or not this type of a fix would have any impact at all on Alaska, where we don't have Indian Country. How would this impact us, if at all?

Mr. PERRELLI. I think a couple of things. Certainly, it would have an impact on the Metlakatla Reserve where there is Indian Country. With respect to the Tribal protection order fix that is in Title II of the bill, we think that would be applicable to Tribal courts in Alaska Native villages.

Senator MURKOWSKI. So when you say the Tribal protection order, what would allow the Tribal courts to do something?

Mr. PERRELLI. It would allow the Tribal courts to issue an order of protection and enforce an order of protection and get full faith and credit to it, something, as I said, we thought should be current law, but was left uncertain.

But as I think both you and Senator Begich indicated, the challenges of Alaska, where court decisions have indicated there is no Indian Country other than Metlakatla, do require more creative solutions. And I think we at the Department of Justice would very much like to work with both Senators to come up with creative solutions.

Because it is certainly true that the enhanced Tribal criminal jurisdiction that we are talking about in Title II of the SAVE Act will have a much bigger impact elsewhere in the Country than Alaska.

Senator MURKOWSKI. I appreciate that.

Have you reviewed the Village Safe Families Act? And do you have any opinion as to whether or not it would create Tribal criminal jurisdiction in Alaska or whether it simply confers Tribal seal of regulatory authority?

Mr. PERRELLI. We have just started reviewing that and our staff would be happy to come up and talk with you further about that, as well as brainstorm about other approaches and ideas.

Senator MURKOWSKI. I look forward to that. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Murkowski.

I would like to ask Senator Begich whether you have any questions you would like to ask?

Senator BEGICH. Mr. Chairman, if I could just follow up. And I guess I want to take you up on that offer as we work on our legislation on S. 1192. You know, the idea is to create these opportunities for communities to resolve and deal with some of these incredible challenges in very remote areas in a State that doesn't have traditional Indian Country. So I would look as you reviewed if you could give us some ideas and innovation. If you think there are some opportunities to tweak the language, I am very open to that.

You see the goal and I think it is the same goal as you have just described in what I would call traditional Indian Country. So I thank you for that.

Second, on the research end, the data end, just to make sure I understand you reference there in the bill, is this new resources or opportunity for you to do more data collection? Or is it brand new in the sense that it has never been done? Help me understand what that piece is.

Mr. PERRELLI. Sure. I think we would say that any emphasis that this Committee or others could give, and frankly any funding,

on research related to criminal justice and American Indian-Alaska Native communities is money well spent. We recently did a compendium of research on criminal justice in Tribal communities and what we found were many more gaps than we knew, gaps that were filled.

And so we have asked for additional funds in the 2012 budget to focus on research related to crimes against American Indians and Alaska Natives. Title I of the SAVE Act ensures that research does focus on violence against Alaska Natives and not just on American Indian communities.

Senator BEGICH. Very good. And then, I guess the last comment I will make, and again thank you, and we are going to take you up on the offer on that because I think your goal is the same as ours: How do you create a better judicial system that is more community-based and reintegrating folks that should be and those that shouldn't be to deal with that as a separate issue. So I am looking forward to your help there.

And I guess one thing, as you think about next year and as you are planning your engagements with the Alaska Native community, I would encourage you. Maybe I am looking through you to Ralph here, that he probably would invite you or your appropriate folks to do a workshop at the Alaska Federation of Native Organizations annual meeting which is held in October and has 4,000-plus Alaska Natives from all around the State.

We would encourage you, if you haven't participated before, but this would be a great opportunity, especially if you saw results by engaging them. This may be a really great way to engage a lot of our community in a very focused area. So I would just offer that kind of through you to Ralph, and maybe he will make a note and offer an invitation.

Mr. PERRELLI. Well, thank you, Senator. And I do think it has been a point of emphasis for us that even in times where people are worried about travel budgets and those things, that if we are going to have an impact in Alaska, we have to do more to reach out. I think, like I said, in the past year where we increased our outreach efforts and saw very significant change in the pattern of applications for grant funding really taught us that a little more gets you better results.

Senator BEGICH. We would invite you, and also it is a great way to get almost every Alaska Native community in one location at one time. Very good.

Mr. PERRELLI. Thank you, Senator.

Senator BEGICH. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Begich, as we continue to discuss S. 1192, the Alaska Safe Families and Villages Act of 2011.

I want to thank you, Mr. Perrelli. Thank you so much for your responses. You have been very helpful. We look forward to continuing to work with you on this for clarifications and I really appreciate it.

Mr. PERRELLI. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you so much.

Mr. PERRELLI. Thank you so much.

The CHAIRMAN. I would like to invite the second panel to the witness table. Ms. Margie Mejia is the Chair of the Lytton Rancheria; Mr. Paul Morris is Mayor of the City of San Pablo, California; Mr. Ralph Andersen is President and CEO of the Bristol Bay Native Association; and Mr. Joe Masters is Commissioner at the Department of Public Safety for the State of Alaska.

I want to welcome everyone here. Before we proceed, I would like to ask Senator Franken for any introductions he may have for some of the panelists.

STATEMENT OF HON. AL FRANKEN,
U.S. SENATOR FROM MINNESOTA

Senator FRANKEN. Thank you, Mr. Chairman. And thank you for convening this hearing. I am a proud cosponsor of his bill. The SAVE Native Women Act makes important updates to the law to ensure that Native American communities have the tools and resources they need to stop acts of violence against Native women. It authorizes services for victimized youth and for victims of sex trafficking. It provides Native Americans in Indian Country the legal authority they need to prosecute acts of violence committed in their communities. And it updates the Federal assault statute applicable in Indian Country.

These are common sense and much needed improvements to the law. So Chairman Akaka, thank you for your work on this legislation. And thank you for the honor of allowing me to introduce two Minnesotans who are here to testify today. Suzanne Koepplinger is a leader in the Native American community and in the fight to end sexual violence.

Since 2003, she has served as Executive Director of the Minnesota Indian Women's Resource Center, which provides invaluable services to women and their families. She actively is involved with a number of nonprofit organizations, including the Metro Urban Indian Directors Group and the American Indian Community Development Corporation's Board of Directors.

Ms. Koepplinger has a wealth of knowledge about issues facing Native American women. I have long considered her one of the foremost experts in the field, as well as a friend. And we are indeed fortunate that she is here to testify today.

It is also my great privilege to introduce Thomas Heffelfinger, a talented attorney who has dedicated much of his legal career to public service and issues affecting Native Americans. During the Bush Administration, Mr. Heffelfinger served as United States Attorney for the State of Minnesota, so he knows a thing or two about prosecuting crimes. He also served as the Chairman of the Justice Department's Native American Issues Subcommittee. In that capacity, he was responsible for developing and implementing a wide range of policies related to public safety in Indian Country.

Since returning to private practice, Mr. Heffelfinger has continued to advise Native American Tribes on public safety issues.

It is really great to see you both and I look forward to hearing your testimony.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Franken.

I would like to begin with the first testimony from Ms. Koepplinger. Please proceed with your testimony.

STATEMENT OF SUZANNE KOEPPLINGER, EXECUTIVE DIRECTOR, MINNESOTA INDIAN WOMEN'S RESOURCE CENTER

Ms. KOEPPLINGER. Thank you very much, Mr. Chairman, Senator Franken, Members of the Committee. I am deeply honored to have this opportunity to add my voice in support of S. 1763, the Stand Against Violence and Empower Native Women Act.

This bill acknowledges the disproportionate and varied forms of violence against American Indian women and it takes steps to more effectively prevent, intervene and prosecute these crimes. Thank you.

You are all aware of the disproportionate rates of violence against American Indian women and children in this Country. In 2009, the organization that I have the honor of representing, the Minnesota Indian Women's Resource Center, published Shattered Heart: The Commercial Sexual Exploitation of American Indian Women and Girls in Minnesota. It was to our knowledge the first report to analyze the scope of sex trafficking of American Indians in this Country.

Since that time, we have gathered additional evidence, most recently the research report called Garden of Truth, which was produced by the Minnesota Indian Women's Sexual Assault Coalition, which you were all provided written testimony about, which is a very important addition to the knowledge in the field.

And all of this additional information has deepened our concern about the breadth and depth of these egregious human rights violations. We believe that the data represents only the tip of the iceberg and that the true rates of all forms of gender violence in Indian Country are much higher. This belief is based on our own experience in the field, the fact that Native women and girls frequently do not report assaults, and the Department of Justice's own research stating that approximately 70 percent of sexual assaults in Indian Country are not reported.

One of the programs serving young Native girls who are at high risk of sexual violence is our Oshkinigiikwe program—Oshkinigiikwe is young woman in the Ojibwe language. A recent evaluation of this program for 11 to 20 year old Native girls showed that 31 percent of the girls coming into the program had had injuries as a result of assault and that nearly a quarter of them had diagnosed mental illnesses and were homeless at the time of intake. None of the girls had reported the assault.

Disclosure of assault histories, including sexual exploitation and sex trafficking typically come after many months in the program when the girls have developed a trust relationship with the staff and feel comfortable disclosing their experiences. There are routinely multiple traumas by the age of 15 of 16, including childhood sexual assault, dating violence, and sexual exploitation and trafficking.

The recommendations in this bill to strengthen Tribal programs, bolster Tribal authority to prosecute all perpetrators, and to include sex trafficking along with other forms of violence against women and children is a very important step forward. We cannot

silo the various manifestations of gender-based violence. Incest, child sexual assault, domestic violence, sexual abuse, sex trafficking, these are all forms of a systemic exploitation of those who have the least power, and that needs to be addressed as a systemic matter.

Often, these abuses are concurrent and cumulative. We also know that early exposure to gender-based violence puts young people at heightened risk of adult abuse.

Investing in the safety of women and children is an investment in the well being of our families and communities and it is not only the right thing to do, it is fiscally prudent to provide preventive and healing services to those in need. The trauma of unreported or untreated sexual trauma leads to higher end-use of social services, multi-generational abuse, increased rates of homelessness, and other costs.

As a representative of an urban Indian organization that works closely with the Tribes, I urge continued collaboration between Tribes and urban Indian organizations to address the unique needs of this population. In Minnesota, for example, approximately 60 percent of the Indian population resides in the metro areas, not on reservations. Nationally, the data remains the same.

We believe that a significant amount of sex trafficking occurs in the towns and the cities where the market exists and where many young people are lured by perpetrators. Building a network of urban and Tribal support services is vital to long-term success.

There are many challenges to identifying and responding to sex trafficking victims and collecting data on the scope of sex trafficking is a challenge. And this is due in large part because many of the women do not identify as victims. They do not report these crimes to authorities. They are more likely to disclose their assault to frontline advocates. Frontline advocates in Tribal human service and urban organizations are well positioned to identify and respond to the needs of victims and will be strong allies in the effort to collect baseline data.

Service providers can also be crucial partners in the prosecution of pimps and traffickers. When victims feel supported, when they have access to long-term culturally appropriate supportive housing with services, they may be more likely to cooperate with law enforcement in prosecuting.

Many communities are just now beginning to understand and respond to sex trafficking, and more training, awareness, and capacity building is required. This bill will provide many of those needed steps and I urge that this legislation be passed because it will greatly improve the safety and security of American Indian women and girls and give Tribes the authority to effectively protect, intervene, and prosecute the perpetrators of gender-based violence.

I thank you all very much and I am happy to answer any questions I can.

[The prepared statement of Ms. Koepplinger follows:]

PREPARED STATEMENT OF SUZANNE KOEPPLINGER, EXECUTIVE DIRECTOR, MINNESOTA INDIAN WOMEN'S RESOURCE CENTER

Honorable Chairman Akaka and Members of the Senate Indian Affairs Committee:

Thank you Mr. Chairman and members of the Committee for the opportunity to voice my support for S. 1763, Stand Against Violence and Empower Native Women Act. This bill acknowledges the disproportionate and varied forms of violence against American Indian women and takes steps to more effectively prevent, intervene, and prosecute these crimes. Thank you.

You are all aware of the disproportionate rates of violence against American Indian women and girls in this country. In 2009, the Minnesota Indian Women's Resource Center released *Shattered Hearts: the commercial sexual exploitation of American Indian women and girls in Minnesota.* It was, to our knowledge, the first report to analyze the scope of sex trafficking and commercial sexual exploitation of American Indians in our country. Since that time we have gathered additional evidence—including the recently released *Garden of Truth* report by the Minnesota Indian Women's Sexual Assault Coalition (which you were provided written testimony on and which is an invaluable contribution to knowledge in the field) that have deepened our concern about the breadth and depth of this egregious human rights violation.

We believe the data represents only the tip of the iceberg, and that the true rates of all forms of gender based violence in Indian Country are higher. This belief is based upon our own experience in the field, the fact that Native women and girls do not often report violence for a variety of reasons, and the United States' Department of Justice data that estimates that 70 percent of sexual assaults against American Indian women are not reported. One of the programs serving young Native girls who are at high risk of sexual violence is our Oskinigiikwe (young woman in the Ojibwe language) Program. Recent evaluation of this program for 11–20 year old Native girls shows 31 percent of girls had a head injury resulting from assault, nearly a quarter of girls had a mental illness diagnosis and were homeless upon intake. None of the girls had reported their assaults to law enforcement. Disclosure of assault histories—including sex trafficking—in our program typically comes after many months, when a trust relationship is developed with staff. There are routinely multiple traumas by the age of 16 including childhood sexual assault, dating violence, and sexual exploitation/trafficking.

The recommendations in this bill to strengthen VAWA Tribal programs, bolster tribal authority to prosecute all perpetrators, and to include sex trafficking along with other forms of violence against women and children is a very important step forward. We cannot silo the various manifestations of gender violence—incest, child sexual abuse, domestic violence, sexual assault, and sex trafficking are all forms of systemic exploitation of those who have the least power and all must be addressed as such. These are often concurrent or cumulative abuses. Early exposure to gender based violence puts young girls at heightened risk of abuse as adults.

Investing in the safety of women and children is an investment in the well being of our families and communities. It is not only the right thing to do, it is the fiscally responsible thing to do to provide preventive and healing services to those in need. The trauma of unreported or untreated sexual violence leads to higher end user social services, multi-generational abuse, increased rates of homelessness, and other costs.

As a representative of an urban Indian organization that works closely with tribal partners, I urge continued collaboration between tribes and urban Indian organizations to address the unique needs of this population. In Minnesota, roughly 40 percent of the state's American Indian people reside in the seven county Twin Cities Metro, with another 20 percent living in cities like Duluth and Bemidji, not on reservations. Nationally the data looks much the same. We believe a significant amount of sex trafficking takes place in cities and towns, where the market exists and where runaway youth are often lured. Building a network of urban and tribal supports and services is key to long term success.

There are challenges to identifying and serving sex trafficking victims, and to collecting data on the scope of sex trafficking in Indian Country. This is due in part to the reluctance of many women to identify as victims of a crime and report exploitation to authorities. They are more likely to disclose and seek help from advocates in the field. Front line advocates in tribal human services and urban Indian organizations are well positioned to identify and respond to the needs of victims, and will be strong allies in the effort to collect baseline data. Service providers can also be crucial partners in the prosecution of pimps and traffickers. When victims feel safe and supported through access to culturally based long term housing and support

services, they may be more likely to cooperate with law enforcement in prosecuting perpetrators.

Many communities are just now beginning to understand and respond to sex trafficking, and more training, awareness, and capacity building is required. This bill will provide many of those needed steps forward, and I urge you to pass this legislation that will greatly improve the safety and security of American Indian women and girls, and give Tribes the authority to effectively protect, intervene and prosecute perpetrators of gender based violence.

Thank you for this opportunity and I am happy to answer any questions you may have.

The CHAIRMAN. Thank you very much, Ms. Koepplinger.

As introduced by Senator Franken, Ms. Koepplinger is Executive Director of the Minnesota Indian Women's Resource Center of Minneapolis.

And now I would like to call on Mr. Thomas Heffelfinger, who is currently with Best & Flanagan LLP in Minneapolis as well.

Will you please proceed?

STATEMENT OF THOMAS B. HEFFELFINGER, ATTORNEY, BEST & FLANAGAN LLP

Mr. HEFFELFINGER. Thank you, Chairman Akaka and Members of the Committee. I appreciate the honor of having the opportunity to appear before you again.

And Senator Franken, thank you very much for your kind introduction.

I appear today before the Committee to provide comments on Title II of the SAFE Native American Women Act. Back in 2004 as United States Attorney, I had the privilege of participating in a consultation with Tribal leaders on issues of public safety. And during that consultation, a gentleman named Chairpah Matheson, a Council Member from Coeur d'Alene, made the observation: How can Tribes have sovereignty when they cannot protect their women and children?

This question has always struck me as going to the heart of the issue for all government. Is there any higher priority than protecting our women and children? And one of the reasons that I support Title II of this Act is that it addresses this question.

As this Committee is well aware and as you have heard already today, the problems of violence against women are of epidemic proportions and tragically high. This legislation, by providing Tribes with jurisdiction over domestic violence committed by all offenders, recognizes Tribal sovereignty and Tribal responsibility. And it also removes a huge barrier which currently prevents from effectively protecting women in their communities.

This Committee is well aware of the level of confusion that exists in Indian Country over jurisdiction. The whole Tribal Law and Order Act addresses that, and I commend this Committee for that. In fact, I would throw in a plug. I really support the provision of this bill that will add a year to the Tribal Law and Order Act's time they are going to need it because all of these issues of confusion should be addressed through that Committee.

One of the biggest areas of confusion is that provided by the *Oliphant* decision, which by its terms deprived Tribes of the jurisdiction over non-Indians. As Amnesty International found so eloquently in their recent well-publicized report, *Oliphant* has had a

dramatic and detrimental impact upon public safety in Indian Country.

In my remaining time, I would like to focus on specific provisions of the Act. I specifically support Section 201 and its providing of a limited *Oliphant* fix. It will provide Tribal courts with jurisdiction over all people. It is important that that provision also provides for concurrent jurisdiction with Federal and States, thereby allowing Tribes to utilize all of the resources available to them.

And as Mr. Perrelli pointed out so well, coordinated with that is the clarification that Tribal courts have jurisdiction for protective orders. This allows Tribes the authority to do what they can to prevent, as well as react to domestic violence.

There is one provision which I object to a piece of it, and I am not going to object to the other. That is the dismissal provision in Section 201. One provision would allow that if a defendant brings a motion to dismiss on the grounds that both the defendant and the victim are not Natives, that the court can dismiss the charge. That is a recognition of a longstanding Supreme Court precedent which I don't believe this bill should be taking on. Therefore, I do not support that.

However, the bill also provides a wonderful thing which I think must stay in it, which says that when a defendant brings a motion to dismiss, it must be held pretrial. Whether or not both offenders are Indian or non-Indian is a matter of jurisdiction. It should be resolved pretrial as a matter of law and not during the trial.

There is also a provision, however, in that dismissal section which provides that a case can be dismissed if the prosecution, the Tribal prosecutor, cannot establish that there are community ties between the defendant and the victim and the Tribe. And this adds issues like employment, residence, Tribal membership, and makes those elements of a domestic violence prosecution. That should not be in the bill. It is hard enough to prosecute these cases without adding new elements to them.

The rights to the defendant section, I applaud the Committee and I applaud the bill for complying with the Tribal Law and Order Act. There is one provision 204, to Section 3 of the rights, which I would ask the Committee to look at very seriously because it is confusing. It says that the Tribe must provide, "all other rights whose protection is necessary under the Constitution," and it goes on.

If we are going to require Tribes to establish new rights and provide new procedures, the law ought to provide clear direction. This paragraph is not clear.

Finally, in the limited time available to me, I support the amendment to the Federal assault statute. The adding of strangulation and suffocation recognizes laws that are already existent in many States, including Minnesota.

And then finally, there is a provision of the bill which I don't believe should be in this Act. It is in the amendment to the Federal assault statute. It would remove from the assault with a dangerous weapon statute the language where there is no "just cause or excuse." I know this is part of the Department of Justice's proposal, but it has nothing to do with domestic violence. And quite frankly, I fear any law that is passed by Congress that removes from its

language what amounts to a defense. I fear that District Courts will interpret Congress as removing self-defense, for example, as a available defense in assault cases.

Thank you very much. I stand for questions.

[The prepared statement of Mr. Heffelfinger follows:]

PREPARED STATEMENT OF THOMAS B. HEFFELFINGER, ATTORNEY, BEST & FLANAGAN LLP

Mr. Chairman and Members of the Committee, my name is Thomas B. Heffelfinger and I am a partner with the Minneapolis law firm of Best & Flanagan LLP where, among other things, I represent Tribal communities. From 2001 to March 2006, I was the United States Attorney for the District of Minnesota and also the Chair of the Department's Native American Issues Subcommittee ("NAIS"). In that capacity, I had the honor of testifying before this Committee three times, twice on issues related to criminal jurisdiction in Indian Country. I also have had the opportunity to testify twice before this Committee as a private citizen.

I appear before the Committee today to comment upon Title II—Tribal Jurisdiction and Criminal Offenses, of Senate File CEL11875 (the "Stand Against Violence and Empower ('SAVE') Native Women Act"), which addresses the topic of domestic violence perpetrated upon Native women. Although my experience as a federal prosecutor, as a criminal defense attorney and as a representative of Tribal governments provides the experiential basis for my testimony, I am appearing today as a private citizen and not as a representative of either the Department of Justice, a Tribal government or of any of my private clients.

In March of 2004, while chairing the Native American Issues Subcommittee ("NAIS"), I had the honor of participating in a listening session here in Washington that was put together by the National Congress of American Indians ("NCAI") on the issue of criminal jurisdiction. A gentleman named Chairpah Matheson, who was a Tribal council member in Coeur d'Alene, made the following comment: "How can Tribes have sovereignty when they can't protect their children and their women?" I will never forget that comment, because it goes to the heart of a governmental obligation, whether it is Federal or Tribal or state, to provide public safety. There can be no higher responsibility for a government. That is also the responsibility that is at the heart of this legislation.

The difficulties facing Native American Tribes and Alaskan Native villages in protecting women and children living in those communities is well known and well documented. (*See* Amnesty International USA Report: *Maze of Injustice: The failure to protect Indigenous women from sexual violence in the USA* (2007)). Native American women are the most heavily victimized group in the United States, specifically two and one-half times more likely to be raped or sexually assaulted than women in the United States general population. The sheer volume of violence inflicted upon Native American women is largely attributable to violence by non-Native men. (*See* Amnesty International USA Report: *Maze of Injustice,* p. 4.)

Tribes are on the front line of protecting women on their reservations just like Minneapolis, Phoenix, Denver and other American cities are on the front line of protecting women in those jurisdictions. The difference is that in Minneapolis, Phoenix and Denver, the law is not preventing the cities from effectively acting. That is not the case in Indian Country, where the law deprives the Tribes jurisdiction over non-Indian offenders. This legislation, by providing Tribes with jurisdiction over domestic violence committed by *all* offenders removes a huge barrier which currently prevents Tribes from effectively protecting women in their communities.

Special Domestic Violence Jurisdiction over "All Persons"

Since 1885, when Congress passed the Major Crimes Act,[1] United States Attorneys have had primary responsibility for the prosecution of serious violent crime in Indian Country. Native Americans are victimized by violent crime at the rate of about two and one-half times the national average rate.[2] In some areas of Indian Country, that rate may be even higher. The Major Crimes Act gives the United States jurisdiction to prosecute offenses such as: assault, murder, manslaughter, kidnapping, arson, burglary, robbery and child sexual abuse. However, federal jurisdiction under this statute is limited to the prosecution of Indians only. The Indian

[1] Now codified at U.S.C. § 1153.

[2] Bureau of Justice Statistics, United States Department of Justice, American Indians and Crime (1999), p. 2.

Country Crimes Act, which is also known as the General Crimes Act,[3] gives the United States jurisdiction to prosecute all federal offenses in Indian Country except when the suspect and the victim are both Indian, where the suspect has already been convicted in Tribal court or in the case of offenses where exclusive jurisdiction over an offense has been retained by the Tribe by way of treaty.

The United States Supreme Court has held that where the suspect and the victim are both non-Indian, then the state court has exclusive criminal jurisdiction.[4] Under the Indian Civil Rights Act (ICRA), Tribal courts have criminal jurisdiction over non-member Indians.[5] In the 1978 decision of *Oliphant v. Suquamish Tribe*,[6] the United States Supreme Court decided that Tribal courts could not exercise criminal jurisdiction over non-Indians. Overlaying these legal principles is the question of whether or not the offense occurred in Indian Country.

What all this means is that whenever a crime occurs in Indian Country, in order to determine jurisdiction, prosecutors are forced to make a determination concerning who has jurisdiction by examining four factors: (1) whether the offense occurred within "Indian Country; (2) whether the suspect is an Indian or a non-Indian; (3) whether the victim is an Indian or a non-Indian (or whether the crime is a "victimless" one); and (4) what the nature of the offense is. Depending on the answer to these questions, an offense may end up being prosecuted in Tribal court, federal court, state court or not at all.

There is much confusion concerning jurisdiction over crimes committed in Indian Country. Unlike jurisdiction over most state and federal criminal offenses, in which jurisdiction and/or venue is determined by the geographical location of a crime scene, the current state of the law requires that determination of criminal jurisdiction in Indian Country be accomplished through a complex analysis of sometimes amorphous factors. Police, prosecutors, defense attorneys and judges must deal with this jurisdictional maze in all cases. This confusion has made the investigation and prosecution of criminal conduct in Indian Country much more difficult. This confusion and difficulty is perhaps most prevalent in domestic violence due to the high level of violence perpetrated in Indian County by non-Indian offenders.

The *Oliphant* case has had significant impact on the level of violence against women in Indian Country. This was accurately reported by Amnesty International USA:

[The *Oliphant* decision] denies victims of sexual violence due process and the equal protection of the law. Jurisdictional distinctions based on the race or ethnicity of the accused, such as the jurisdictional limitation here, have the effect in many cases of depriving victims of access to justice, in violation of international law and US constitutional guarantees. (Tribal courts are the most appropriate forums for adjudicating cases that arise on Tribal land, and, as this report finds, state and federal authorities often do not prosecute those cases of sexual violence that arise on Tribal land and fall within their exclusive jurisdiction.) This situation is of particular concern given the number of reported crimes of sexual violence against American Indian women involving non-Indian men (Amnesty International USA Report: *Maze of Injustice,* p. 30).

I support Section 201 of the SAVE Native Women Act (Act) which establishes "special domestic violence criminal jurisdiction over *all* persons." (New ICRA Sec. 204(b)(1)) (Emphasis added.) This provision of law provides a limited "*Oliphant* fix" and will empower Tribes who are on the front lines of the efforts to fight domestic violence. Under Section 201, the special criminal jurisdiction would apply only to Domestic Violence and Dating Violence and to Violations of Protection Orders. Significantly, the proposed legislation emphasizes the fact that Tribal exercise of this special jurisdiction is concurrent with the jurisdiction already existing with federal and state authorities. This will enhance the resources and commitment Tribes can apply to reducing domestic violence. In addition, by clarifying that Tribal protective orders can be issued and enforced by Tribal courts against "any person" (Act, Sec. 202), the Act assures that Tribes now have significant authority both to prevent and to respond to domestic violence perpetrated by non-Indian offenders.

Dismissal of Certain Cases

Section 201 of the Act (new ICRA Sec. 204(d)) provides for dismissal of certain cases where the defendant in a Tribal prosecution makes a pretrial motion to dis-

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[3] 18 U.S.C. § 1152.

[4] *Draper v. United States,* 164 U.S. 240 (1896); *United States v. McBratney,* 104 U.S. 621 (1882).

[5] 25 U.S.C. § 1301(2) & (4).

[6] 435 U.S. 191 (1978).

miss on the grounds that the offense did not involve an Indian, or on the grounds that there were insufficient ties to the Indian Tribe. The Act addresses the situation where there is a non-Indian defendant and non-Indian victim. Although a strong argument can be made that Tribes should have jurisdiction over all crimes, including domestic violence, committed on Tribal lands, clear Supreme Court precedent has established that states have exclusive criminal jurisdiction where both the defendant and the victim are non-Indian. Reversing this precedent is not necessary in order to achieve the goal of the Act: protecting Native women against domestic violence.

The Act (new ICRA Sec. 204(d)(2)) addresses an issue that has plagued prosecuting in Indian Country: how to properly address the question of Indian status. This is an issue of jurisdiction and is, therefore, a question of law. Such issues should properly be raised in pretrial motions before the court and not as matters of fact for a jury. The Act properly requires that this question of jurisdiction be raised by the defendant pretrial or be held to have been waived by the defendant.

The Act (new ICRA Sec. 204(d)(3)) also provides that a case can be dismissed upon a pretrial motion of the defendant on the grounds that "the defendant and the alleged victim lack sufficient ties to the Indian Tribe." (Emphasis added.) By this provision, the legislation adds for the first time residence, employment and Tribal membership as elements of the offense, which must be proven by the Tribal prosecutor in order to avoid dismissal. These additional elements undermine the effectiveness of the special domestic violence jurisdiction and the protection which Tribes can provide in the face of domestic violence. Police and prosecutors in Phoenix or Denver give no consideration to the ties a domestic abuse defendant has to the community. Why should Tribal authorities have to consider this factor?

Rights of Defendants

Section 201 of the Act (new ICRA Sec. 204(e)) sets forth that Tribes exercising special domestic violence criminal jurisdiction must provide the defendant with specified rights. The section provides that when a term of imprisonment of any length is to be imposed, all rights described in ICRA Sec. 202(c) should be applied. ICRA Sec. 202(c) was recently codified in the Tribal Law and Order Act. The current legislation properly coordinates the rights required under the Tribal Law and Order Act and the SAVE Native Women Act and provides clear guidance to the Tribes as to the procedural rights they must establish and provide to defendants in cases under the Act.

However, the Act (new ICRA Sec. 204(e)(3)) provides that the Tribes must also provide "all other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of the participating Tribe to exercise criminal jurisdiction over the defendant." This provision lacks clarity and certainty. If Congress is going to require Tribes to establish certain procedural protections for defendants in these cases, it should do so clearly.

From a practical perspective, the Act itself supports Tribes' ability to comply with it. The grants (new ICRA Sec. 204(g)) will be necessary in order for Tribes to establish the public safety and judicial infrastructure required by the Act. The delayed effective date (Act Sec. 204(b)) will allow the Tribes the time to establish that required infrastructure which is not already in place. Finally, the Pilot Project provision (Act Sec. 204(b)(2)) allows those Tribes that already have the judicial infrastructure in place to begin using the special jurisdiction before the effective date of the Act.

Petitions to Stay Detention

The Act (new ICRA Sec. 204(f)) incorporates the jurisdiction of the courts of the United States to address petitions for writ of habeas corpus in matters involving exercise of special domestic violence criminal jurisdiction. By incorporating a right already codified under ICRA and affirmed by the Supreme Court,[7] the legislation has incorporated a body of law with which Tribes are already familiar.

The Act also provides that, in conjunction with a petition for a writ of habeas corpus, the defendant in a special jurisdiction case can petition the court to stay further detention of that defendant by the Tribe. The Act also lays out criteria to be applied by the Federal Court in considering a motion for a stay.

The Act does not, however, specifically address the issue of exhaustion of Tribal remedies by the defendant. The case law on habeas corpus relief regarding the "legality of detention by order of an Indian Tribe" (ICRA Sec. 203) is inconsistent as it relates to issues of exhaustion of Tribal remedies. The Act should address this

[7] *Santa Clara Pueblo v. Martinez,* 436 U.S. 49 (1978).

by requiring that the defendant be required to exhaust Tribal remedies or to demonstrate the futility of attempting to do so.

Amendments to Federal Assault Statute

Section 203 of the Act amends several provisions of Title 18, U.S. Code § 113, the most significant of which is to add an offense of assault by strangulation or suffocation. This additional provision of federal law is consistent with similar laws that have been enacted at a state level. For example, domestic assault by strangulation is a felony in Minnesota. (See Minn. Stat. § 609.2247.) The Minnesota definition of "strangulation" incorporates suffocation ("impeding normal breathing").

In the definitions of "strangling" and "suffocating," the proposed legislation not only punishes intentional and knowing strangulation and suffocation, but also reckless conduct. Although reckless disregard of the safety of another can form the basis for criminal punishment, it is a lower standard of *mens rea* than intentional and knowing conduct.

Section 205(a)(2) of the Act also proposes to amend Title 18, U.S. Code ♦ 113(a)(3), involving assault with a dangerous weapon, by striking the language "and without just cause or excuse." This provision mirrors Sec. 7(a)(2) (Technical Amendments) of the July 21, 2011, proposed legislation from the United States Department of Justice. This proposed striking creates the risk that Federal Courts will conclude that Congress has determined that certain defenses, such as self-defense, are not available to defendants charged with assault with a dangerous weapon. The Department of Justice does not explain in its submission letter why it seeks to strike this language from the statute. However, striking such language from the statute is not necessary, as case law is clear that the existence of "just cause or excuse" for an assault is an affirmative defense and the government does not have the burden of pleading or proving its existence.[8] Moreover, striking this provision for Title 18, U.S. Code § 113(a)(3) has nothing to do with addressing the issues of domestic violence upon Native women. Therefore, the provision does not seem to be appropriate for the Act or otherwise.

The CHAIRMAN. Thank you very much, Mr. Heffelfinger.

Now, I would like to have Ms. Mejia.

Please proceed with your statement.

STATEMENT OF HON. MARGIE MEJIA, CHAIRWOMAN, LYTTON RANCHERIA

Ms. MEJIA. Good afternoon. I want to thank you for the opportunity to present testimony to the Committee today on a bill that would have a significant impact on the citizens of Lytton Rancheria.

My name is Margie Mejia, and I am the Chairperson of Lytton Rancheria, and I follow a long line of tradition of leaders who have been responsible for the safekeeping of the Tribe and its members.

I have lived the highs and lows of my Tribe's status every day of my life, from the devastating effects of poverty, alcoholism, drug abuse, and having our Tribal status terminated, to the recent economic success we have finally been able to enjoy through our restoration.

This is not simply one of a broad array of issues I have sought to advance. This is the pride, respect, and stability of my Tribe. We cannot stand idly by while our status is again under threat. I take it very seriously and I am thankful that you do, too.

While I hold Senator Feinstein in high regard, and I am sure that her intentions are honorable, there is much more to the story of Lytton Rancheria than this legislation suggests.

As some of you may know, the Federal Government wrongfully terminated the Lytton Rancheria on April 4, 1961 and our ancestral lands were lost. Not long after that, our traditional homelands

[8] *See U.S. v. Guilbert,* 692 F.2d 1340 (11th Cir. 1982), *cert. denied* 460 U.S. 1016.

were replaced with vineyards. Finally, in 1991, after decades of battling the relentless effort to regain our Federal recognition, the Federal courts ordered the government to reverse its decision to terminate the Tribe and restore our full Tribal status.

Unfortunately, we had no ancestral lands to return to, leaving us landless and with few options. In fact, Sonoma County, where most of our ancestral lands are located today, forced a provision in the final court stipulation. The provision forbids the Tribe from acquiring and using any land within the county for any purposes not included in the Sonoma County general use plan. Our neighboring Tribes have not had to deal with such restrictions.

While we were thrilled to have our status restored, we continued to face a severe challenge in establishing our Tribal economy. Therefore, we were heartened to learn that the City of San Pablo understood our tragic history and was receptive to the idea of working with us to address the effects of termination on our Tribe. We began working with the City of San Pablo to develop a municipal services agreement, and it is that agreement which guided the mutually beneficial relationship that we continue to have with the city today.

The provisions of S. 872 suggests that our land was restored with no local input or community feedback; that we circumvented the requirement in the Indian Gaming Regulatory Act. The truth is we spent several months meeting with citizens and elected officials to develop an agreement that would meet our respective needs and objectives. We continue to meet regularly and find ways to address each other's concerns.

As a result of this agreement, the Tribe filed an application with the Department of Interior to have land within San Pablo taken into trust status for Lytton for gaming purposes. When it became clear the Department of Interior was not going to act on our application, the city and the Tribe together asked Congressman George Miller for his assistance with our land-into-trust request in San Pablo.

It should be noted that the land our Tribe acquired was the site of an existing gaming facility. It was a card room. At the end of the year, an omnibus Indian bill was developed by this Committee and the House Natural Resources Committee to address a range of outstanding issues for Indian Country.

Language directing the Secretary to place the land into trust in San Pablo for the Lytton Band was included in that bill because through no fault of our own, Lytton had lost use of our land in the 1960s. And because we determined that our best economic development opportunity was to continue gaming at this site, language was drafted to ensure that outcome.

Congressman Miller's legislation reversed a wrong that left our Tribe landless and impoverished for decades. And it put us on a level footing with other federally recognized Indian Tribes. I am here because this new proposed legislation would take away that equal footing status.

There are currently proposals for a resort-style gaming facility within miles of the San Pablo casino. They are advanced by Tribes who plan for Class III Las Vegas-style slot machines. In accordance with the restored lands provision of IGRA. S. 872 would treat the

Lytton Rancheria differently from our neighboring and similarly situated Tribes by limiting the Tribe to Class II bingo-style machines, while forcing us to undertake an additional expensive and lengthy process that would put us at an extreme, totally unjust disadvantage.

Although we have no plans at this time to do so, without the ability to qualify for Class III gaming, the Lytton facility could face closure, resulting in severe negative impacts for the Tribe and the surrounding community.

We honestly do not understand the purpose behind this legislation. If the bill is based on the unsubstantiated belief that the Lytton Rancheria is somehow not complying or has not complied with Federal law, nothing could be further from the truth. The Lytton Rancheria fully complies with Federal law. We have complied with all the provisions of IGRA in the planning, construction, and management of the San Pablo Lytton Casino.

Our gaming ordinance was approved by the National Indian Gaming Commission and is subject to the minimum internal control standards. Our facility is subject to review and audit by the NIGC and all of our machines are certified to the NIGC's strict compliance standards.

These are the exact same standards that all other gaming facilities must meet in order to legally operate, and we have an excellent record. To suggest that we have done anything else is wholly disingenuous. Our Tribal members have realized significant benefits from our economic enterprise, including vastly improved housing and educational opportunities for our children, and we have been good neighbors to our local non-Indian community.

S. 872 is not simple, straightforward and reasonable, and it does not somehow restore the intent of Congress as was suggested in the introductory remarks accompanying the bill. In fact, it does just the opposite. The law preventing gaming on lands taken into trust after 1988 was not written in order to prevent landless Tribes like Lytton from achieving economic independence through gaming. It was written to deal with Tribes who already had lands or existing reservations on which they could conduct gaming.

Lytton Rancheria was only landless because of a wrongful act taken by the Federal Government decades before. We are not and never have been a Tribe looking to obtain additional land for more lucrative gaming. We are a Tribe who Congress realized should have had the same status as other Tribes granted lands prior to 1988 and I am thankful that Congress came to this conclusion.

Our reality today fully incorporates the intent of Congress in the 2000 legislation. The termination policies of the Federal Government had tragic consequences for members of Lytton Rancheria. It took over three decades to have our Federal status and our rights restored.

The CHAIRMAN. Ms. Mejia, will you please summarize your statement?

Ms. MEJIA. Yes, Mr. Chairman.

We have been able to take land into trust and establish economic independence. It was an act that righted a wrong that the Federal Government committed against our Tribe. I ask you let the act of justice stand and oppose the enactment of S. 872.

Thank you, Mr. Chairman.
[The prepared statement of Ms. Mejia follows:]

PREPARED STATEMENT OF HON. MARGIE MEJIA, CHAIRWOMAN, LYTTON RANCHERIA

Good morning. I want to thank you for the opportunity to present testimony to the Committee today on a bill that would have a significant impact on the citizens of the Lytton Rancheria. My name is Margie Mejia. I am the Chairperson of the Lytton Rancheria and follow a long tradition of leaders who have been responsible for the safe-keeping of the tribe and its members. I have lived the highs and lows of my tribe's status every day of my life, from the devastating effects of poverty, alcoholism and drug abuse and having our tribal status terminated, to the recent economic success we have finally been able to enjoy through our restoration. This is not simply one of a broad array of issues I have sought to advance; this is the pride, respect and stability of my Tribe. We cannot stand idly by while our status is again under threat. I take it very seriously and am thankful that you do too.

While I hold Senator Feinstein in high regard and am sure that her intentions are honorable, there is much more to the story of the Lytton Rancheria than this legislation suggests.

As some of you may know, the federal government wrongfully terminated the Lytton Rancheria on April 4, 1961 and our ancestral lands were lost. Not long after that, our traditional homelands were replaced with vineyards. Finally, in 1991 after decades of battling and relentless efforts to regain our federal

recognition, the federal courts ordered the government to reverse its decision to terminate the tribe and restore our full tribal status. Unfortunately, we had no ancestral lands to return to, leaving us landless and with few options. In fact, Sonoma County, where most of our ancestral lands are located today, forced a provision in the final court stipulation. The provision forbids the Tribe from acquiring and using any land within the county for any purpose not included in the Sonoma County General Use Plan. Our neighboring tribes have not had to deal with such restrictions. While we were thrilled to have our status restored, we continued to face a severe challenge in establishing our tribal economy. Therefore, we were heartened to learn that the City of San Pablo understood our tragic history and was receptive to the idea of working with us to address the effects of termination on our Tribe.

We began by working with the City of San Pablo to develop a Municipal Services Agreement and it is that agreement which has guided the mutually beneficial relationship that we continue to have with the City today. The provisions of S.872 suggest that our land was restored with no local input or community feedback and that we circumvented a requirement in the Indian Gaming Regulatory Act (IGRA). The truth is we spent several months meeting with citizens and elected officials to develop an agreement that would meet our respective needs and objectives. We continue to meet regularly to find ways to address each other's concerns.

As a result of this agreement, the Tribe filed an application with the Department of Interior (DOI) to have land within San Pablo taken into trust status for Lytton for gaming purposes. When it became clear the DOI was not going to act on our application, the City and the Tribe together asked Congressman George Miller for his assistance with our land into trust request in San Pablo. It should be noted that the land our Tribe acquired was the site of an existing gaming card room.

At the end of the year an omnibus Indian bill was developed by this Committee and the House Natural Resources Committee to address a range of outstanding issues for Indian country. Language directing the Secretary to place land into trust in San Pablo for the Lytton Band was included in that bill. Because, through no fault of our own, Lytton had lost the use of our land in the 1960s, and because we determined that our best economic development opportunity was to

continue gaming at this site, the language was drafted to ensure that outcome. Congressman Miller's legislation reversed a wrong that left our Tribe landless and impoverished for decades -- and it put us on level footing with other federally recognized Indian tribes. I am here today because this new proposed legislation would take away that equal footing status.

There are currently proposals for resort-style gaming facilities within miles from San Pablo Lytton Casino; they are advanced by tribes who plan for Class III Las Vegas-style slot machines in accordance with the "restored lands" provision of IGRA. S.872 would treat the Lytton Rancheria differently from our neighboring and similarly situated tribes by limiting the tribe to Class II Bingo-style machines or forcing us to undertake an additional expensive and lengthy process that would put us at an extreme and wholly unjust disadvantage. Although we have no plans at this time to do so, without the ability to qualify for Class III gaming, the Lytton facility could face closure resulting in severe negative impacts for the Tribe and the surrounding community.

We honestly do not understand the purpose behind this legislation. If the bill is based on the unsubstantiated belief that the Lytton Rancheria is somehow not complying or has not complied with federal law, nothing could be further from the truth. The Lytton Rancheria fully complies with federal law. We have complied with all provisions of IGRA in the planning, construction and management of San Pablo Lytton Casino. Our gaming ordinance was approved by the National Indian Gaming Commission and is subject to Minimum Internal Control Standards. Our facility is subject to review and audit by the NIGC and all of our machines are certified to the NIGC's strict compliance standard.

These are the exact same standards that all other gaming facilities must meet in order to legally operate and we have an exemplary record. To suggest that we have done anything else is wholly disingenuous. Our tribal members have realized significant benefits from our economic enterprise including vastly improved housing and educational opportunities for our children. And we have been good neighbors to our local non-Indian communities.

S.872 is not "simple, straightforward, and reasonable" and it does not somehow "restore the intent of Congress" as was suggested in introductory remarks accompanying the bill. In fact it does just the opposite. The law preventing gaming on lands taken into trust after 1988 was not written in order to prevent landless tribes like Lytton from achieving economic independence through gaming. It was written to deal with tribes who already had lands or existing reservations on which they could conduct gaming. Lytton Rancheria was only landless because of wrongful acts taken by the federal government decades before; we are not and have never been a tribe looking to obtain additional land for more lucrative gaming. We are a tribe who Congress recognized should have the same status as tribes granted land prior to 1988 and I am thankful that Congress came to this conclusion. Our reality today fully incorporates the intent of Congress in the 2000 legislation.

The termination policies of the federal government had tragic consequences for the members of the Lytton Rancheria. It took over three decades to have our federal status and our rights restored, but now through legislation enacted in 2000 and a cooperative relationship with the City of San Pablo, we have been able to take land into trust and establish economic independence. It was an act that righted a wrong the federal government committed against our tribe. I ask you to let that act of justice stand and oppose the enactment of S.872. Thank you.

Additional Comments Submitted for the Hearing Record

Dear Chairman Akaka:

I am writing on behalf of my tribe, the Lytton Rancheria, to thank the Committee for providing me with the opportunity to testify at the hearing held on November 10, 2011, to address the potential consequences of enacting S. 872, "A bill to amend the Omnibus Indian Advancement Act to modify the date as of which certain tribal land of the Lytton Rancheria of California is considered to be held in trust and to provide for the conduct of certain activities on the land." As you know, this legislation would have severe negative consequences on the financial stability of my tribe. It is, therefore, very important for us to provide you with clear and up-to-date information which will allow Committee members to make a fully informed decision – one which takes into account the devastating consequences for the Lytton Rancheria and the City of San Pablo should S. 872 be enacted.

For the Committee's reference, enclosed is a copy of the testimony given during an earlier hearing on this matter held on April 5, 2005, by Congressman George Miller. It is important that this testimony be included in the hearing record because, as the author of the original legislative language regarding the Lytton Rancheria, Congressman Miller is the expert on how and why legislation was necessary in 2000. His testimony provides a comprehensive overview of his assistance to us and the City of San Pablo with regard to the establishment of our trust land in San Pablo.

During the November 10 hearing, you inquired as to the number of jobs which would be lost should the Casino San Pablo be forced to close. Our casino currently employs 475 California citizens, all of whom would lose their jobs if our casino were to close. In this time of economic uncertainty and high unemployment, the Lytton Rancheria is a good neighbor and a trusted and integral part of the San Pablo business community. Any action which could disrupt this relationship should be avoided.

Again, we thank you for your consideration and the opportunity to provide the Committee with information on the potential consequences of enacting S. 872. We would be happy to answer any further questions from the Committee and request that this letter and attachment be made part of the official hearing record.

Attachment

Testimony of the Honorable George Miller (D-CA)
Regarding S. 113
April 5, 2005

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today.

And Senator Feinstein, it is good to be with you. While you and I do not agree on this particular matter today it is always good to work with you on issues that affect the State of California. I appreciate what you do for us.

Mr. Chairman, with your permission I would like to submit my written statement for the record.

I would also like to recognize several constituents and local representatives who will testify later today.

Assemblywoman Lonnie Hancock is a strong advocate for her district and I appreciate her being here.

And Mayor Sharon Brown and City Manager Brock Arner of the City of San Pablo are here. They are working very hard to stimulate economic development in their city and I appreciate their efforts on behalf of the resident of San Pablo.

Today's hearing concerns the Lytton Band of Pomo Indians and the City of San Pablo in my district and their effort to work together to meet mutual goals of desperately needed economic development. I support their efforts.

My involvement with this matter dates back to 1999 and 2000 when I was approached by the City to discuss its interest in working with the Lytton Band to help them acquire an existing card room in San Pablo for the purposes of renovating it and building a modest sized casino.

The tribe made a good faith effort to work through the Department of the Interior to win the right to acquire this land for the purposes of gaming under the Indian Gaming Regulatory Act (IGRA) but due to special circumstances affecting the tribe, it is my understanding that the tribe was told by the Department that they would be turned down.

After much discussion and a detailed review of the circumstances, I agreed to help the city and the tribe. I supported their project for several reasons:

- the local community, including the police department, supported the project;
- the City stood to make significant economic development gains from the project;
- the tribe had a clear need and a legitimate right to pursue lands for the purposes of economic development and made a good faith effort to work through the Department of the Interior to do so;
- I have a long standing history of supporting the sovereign rights of Indian tribes.

The issue of whether or not American Indians should be involved in gaming is not at issue here. There are opponents of gambling for many reasons, some personal, some moral, some simply competitive. And of course there are many proponents of gaming. There are card rooms throughout the Bay Area, an extensive lottery program, and the California constitution allows for Indian gaming. Personally, I am neither a proponent nor opponent of gaming per se. I am, however, a strong defender of economic development and of Indian sovereignty.

As you will hear in greater detail later today from the Lytton's tribal chairwoman, Marge Mejia, the Lytton Band was wrongfully terminated in the 1960s. A federal court restored its tribal status in 1991. The Lyttons are a poor people, many of whom are homeless. The tribe is concerned about preserving its tribal heritage and providing economic means for its members.

The City of San Pablo and the Lyttons have much in common.

San Pablo is one of the poorest cities in the Bay Area. A small city with little economic activity, it has a poverty rate of 18 percent – twice that of the entire Bay Area and more than twice that of Contra Costa County. Its unemployment rate is higher than that of the Bay Area and the County. More than 90 percent of the city's residents work outside of the city, because there are just not enough jobs created within the city.

The key question before the committee is whether it was appropriate for the Congress to have passed section 819 of the Omnibus Indian Advancement Act in 2000 on behalf of the Lytton Band. I believe that it was appropriate and that the provision should stand, as written.

As you know, the U.S. Constitution gives Congress plenary authority over Indian tribes to pass laws for their benefit. Congress is fully within its rights to pass legislation directing the Secretary of Interior to place lands into trust for a particular tribe and does so on a regular basis.

In the 108th Congress; at least 10 bills became law that placed lands into trust for various reasons to benefit various Indian tribes. This may happen for any number of reasons that Congress determines is prudent. It may be as part of a settlement agreement of a land claim, or in the instance of the Pechanga Indian Tribe, who are scheduled be testify later, the desire to protect certain important lands from possible desecration.

Last Congress, we even took lands right out of a national park and had it placed in trust for one tribe. In the Gila River water settlement law we required an act of Congress occur to bring some lands into trust for that tribe.

In most cases, including the ones I mention here, the tribe attempts to go through the BIA process, becomes frustrated for one reason or another, and comes to congress to plead its case. In fact, the highly touted bill that the Lytton provision was in also included 14 other provisions to take lands into trust for Indian tribes, including one provision that held the land be considered in trust as of 1909.

The Lyttons had a special circumstance that I believe distinguished them from most other tribes in California and that necessitated congressional action.

The 1991 federal court settlement that restored Lyttons' tribal status and that of numerous other California tribes included one unusual provision that pertained only to the Lyttons.

The court order restoring the Lyttons' tribal status contained a unique limitation that precluded the Secretary of the Interior from taking land in Sonoma County -- the Lytton's ancestral lands -- into trust for the benefit of the Lytton Band for any use that was inconsistent with the Sonoma County General Plan. In effect, the limitation denied Lytton any right to use its ancestral land for gaming.

The order however did not put any restrictions on the ability of Lytton to pursue other lands for gaming or other activities.

This limitation created a special circumstance when the Lyttons appealed to the Department of Interior for an exception under the Indian Gaming Regulatory Act for permission to have lands put into trust and to be allowed to conduct gaming.

The lands that the tribe sought were not their ancestral lands, nor contiguous with its ancestral lands. It is my understanding that the Bureau of Indian Affairs denied the tribe this exception under IGRA because of this land issue. And yet, as I explained, the court settlement forbade the tribe from using their ancestral lands.

The Lyttons are the only tribe in California -- and perhaps the only tribe in the United States -- that, as a condition of the restoration of its tribal status, was expressly deprived of the opportunity to exercise rights under the Indian Gaming Regulatory Act on its ancestral land.

I do not believe that existing law anticipated this unusual circumstance and therefore Congress, which has the authority to intervene in these matters, appropriately remedied this situation.

This is what the issue boils down to. Through no fault of its own, the Lytton Tribe was illegally stripped of its status as a federally recognized Indian tribe and denied its rights for decades until it was restored to its proper status by our judicial system. Had the tribe's status never been illegally terminated, there would have been no question as to the Lytton's ability to operate gaming on lands within its ancestral area.

I thought that the Bureau of Indian Affairs would accept the land under the IGRA exceptions for restored tribes, but was told it would not. I believed that was a mistake, and even then Assistant Secretary for Indian Affairs Kevin Gover was quoted at the time about the denial of Lytton's request that "it was a close call. A good case could be made that we were wrong," Gover said.

Every tribe's situation is different and must be evaluated individually. But I believed then, and continue to believe now, that it was the fair and right thing to do in this particular case to make the Lytton Band whole again.

Not only do I believe that that it was appropriate for Congress to have acted on the tribe's behalf, but I want to be clear that the manner in which Congress approved this legislation was entirely appropriate.

My Provision regarding the Lytton Band was added, along with numerous other tribal issues, as an amendment to H.R. 5528, the Omnibus Indian Advancement Act," in the full House.

All the provisions added were done so with the support of the leadership of both the House Resources Committee and this Committee as a way to move some legislation that for whatever reason had not passed. To make it clear this was a compilation of bills, the "omnibus" title was given to the bill. This is a most appropriate way to move legislation near the end of a Congress that has been bottled up. The bill passed the full House on October 26, 2000.

H.R. 5528 was referred to the Senate Committee on Indian Affairs and passed in the Senate by unanimous consent on December 11, 2000 – forty-five days after its referral to the Senate and its being sent to both respective cloakrooms for viewing and Senate notification.

Section 819 was identified by the heading "Land to be Taken Into Trust" and, at all times, contained the name of the tribe and location of the land. Any Senator who questioned or objected to any provision had the opportunity to review the provision and to withhold consent under the unanimous consent procedure. No Senator did so.

Under the provision, Lytton is subject to all of the provisions of IGRA, including the requirement under California law that any compact negotiated between the State of California and the Lytton Band be ratified by the California legislature.

A compact was signed in August, 2004, by the Governor and the Tribal Chair, but it has not yet been ratified by the legislature.

I am on record as opposing both the size of the first proposed compact between the state and the tribe and the revised proposed compact; I hope that any final resolution on the compact will adhere to the proposal originally presented to me by the tribe and the City. That proposal called for a modest casino within the parameters of what already exists at the card room, not a mega casino as is now under consideration.

It should be noted, however, that the Lytton Band from the very beginning went to unprecedented lengths to consult with the local community and the State of California to forge an agreement with regard to mitigating potential impacts of a new casino and sharing the benefits of the casino with the community.

But the issue of the compact details is a separate matter.

The issue today is whether the tribe has the right to these lands and whether Congress acted appropriately in conveying the lands to the tribe. In both instances, the answer clearly is yes.

I do not believe Congress is justified in taking away from the Lytton's the rights that Congress gave to it. Doing so would be a significant breach of trust between Congress and the Indians, a trust that has been broken so often in our Nation's history. And it would also greatly undermine the economic development opportunity of an impoverished tribe and an impoverished California city.

I believe that S. 113 is unwarranted and harmful but more importantly I believe that it would be a dangerous precedent.

Governor Schwarzenegger expressed a similar view when he wrote to Sen. Feinstein on September 20, 2004 about her legislation that, "This bill would set a dangerous precedent that could damage trust and faith with the Lytton Rancheria Indian community." He added, "Passage of [this bill] will destroy the trust which has been built with the Lytton and other tribal governments, not just in California but throughout the nation."

Indian gaming in California is clearly a complicated matter and there are many aspects of the issue to resolve. But using the power of Congress to take punitive action against the Lytton Band is neither justified nor appropriate.

Thank you again Mr. Chairman and members of the Committee for the opportunity to testify today.

The CHAIRMAN. Thank you very much, Chairperson Mejia.
And now I would like to call on Mayor Morris.
Will you please proceed with your testimony?

STATEMENT OF HON. PAUL MORRIS, MAYOR, CITY OF SAN PABLO, CALIFORNIA

Mr. MORRIS. Thank you and good afternoon, Mr. Chairman and Members of the Committee. Thank you for inviting me here today. I certainly appreciate this hearing.

My name is Paul Morris. I am the Mayor of the City of San Pablo. Vice Mayor Cecilia Valdez and I are attending this hearing today so we can bring you our unique perspective about the San Pablo Lytton Casino.

If you take anything from my statement today, this is what I want you to remember. The Lytton Rancheria is a respected, involved member of the community and has been since day one.

Thanks to them, San Pablo residents are enjoying a safe and secure community. I am not an expert on gambling, but I am an expert on the City of San Pablo.

Claims that casinos bring in high crime are unfounded in my city. This may be true for other communities with different dynamics, but you should not create legislation for one specific community, using broad data and vague claims of increased crime that have been shown to be inapplicable in San Pablo.

The Lytton Casino has minimal impact on local traffic and public safety. This stands in stark contrast to the belief by critics that any urban gaming is detrimental to the public welfare. The Lytton Casino has not increased crime or traffic congestion. Instead, it has allowed us to have the resources to significantly reduce crime. As of 2010, we have had 20 percent decrease in violent crime and a 19 percent reduction in property crimes since 2008.

The Police Department has been able to provide significant increases in personnel, state-of-the-art equipment, and multi-jurisdictional training. None of this could have happened without the additional resources that the casino made possible. Without those resources, the department would have had to cut nearly half of its sworn officers and dissolve a number of specialty programs, including gang violence reduction, narcotics task forces, and youth services programs. 9–1–1–response times would increase and public safety would be compromised.

The payments received from the casino also make up nearly two-thirds of the city's general fund. Because of this, the city has been able to provide after school programs, a new youth services program, and with an emphasis on intervention and prevention.

We have also been able to keep a local elementary school open for the last three years, despite closure plans by the School District.

The Lytton Rancheria provides financial support to San Pablo residents beyond just city government, including, but not limited to almost $250,000 to the San Pablo Senior Center in the past few years to provide key services and maintain social programs that would disappear without them.

When Senator Feinstein introduced S. 872, she stated that the legislation would implement a reasonable solution to this problem. My main point to make today is that there is, in fact, no current problem that must be remedied. The problem, as posed by the Senator, is that the government now has little ability to regulate Lytton Band's gaming operation. This could not be further from the truth. All activities at the casino are as we speak fully subject to regulation by Federal law and we are unaware of any problems that Interior or the BIA have had with operations at this location.

The casino is subject to extensive oversight and regulation by the NIGC and also by the city via our municipal services agreement. In fact, the Tribe is required to go through the city's normal planning and environmental review procedures, public notice, and public hearings if it ever wants to expand its operations. So here again, there is really no current problem either at the local or Federal level that must be addressed.

On the other hand, our community already suffers much more in this horrendous economy. As of the last year, 19.8 percent of San

Pablo residents lived below the poverty line; 19.5 percent were unemployed. Almost all of our working residents work outside the city and it is thus essential that we increase, not decrease the number of local jobs.

This legislation seeks to address a nonexistent problem. The Lytton Casino has been operating for over eight years with no problems, but many benefits. There is no reason to turn the clock back and make their lives harder. There are sensible changes that this legislation would prevent, such as an addition of a parking structure to the existing building. San Pablo and its residents would be collateral damage if this bill should pass.

While deliberating, we ask that this Committee keep that fact in mind, and the fact that the economic recession is hitting San Pablo harder than most.

Thank you for your time, Mr. Chairman. I would be happy to answer any questions you have.

[The prepared statement of Mr. Morris follows:]

PREPARED STATEMENT OF HON. PAUL MORRIS, MAYOR, CITY OF SAN PABLO, CALIFORNIA

Honorable Chairman Daniel K. Akaka and Members of the Committee:

Thank you for inviting me to speak today. My name is Paul Morris and I am the Mayor of the City of San Pablo. Vice-Mayor Cecilia Valdez and I are attending this hearing today so we can bring you our unique perspective about the San Pablo Lytton Casino. If you take anything from my statement today, this is what I want you to remember – the Lytton Rancheria is a respected, involved member of the community, and has been since day one, and thanks to them San Pablo residents are enjoying a safe and secure community.

I am not an expert in Indian gaming, but I am an expert on the City of San Pablo. I will tell you that the claims that casinos bring in high crime and poverty are unfounded in my city. This may be true for other communities with different dynamics, but you should not create legislation for one specific community using broad data and vague claims of increased crime, *especially when there is data available specific to San Pablo*.

The Lytton Casino's Type II gaming establishment has had a minimal impact on local traffic and public safety, and our professional relationship with security and management personnel of the Lytton Casino is a testament to the City's successful business practices. This stands in stark contrast to the fundamental belief by critics that <u>any</u> urban gaming is detrimental to the public welfare. The Lytton Casino has <u>not</u> increased crime or traffic congestion. Instead, it has allowed us to have the resources to significantly reduce crime. As an example, in 2010 the police reported a 20% decrease in violent crime and a 19% reduction in property crimes since 2008. This could not have happened without the additional resources that the Casino made possible.

Because of the mutually beneficial relationship that the City has with the Lytton Rancheria, and their willingness to work cooperatively with us through a Municipal Services Agreement, the City's Police Department has been able to provide significant increases in personnel, state of the art equipment, and multi-jurisdictional training. Without the supportive relationship with Lytton Rancheria, the police chief has estimated that the department would have to cut nearly half of its sworn officers and dissolve a number of specialty programs including gang violence reduction, narcotics

task forces and youth services programs, among others. Also, 911 response times would dramatically increase, and public safety would definitely be compromised.

The financial support from Lytton Rancheria is critical to ensuring public safety in San Pablo. But the payments received from the casino also make up nearly 2/3 of the City's general fund. Thanks to this agreement, the City has been able to provide after school programs and a new Youth Services Program with an emphasis on intervention and prevention. Revenue from the casino has enabled the City to keep a local elementary school open for the past three years, at a total cost of $900,000, despite closure plans by the school district.

The financial support that Lytton Rancheria provides to San Pablo extends beyond just city government. Lytton Rancheria has donated over $230,000 to the San Pablo Senior Center in the past few years to provide key services and maintain social programs that would disappear without them. This is on top of thousands of dollars given away annually to local organizations such as the Boys & Girls Club, food banks, the San Pablo Community Foundation, and even the purchasing of brand new Christmas gifts for dozens of children in the community. This is all done with little fanfare because the Lytton Rancheria genuinely wants to be a good neighbor and help those people in the community who need it most.

The relationship with the Lytton Rancheria is more than just the financial support they willingly provide. The City of San Pablo has a role in the administration of the casino. As part of the Municipal Services Agreement, the City is able to appoint a member of the Tribal Gaming Commission. Currently, the former Chief of Police serves as a commissioner and is able to advocate for the City. The agreement also ensures the opportunity for the community to provide feedback should the Lytton Rancheria ever choose to modify its current gaming facility. In fact, they would have to go through exactly the same planning and environmental process, complete with public notice and public hearings, as any other applicant in the City.

S.-872 ties the Lytton Rancheria's hands by prohibiting physical or operational expansion of even its Class II operation unless the Tribe undergoes an entirely different process than what the Tribe it is currently subject to follow. Other tribes would be subject to a much less rigorous process; I will not go into detail on the Tribe's tragic history, but the last thing they deserve is for the federal government to turn the clock back and make their lives harder. There are sensible changes that this legislation would prevent, such as construction of a parking structure. There is simply no reason to makes things any harder for the Lytton Tribe - which only wants to be a good neighbor in the community.

Hopefully I have conveyed the message that the concerns about the Lytton Rancheria not complying with federal law and having negative impacts on the community are totally unfounded. I have reviewed Senator Feinstein's comments from the Congressional Record on May 3, 2011, when the Senator reintroduced S.872. In her comments, the Senator stated that this legislation "would implement a reasonable solution to this problem." The City of San Pablo, speaking for its residents and the residents of West Contra Costa County, submits to this Committee that there is, in fact, no current problem that must be remedied.

The "problem," as posed by the Senator, is that the Omnibus Indian Advancement Act "left the government with little ability to regulate the Lytton Band's gaming operation." This could not be further from the truth, as all activities at the San Pablo Lytton Casino are indeed, as we speak, fully subject to regulation by federal law. To date, we are unaware of ANY problems that the Department of the Interior or the Bureau of Indian Affairs have had with operations at this location. Further, as stated earlier, the casino is subject to extensive oversight and regulation by the City of San Pablo by virtue of our comprehensive Municipal Services Agreement, as well as by the National Indian Gaming Commission. So, again, there really is no current problem, either at the local level or at the federal level, that must be addressed.

Senator Feinstein's remarks in May also cited these problems: "No local input. No community feedback and no consideration for the best interest of the region." In fact, though, public hearings were held and community feedback was sought. For the past ten years, the community has been solidly, and overwhelmingly, in favor of the Casino and the benefits it has brought not only to the City of San Pablo and its residents, but to neighboring areas as well. And, as stated earlier, our Municipal Services Agreement ensures the opportunity for the community to provide feedback should Lytton Rancheria ever choose to modify its current gaming facility; the casino would have to go through exactly the same planning and environmental process, complete with public notice and public hearings, as any other applicant in the City. And any Class III operation would require consent of both the Governor and the state legislature.

I understand you want to do what is best by considering all of the factors involved in this complex decision, but S.872 and its claims are so specific to San Pablo that I could not let you make your decision without sharing the facts first-hand about the city's relationship with Lytton Rancheria. The Lytton Rancheria has had Class II gaming in San Pablo for eight years now. There are various on-going efforts at the Department of the Interior from other tribes to locate in the same area, but outside city boundaries, and ultimately obtain Class III gaming. This bill would prevent the Lytton Rancheria from competing equally with those other tribes, and its Class II casino in our City would be unable to compete. This would be a huge financial hit to the City of San Pablo and would lead to the financial devastation of the entire community. Our community already suffers much more than most in this horrendous economy. As of last year, 19.8% of San Pablo residents lived below the poverty line, and 19.9% of our residents are unemployed . Almost all of our working residents work outside the City, and it is

thus essential that we increase, not decrease, the number of available jobs in our local area.

This legislation seeks to address a non-existent problem. Lytton Casino San Pablo has been operating for over eight years with no problems but many benefits. If it seeks to expand its Class II gaming it should be able to do so as long as it complies fully with existing federal and local laws. If it seeks Class III gaming it should be treated the same as any other Tribe in the country. San Pablo, and all of its residents, would be collateral damage if this Bill should pass. When deliberating, we ask that this Committee keep that fact in mind, and the fact that the economic recession is hitting San Pablo harder than most.

Thank you for your time.

The CHAIRMAN. Thank you very much, Mr. Mayor, for your testimony.

Mr. Andersen, President Andersen, would you please proceed with your statement?

STATEMENT OF RALPH ANDERSEN, PRESIDENT/CEO, BRISTOL BAY NATIVE ASSOCIATION; CO–CHAIR, ALASKA FEDERATION OF NATIVES

Mr. ANDERSEN. Good afternoon, Chairman Akaka, Senator Murkowski, and Senator Franken. My name is Ralph Andersen. I am the Co-Chair of the Alaska Federation of Natives. I am also the President and Chief Executive Officer of the Bristol Bay Native Association based in Dillingham, Alaska.

I am honored to be here to testify in support of the Alaska Safe Families and Villages Act. AFN is the largest statewide organization in Alaska of Alaska Natives, representing 125,000 Natives within Alaska and nearly an equal number living outside of Alaska. AFN was formed in 1966 initially to fight for aboriginal land claims and for the past 45 years has been at the forefront of efforts to advance Alaska Native self-determination.

It hosts the largest gathering of Alaska Natives, the annual AFN convention attended by thousands of Alaska Natives. In October, the convention delegates adopted Resolution 1129 in support of the Alaska Safe Families and Villages Act. I have appended a copy of that resolution to my testimony.

BBNA is a regional nonprofit Tribal consortium of 31 federally recognized Tribes in the Bristol Bay region. Our geographic area of southwest Alaska is about the size of the State of Ohio. Our regional population is about 7,000 people, about 70 percent are Alaska Native.

Both the AFN and the BBNA strongly support the Alaska Safe Families and Villages Act. This legislation will allow local Tribal courts and law enforcement to address social problems at home in the village. Currently, villages rely on the State of Alaska to provide all law enforcement and judicial services, often at centers a great distance away from the village.

The bill will establish a demonstration project by which a small number of Tribes would be authorized to enforce local ordinances dealing with alcohol and drug abuse, domestic violence, child abuse, and neglect. Alaska Tribes already have some jurisdiction in

those areas, but most villages have not developed Tribal ordinances and procedures.

The ordinances and the Tribes' plans for implementing the demonstration project will be subject to the oversight and approval of the Department of Justice every step of the way. The bill creates no Tribal criminal jurisdiction, but simply confirms civil regulatory jurisdiction over alcohol and drug abuse, domestic violence, and child abuse and neglect. It does not address major crimes, does not authorize Tribes to jail people, and does not diminish in any State law enforcement authority, criminal or civil.

Although the demonstration project starts small, we believe it will be such an obvious success that Congress will expand the program and make it permanent in future years.

Alaska Natives are far better situated to address social problems, particularly involving children and youth, at home under Tribal authorities, better than the State. While this is often discussed in terms of law enforcement, I believe it is more of a problem of access to State courts.

Alaska State courts are not local in most places. In Bristol Bay, for example, we have 28 year-round inhabited communities spread over an area the size of the State of Ohio. There are State courts in only communities, Dillingham, and Naknek. Alaska has no Justice of the Peace Courts like some States have, and there are no municipal courts outside the big cities.

We have villages in our region that are more than 200 miles from the closest State court and there are no roads in between. Even a village that has a local village public safety officer, or VPSO, or even a local city police department, is still dependent upon a prosecutor's office and the court system in some large community far away.

I grew up in a small village, Clarks Point, which is across the Nushagak Bay from Dillingham. It is only about 15 miles away as the eagle flies, but there are no roads connecting them. And if the weather is bad, it is simply inaccessible until the weather breaks. Clarks Point has about 75 people. Although it has had a VPSO in the past, the position is currently vacant and has been difficult to fill. There is no chance that a village of 75 people will ever have a magistrate, a State magistrate or a State court. It simply wouldn't be cost-effective.

Clarks Point does have, however, a functional Tribal Council that already provides a number of services in the village. Although some villages have city governments as well as Tribal councils, most city governments do not enforce criminal or civil laws because they would have to pay the cost of a prosecuting attorney, provide public defenders, and pay for a prosecution in State courts.

Alaska Tribes already have some authority in these areas of child custody and adoption, child neglect, and domestic relations based on Tribal membership. But Alaska Tribes do not have land-based jurisdiction and the exact extent of Tribal authority in Alaska has been very unclear.

We are not advocating for the creation of Indian Country in Alaska. I want to make that very clear. We are advocating and think it makes enormous sense to allow Tribes to handle some explicit

and specific types of problems in their villages and to clearly define what those types of cases are.

Alaska Natives have probably the highest rate of suicide in the Nation, perhaps the world. We have hugely disproportionate rates of sexual assault, domestic violence, alcoholism, and accidental death. Many of the sexual assaults and domestic violence go unreported, but the scars can be seen. Most of these problems and scars trace back to alcohol abuse.

For too long, law enforcement in rural Alaska has been underfunded and in many smaller, remote villages virtually nonexistent. The Alaska State Court system does not reach out far enough or fast enough for many of our remote, isolate villages. For too long, villages then have had to travel great distances at great expense for court cases.

For too long, we have seen bootleggers, domestic violence, and sexual abuse offenders walking our village streets unabated because State law enforcement is too slow to respond and prosecutions are too difficult.

This bill is a tool and step in the right direction. It is a break from past practices and attitudes. It shows a practical understanding that sheer economics, budgetary, and political constraints will always preclude the State of Alaska from providing truly adequate judicial resources in hundreds of tiny geographically remote villages. It also recognizes that Tribal governments can fill the gap and it adds an element of prevention and early intervention.

We appreciate Senator Begich and Chairman Akaka and Senator Murkowski and this Committee that you are willing to roll up your sleeves to help us put into place locally controlled, culturally relevant practices to help reduce serious social problems. You will save lives. You will save lives in our most remote and neediest villages in the Country and in Alaska.

I want to be very clear that we don't want to create Indian Country in Alaska. At the same time, we don't want to take over responsibility for criminal courts or jails and law enforcement. We simply want to do our share, to do our part, to do what we can to help.

Complicated jurisdictional issues should really not get in the way of providing basic, needed, and common sense solutions in the villages. The longer they go on, the longer our people will suffer, and lives will be destroyed or lost.

The demonstration project as provided in the bill is well designed and provides a step-by-step approach. It will work.

In closing, I want to stress that I have the deepest respect for the State government and the current Administration. I have great respect for Governor Parnell. He has shown a deep commitment to addressing alcohol and drug abuse, domestic violence, and sexual assaults in Alaska.

The CHAIRMAN. President Andersen, will you please summarize your statement?

Mr. ANDERSEN. Yes. I have great respect for the village public safety officers and State troopers. The VPSOs have the toughest jobs that I can imagine.

Again, I want to express AFN and BBNA and our sister regional Native nonprofit consortiums' support for this bill. We believe it is a very positive step toward empowering local communities and

local residents to take responsibility for problems and for resolving them at home.

Thank you, Chairman Akaka.

[The prepared statement of Mr. Andersen follows:]

PREPARED STATEMENT OF RALPH ANDERSEN, PRESIDENT/CEO, BRISTOL BAY NATIVE ASSOCIATION; CO-CHAIR, ALASKA FEDERATION OF NATIVES

Good afternoon Chairman Akaka and distinguished members of the Committee. My name is Ralph Andersen. I am Co-Chair of the Alaska Federation of Natives (AFN) and I am also the President and Chief Executive Office of the Bristol Bay Native Association (BBNA), based in Dillingham, Alaska. I am honored to be here today to testify in support of the Alaska Safe Families and Villages Act.

AFN is the largest statewide organization of Alaska Natives, representing 125,000 Natives within Alaska and nearly an equal number—120,000—living outside Alaska. AFN was formed in 1966, initially to fight for aboriginal land claims, and for the past 45 years has been at the forefront of efforts to advance Alaska Native self-determination. It hosts the largest gathering of Alaska Natives, the AFN Annual Convention attended by thousands of Alaska Natives. In October the convention delegates adopted Resolution 11–29 in support of the Alaska Safe Families and Villages Act. I am appending a copy of that resolution to my testimony.

BBNA is a regional non-profit tribal consortium of 31 federally recognized tribes within the Bristol Bay Region. Our geographic area in southwest Alaska is about the size of the State of Ohio. Our regional population is about 7,000 people, about 70 percent are Alaska Native. BBNA operates a variety of service programs for our member tribal villages, including Bureau of Indian Affairs programs that we operate under a self-governance compact agreement that has been in effect since 1995.

Both AFN and BBNA strongly support the Alaska Safe Families and Villages Act and, in fact, both organizations have supported this and similar legislative proposals to clarify tribal civil jurisdiction in Alaska for many, many years, dating at least to the Clinton administration. We are very pleased this bill has been introduced and that this hearing is being held.

Plugging the Gaps

The basic idea of this legislation is to allow local tribal courts and law enforcement—to address social problems and petty offenses involving tribal members at home, in the village, instead of relying on the state government to provide all law enforcement and judicial services, often from centers a great distance away from the village.

The bill will establish a demonstration project by which a small number of tribes, no more than three per year for three years—nine total—would be authorized to enforce local ordinances dealing with alcohol and drugs for a period of five years. The bill is also intended to enhance tribal enforcement of domestic violence and child abuse and neglect matters. Alaska tribes already have some jurisdiction in those areas but most villages have not developed tribal laws and procedures. The ordinances and the tribe's plan for implementing the demonstration project would be subject to the oversight and approval of the Department of Justice.

The bill creates no tribal criminal jurisdiction, but simply confirms civil regulatory jurisdiction over the subjects listed in the bill—alcohol, drugs, domestic violence and child abuse and neglect. It does not address major crimes, it does not authorize tribes to jail people, and it does not diminish in any way state law enforcement authority, criminal or civil. It is intended to address what might be called entry-level offenses such as underage drinking and drug use, and to keep such problems from escalating. It makes far more sense to address low grade offenses immediately, at home, rather than waiting until they get so bad a person is caught up in the state criminal justice system, jailed, and sent to court dozens or even hundreds of miles away from home.

This is very much a common sense bill to fill gaps in existing services. Although the demonstration project starts small, we believe it will be such an obvious success Congress will expand the program and make it permanent in future years.

Alaska Native villages are far better situated to address social problems, particularly involving children and youth, at home under tribal authorities, than is the state government. It would benefit everyone, including the state agencies, if some problems such as juvenile delinquent behavior could be curtailed and the person helped by the local community before the behavior ever escalates or becomes a state issue.

While this is often discussed in terms of law enforcement—and there are gaps in state law enforcement—I tend to believe it is more a problem of inadequate courts and access to courts. The state court system is not the most culturally appropriate way for dealing with young Native offenders, nor are state courts "local" in most places. In Bristol Bay, which has 28 year-round inhabited communities spread out over an area the size of Ohio, there are state courts in only two communities—Dillingham and Naknek. Alaska has no justice of the peace courts like some states have, and there are no municipal courts outside the big cities. We have villages in our region that are more than 200 miles from the closest state court, and there are no roads in between.

Even a village that has a local Village Public Safety Officer (VPSO) or even a local city police department is still dependent on a prosecutor's office and court system in some larger community miles away.

I grew up in a Bristol Bay village, Clarks Point, which is across the Nushagak Bay from Dillingham. It's only about 15 miles away as the eagle flies, but there are no roads connecting them and if the weather is bad it is simply inaccessible until the weather breaks. Clarks Point has about 75 people. Although it has had a VPSO position in the past, the position is currently vacant and has been difficult to fill. There is no chance that a village of 75 people will ever have a state magistrate court or a resident state trooper—it simply would not be cost effective. Clarks Point does, however, have a functioning tribal council that already provides a number of services in the village. There is simply no logical reason why the tribe should not be able to prosecute and handle minor offenses at home as civil regulatory matters. That is all S. 1192 does, on a pilot basis for up to nine villages.

I will note that although some villages have city governments as well as tribal councils, the city governments in the villages do not directly enforce criminal or civil regulations because they would have to pay for the expense of a prosecuting attorney, provide public defenders, and otherwise pay for prosecution in the state courts in the regional hubs. The city government in Clarks Point has no resources to be prosecuting cases in Dillingham.

Although Alaska tribes already do have some authority in areas such as child custody and adoption, child neglect, and domestic relations based on tribal membership, Alaska tribes do not generally have land-based jurisdiction and the exact extent of tribal authority in Alaska has been very unclear. We are not advocating for the creation of "Indian Country" jurisdiction in Alaska. I want to make that very clear. We are advocating and think it makes enormous sense to explicitly allow tribes to handle some types of problems within their villages and to clearly define what those types of cases are, without getting into a complicated analysis based on land status and without waiting for decades of litigation to establish the parameters of tribal jurisdiction. The cleanest way to do this is by enacting a federal law to clarify a few subject matters areas where tribes can assert authority.

To illustrate the problems tribes run into in addressing social problems through tribal courts, one of the larger Bristol Bay villages operated a tribal court that handled juvenile cases for about ten years. The particular village has a city police department, and my understanding is that the tribe had a written agreement with the city by which the local city police referred some juvenile cases to the tribal court. The agreement was also signed off by the State of Alaska. This agreement and arrangement worked well and the tribe successfully handled a number of cases, each of which would otherwise been in the state system and prosecuted 70 miles away in Dillingham. Recently, someone in the city government had questions about the agreement that were referred to the state Attorney General's office. The AG's office concluded this diversion of cases was improper and that the state could not honor its own prior agreement with the tribe. Understandably the city, which is a subdivision of the state, is now no longer willing to honor the agreement either.

Sadly, a cooperative effort that was working, that was probably within the normal discretion of state law enforcement anyway, and that benefited all parties was ended because someone in a state office in Anchorage or Juneau hundreds of miles away decided it was a bad thing to work cooperatively with tribes. It has been our experience that state opposition to tribes almost always comes from state elected officials and the higher echelons of state government. People who actually do the work in the field—state troopers, social workers, judges, prosecutors—are practically always more than willing to work with tribes because they correctly see the tribes as a resource.

The Need

I do not wish to spend too much time talking about the severity of social problems in rural Alaska. We have told our story over and over and the bill itself recites many of the statistics. Alaska Natives probably have the highest suicide rate in the

nation and perhaps the world. We have hugely disproportionate rates of sexual assault, domestic violence, alcoholism, and accidental death. Many of the sexual assaults and domestic violence goes unreported, but the scars can be seen. Too many of our people are in prison. Too many of our adults find it difficult to get jobs because they have criminal records. Most of these problems trace back to alcohol abuse.

For too long law enforcement in rural Alaska has been underfunded and in many small remote villages virtually non-existent. The Alaska Court system does not reach out far enough or fast enough for many of our remote, isolated villages. For too long, village residents have had to travel great distances at great expense for court cases. For too long we have seen bootleggers and domestic violence and sexual abuse offenders walking our village streets unabated because state law enforcement is slow to respond and prosecutions too difficult. While the lack of courts or law enforcement is not the cause of our high rates of suicide and other social problems, it is certainly an obstacle to addressing them.

The bill is a tool, and a step in the right direction. It is a break with past practices and attitudes and shows a practical understanding that sheer economics, budgetary and political constraints will always preclude the Alaska state government from providing truly adequate law enforcement and judicial resources in dozens of tiny, geographically remote villages, scattered across an area the size of the State of Ohio. It also recognizes that tribal governments can help plug the gap, and it adds an element of prevention and early intervention that is lacking in the state system.

We appreciate that Senator Begich, Chairman Akaka, and this Committee, are willing to roll up your sleeves to help us put into place locally-controlled, culturally-relevant practices to help reduce social problems. You will help save lives in some of our most remote and neediest villages in the country and in Alaska. I want to be very clear that we don't want to take over responsibility for criminal courts, jails, and law enforcement. We simply want to do our share—to do our part—to do what we can to help. Complicated jurisdictional disagreements with the state really should not get in the way of providing needed, common sense solutions in the villages. The longer they go on, the longer our people will suffer and lives will be destroyed or lost.

In addition to establishing the demonstration project on tribal law enforcement and courts, the bill will open a new temporary federal funding stream in support of the project. This includes both training of our tribal courts and administrators and some additional funding for law enforcement. The demonstration project as provided in the bill is well designed and provides a step by step process. It will work.

Closing

In closing I wish to stress I mean no disrespect for the Alaska state government or the current state administration. I have great respect for Governor Parnell. He has shown a deep commitment to addressing alcohol and drug abuse, domestic violence and sexual assaults in Alaska. In rural Alaska, in recent years the state has expanded the Village Public Safety Officer Program. I have great respect for Village Public Safety Officers, and the Alaska State Troopers and the Alaska Court System. Our VPSO's have the most difficult jobs that I can imagine. But there are simply inherent constraints such that the state is never going to pay for magistrates and state police officers in 200-plus villages. The bulk of the population and the political power in Alaska are in the urban areas of Anchorage, Fairbanks and Juneau. Even the VPSO program, which is an excellent program specifically designed for villages, is hampered by relatively low wages, lack of housing, difficulty in recruitment and other limits.

I have witnessed first-hand the largely unchanged social problems in many villages that have existed since my childhood days. We still hear of family violence, bootlegging, and sexual abuse. It seems not a week goes by when we hear of another suicide or death.

There is no single solution to these difficult problems nor are there any easy answers. The right solutions will likely vary from region to region, community to community, and involve more than just one agency and more than one just one program or approach. We need and want our tribal governments and tribal law enforcement and courts to be part of the equation. We want to be part of the solution. Tribes are already there, providing services on the ground.

The Alaska Safe Families and Villages Act will break new ground by actually recognizing that Alaska tribal governments have a role in and are part of addressing the important needs for law enforcement and judicial services in remote areas. For this reason the Alaska Federation of Natives, the Bristol Bay Native Association, and our sister regional Native non-profit tribal consortiums consider this bill a very

high priority. We believe this bill will be a very positive step toward empowering local communities and local residents to take care of problems at home.

Thank you again Chairman Akaka and members of the Committee for giving me this opportunity to testify.

Attachment

ALASKA FEDERATION OF NATIVES, INC.

2011 ANNUAL CONVENTION

RESOLUTION 11-29

TITLE: SUPPORTING S. 1192 THE ALASKA SAFE FAMILIES AND VILLAGES ACT

WHEREAS: All children are created with the inherent right to be safe, loved and nurtured, to receive excellent health care, nutrition and shelter, and to be heard, seen, believed and acknowledged; and

WHEREAS: All of the children in our regions have the right to a name, a tribal identity and the right to remain safely with his/her birthparents, to know their extended family and community, to know their tribal and cultural traditions and language, which all are an important part of a child's identity and essential to our survival as a people; and,

WHEREAS: All children and families have the right to be free of physical, emotional, and mental abuse and neglect, and free of discrimination, racism and the demeaning or destructive acts of others, both individuals and institutions; and,

WHEREAS: All children, youth and families have the right to access, learn about and benefit form our tribal and native history, culture, language, spiritual traditions and philosophy and art, and we believe that connectedness to their tribal and native history and culture is essential to their well-being and health; and,

WHEREAS: Some Alaska Native villages have the highest rates of alcohol abuse and family violence in the country; and,

WHEREAS: There has been an absence of clear authority, lack of resources and misunderstandings among efforts by local communities, the State of Alaska, and the federal government in addressing current social issues at the local and tribal levels ; and,

WHEREAS: There is an actual and/or perceived stripping of authority of traditional Native Institutions and Native Ways of Knowing that has occurred since statehood, and that this has left a gap or lack of resources and services that can never be filled by state law enforcement, state courts, state child protection services, operating out of regional centers; and

WHEREAS: Our Native Villages, Tribal Governments, and Tribal Leaders have the responsibility and the inherent right to ensure that all our tribal children, families and communities are safe, healthy and free of violence; and

WHEREAS: Senator Mark Begich introduced the Alaska Safe Families and Villages Act, S. 1192; and

WHEREAS: This bill would create a demonstration project by which participating tribes would be able to locally enforce tribal laws regarding alcohol and substance abuse, domestic violence and child abuse and neglect, and a grant program to support the project; and

WHEREAS: There is a high need for additional resources to help address the social issues using local and tribal strengths; and

NOW THEREFORE BE IT RESOLVED by the Delegates of the Alaska Federation of Natives Annual Convention urges Alaska's Delegation to do all that is necessary to enact S. 1192, Alaska Safe Families and Villages Act.

SUBMITTED BY: ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS

COMMITTEE ACTION: DO PASS

CONVENTION ACTION: PASSED

The CHAIRMAN. Thank you very much.
Commissioner Masters, please proceed with your testimony.

STATEMENT OF JOE MASTERS, COMMISSIONER, ALASKA DEPARTMENT OF PUBLIC SAFETY

Mr. MASTERS. Good afternoon. I am Joe Masters and I am the Commissioner for the Alaska Department of Public Safety, whose mission is public safety in the State of Alaska.

As a matter of introduction, I am a Yupik Eskimo and I have been raised in the Aleutian Islands. I have been a law enforcement officer for 29 years and began my career as a village public safety officer in the village of Unalakleet. I later became a city police officer and then spent 20 years as an Alaska State trooper and I have been the Commissioner for the past three years.

Mr. Chairman, Members of the Committee, Senator Begich, thank you for this opportunity to comment on behalf of the State of Alaska on this Senate bill.

Assuring that families and villages in Alaska are safe is unquestionably an objective that the State of Alaska shares with the Federal Government and with all Alaska Tribes. I would like to do two things in my testimony: first, outline for you the State's recent efforts to improve law enforcement in rural Alaska Native villages; and second, to respectfully suggest to the Committee that the serious issues facing rural Alaska require a different long-term framework than provided in the Act.

And I would welcome an opportunity to assist the Committee and the bill sponsors to overcome our concerns.

Alaska's Governor Sean Parnell has made unprecedented investments in improving rural justice, including establishing a 10-year State initiative to end domestic violence and sexual assault. As part of that initiative, he made the unprecedented commitment to ensure that there is a law enforcement presence in every village.

To that end, he has increased the hiring of village public safety officers and shared the vision of adding 15 of those positions each year for 10 years. To give you some idea of the extent of these recent efforts, in 2008 there were 46 VPSOs in rural Alaska villages within the program, funded at $5.7 million. Today, there is funding for 101 positions, and importantly, the Governor wants to bring that number to 116 with program funding that could exceed $19 million in State fiscal year 2013. This is a 325 percent increase from just a few years ago.

It is not just about VPSOs. There are also more than 100 village police officers and Tribal police officers in Alaska communities providing a law enforcement presence in all but 75 Alaska communities.

Alaska is also seeking partnerships with Department of Interior BIA for law enforcement technical assistance and training for these VPO's. We have added State troopers in support positions in rural Alaska to increase our presence and response capacity, as well as increased training and assistance for all categories of law enforcement officers.

The efforts are not confined to law enforcement. The Governor's domestic violence initiative funded and completed baseline studies of the actual incidents of sexual assault and domestic violence in Alaska to assist future policy, fiscal, and programmatic decisions.

These efforts collectively mark a concerted, serious, and ongoing commitment by the State of Alaska to address the precise issues of concern stated in S. 1192. The belief that law enforcement efforts are broken or that Alaska cannot or will not provide services to Alaska Native villages is not accurate.

I would like to suggest a framework for proceeding that would build on and develop already existing Federal-State-Tribal partnerships. The State already has solid partnerships with many Federal agencies, and we can build on these partnerships to the benefit of Native communities and to the State of Alaska as a whole.

We have a number of specific suggestions for moving forward. Federal dollars directed to assist villages with public safety infrastructure needs and to hire and train officers such as VPSOs and VPOs would go a long way to increasing safety in rural Alaska. Targeted programmatic Federal assistance for education, prevention, and early intervention programs to address underlying social issues such as substance abuse and truancy would also be immensely beneficial.

There are provisions within this Act that unquestionably promote safety and will enable Tribes to take a more active role in their own wellness. However, the Act also contains ambiguous provisions that the State believes may create Indian Country and may create Tribal criminal jurisdiction that will be counterproductive to those collaborative efforts I just spoke of.

Alaska Attorney General John Burns has specifically commented on these issues in a letter that is included with my written testimony.

Dividing the State into jurisdictional project areas subject to separate rules and separate court systems is not a practical approach for the long term. Rather, programs addressing law enforcement training, programs for technical and programmatic support to village and Tribal councils, and programs directed to regional and community efforts are all areas where the Federal Government can truly be part of the solution. And we hope that you will consider these specific ideas.

Although I am not testifying on S. 1763, I do want to let you know that we have made specific comments that are pertinent to your review and they are also contained within my written testimony.

In closing, we believe practical, programmatic solutions do exist to the intractable issues of violence and crime in our rural communities. And those solutions are preferable to a top-down federally imposed jurisdictional solution.

Moving forward, we appreciate the opportunity to offer input and work with the Committee staff and Tribal partners to seek a consensus about how best to proceed in Alaska and are dedicated to devoting the staff and resources necessary to make this happen.

Thank you.

[The prepared statement of Mr. Masters follows:]

PREPARED STATEMENT OF JOE MASTERS, COMMISSIONER, ALASKA DEPARTMENT OF PUBLIC SAFETY

Good afternoon. My name is Joe Masters and I am the Commissioner of the Alaska Department of Public Safety, the statewide agency whose mission is to ensure public safety in the great State of Alaska.

Thank you, Chairman Akaka and members of the Committee, for this opportunity to comment on behalf of the State of Alaska on Senate Bill 1192, the Alaska Safe Families and Villages Act, and Senate Bill 1763, the Stand Against Violence and Empower Native Women Act (SAVE Native Women Act) and on Alaska's commitment to keeping families, homes, and communities free from the fear of sexual assault and domestic violence.

The State shares the goal of improving life in rural Alaska

Assuring that families and villages in Alaska are safe is unquestionably an objective that the State of Alaska shares with the federal government and with all of Alaska's tribes. The goal of improving the quality of life in rural Alaska while reducing domestic violence against women and children is timely and relevant and I am encouraged to see the recognition of this as a federal responsibility to Alaska native peoples regardless of Indian country. But it isn't just a federal goal; it is a mutual goal to which the State of Alaska is fully committed, and a goal which the state is taking major, concrete steps to achieve.

Alaska Governor Sean Parnell has made considerable investments into improving rural justice services including establishing a 10-year State initiative to end domestic violence and sexual assault throughout Alaska through four strategies: primary prevention; core victim services; offender accountability; and coordination and collaboration. Accomplishing these goals in our rural communities is an essential part of this initiative. We are now in year three of this ambitious program. We fully recognize that achieving this goal will take communication, cooperation, and coordination, not only on the part of state agencies like my Department of Public Safety, but also on the part of city officials and tribal administrators, and on the part of our federal partners.

Ways that the State is working hard to address sexual assault and domestic violence

Before I discuss the specifics of the pending legislation, here are some of the ways that the State of Alaska, with the full support of the Governor and the Legislature, is already demonstrating its uncompromising commitment to the goal of improving public safety in rural Alaska.

A major aspect of Alaska's Sexual Assault and Domestic Violence Initiative is to increase law enforcement presence in rural Alaska. Governor Parnell has made the unprecedented commitment to increase the hiring of Village Public Safety Officers (VPSOs) throughout rural

Alaska by adding 15 new positions per year for the next 10 years, so that every village in Alaska that wants a law enforcement presence in its community can have it.

In addition to VPSOs, Village Police Officers (VPOs) and Tribal Police Officers (TPOs) also provide paraprofessional police services in rural Alaska. These three categories differ in the training they receive and their funding sources. Currently, there are a combined 104 VPOs and TPOs in 52 communities. This places a law enforcement presence in all but 75 Alaskan communities--a number that is ever decreasing as the VPSO program expands.

The VPSO program represents an approach to rural policing that is tailored specifically to Alaska. In recognition of the scope of village life and of the range of public safety needs in these areas, the program was designed to train and employ individuals residing in the village as first responders to public safety emergencies such as search and rescue, fire protection, emergency medical assistance, crime prevention, and basic law enforcement. Working as a team with the Alaska State Troopers, VPSOs conduct misdemeanor and minor felony investigations with and can stabilize most volatile situations and protect crime scenes in more serious incidents until Troopers can arrive.

Under the Parnell administration, the VPSO program exemplifies the real benefits of a true partnership between the State, participating native organizations and rural communities. The Department of Public Safety provides funding to nonprofit regional native corporations to hire and employ VPSOs within their region, recognizing that these organizations are aptly aware of the specific needs of the areas to be served. Regional nonprofit native corporations employ the VPSOs, and the Department of Public Safety provides training, equipment, and over sight. Both entities work to provide VPSOs with direction suited to the specific needs of the communities in which the VPSOs live and work. Additionally, three new State Trooper positions have been added in Bethel, Kotzebue, and Fairbanks to focus specifically on supporting VPSOs, and to work with VPSOs, native non-profit organizations and village and tribal councils to enhance the quality of service and strengthen the collaborative partnership.

VPSOs are an effective mechanism for villages to have strong local influence and control over public safety needs, and positions can be filled through local hire reflective of the cultural composition of the region. For example, if you look at the southwest region of Alaska, the Alaska Association of Village Council Presidents (AVCP) has filled their positions reflective of 90% local hire and Alaska Native hire. Their highly effective hiring practices will likely result in more effective policing in the villages and in a way that is culturally relevant to their community.

VPSOs receive 10 weeks of training and instruction on law enforcement, first aid, and firefighting, all of which is provided by the Department of Public Safety at its Training Academy

in Sitka, Alaska. In contrast, VPOs and TPOs receive just two weeks of formal training. The Department is currently exploring ways to collaborate with criminal justice partners and private entities to increase the training to VPSOs, as well as provide the same level of training to qualified VPOs and TPOs. In this regard, I have made specific requests to the Department of Interior, BIA Office of Justice Services to partner with the state in providing technical assistance and training to villages, tribes, and officers.

In State Fiscal Year 2008, funding for the VPSO program was $5.7M. In State Fiscal Year 2013, VPSO program funding could exceed $19M. This is an increase of more than 325 percent in just five years. The State is further investing in this program by providing funding through the Alaska Housing Finance Corporation for VPSO housing in the amount of $1M in both State Fiscal Year 2011 and 2012. The Governor will be asking for this in State Fiscal Year 2013 as well. The focus on housing supports a recommendation of the Alaska Rural Justice and Law Enforcement Commission to improve and expand housing for public safety officers in rural Alaska.[1]

In 2008, there were 46 VPSOs in rural Alaska. Today there is funding for 101 positions, with 88 of those filled in 74 rural communities. And at the recent Alaska Federation of Natives Convention, the Governor reaffirmed his commitment to ask for 15 new positions in his State Fiscal Year 2013 budget request; this would bring the number of VPSOs to 116.

The presence of VPSOs has had a significant impact on improving the quality of life in participating villages. Studies have shown that: villages with a local paraprofessional police presence, such as a VPSO, have rates of serious injury caused by assault that are 40 percent lower than in villages without a local paraprofessional police presence;[2] sexual assault cases originally reported to local paraprofessionals are 3.5 times more likely to be prosecuted;[3] and cases of domestic violence first reported to a VPSO or VPO are 2.4 times more likely to result in a conviction.[4] My department is also adding trooper positions in rural Alaska. After a decades-long absence of a permanent Alaska State Trooper post, the village of Selawik will house two troopers to give the village a continual trooper presence. This was in response to requests from the community and the Northwest Arctic Borough to make villages in that region safer and would not have been possible without the cooperative and combined efforts of the State, the Borough and the village government.

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[1] Alaska Rural Justice and Law Enforcement Commission. (2006). Initial *Report and Recommendations of the Alaska Rural Justice and Law Enforcement Commission, 2006*. Anchorage, AK: Alaska Native Justice Center.

[2] Wood, D. S. and Gruenewald, P. J. (2006). Local alcohol prohibition, police presence and serious injury in isolated Alaska Native villages. *Addiction*, 101: 393–403.

[3] Rosay, André B. (20 Aug 2010). "Overview of Sexual Assault in Alaska" (PowerPoint slide presentation). Slide presentation presented to the U.S. Department of Justice Roundtable Discussion, Anchorage, AK.

[4] Rivera, Morny; Rosay, André B.; Wood, Darryl S.; and Tepas, Katherine. (Fall 2009). "Predicting Legal Resolutions in Domestic Violence Cases." *Alaska Justice Forum* 26(3): 1, 8–12.

Further efforts of my department, supported through Governor Parnell's initiative, include staffing a new position to increase training to VPSOs, VPOs, TPOs, and other first responders such as behavioral health aides and village health aides in recognizing and responding to crimes involving domestic violence, sexual assault, and sexual abuse of minors; the goal being to enhance services to victims in rural Alaska and increase the reporting of these crimes to law enforcement.

Additionally, three new State Trooper/Investigator positions have been funded to provide vital follow-up investigative activities in cases involving domestic violence, sexual assault, and sexual abuse of minors, with one of these positions stationed in Bethel, Alaska. By dedicating troopers to concentrate on follow-up investigative activities we are increasing the likelihood of successful prosecution and holding offenders accountable.

With respect to addressing substance abuse, my department supports eight multi-jurisdictional teams dedicated to illegal alcohol and drug enforcement throughout the State. We have solid partnerships with federal agencies involved in drug investigation and enforcement, including: the Drug Enforcement Administration (DEA); the Internal Revenue Service (IRS); the Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATF); and U.S. Immigration and Customs Enforcement (ICE). Members of Alaska's law enforcement community and other criminal justice professionals have long known that the greatest contributing factor to violent crimes, including domestic violence and sexual assault, is drug and alcohol abuse. It is also widely recognized that many of the accidental deaths that occur in Alaska are related to alcohol use. The Western Alaska Alcohol and Narcotics Team (WAANT) covers the entire western region of Alaska including Kotzebue, Nome, Bethel, Dillingham, and the Aleutian Chain to curb the flow of illegal drugs and alcohol into these rural communities, and often works with the assistance of residents who want to keep their villages safe. In 2010, the WAANT unit seized over $330,000 in illegal alcohol and just over $1M in illegal drugs.[5]

Because much of the alcohol and drugs being sold illegally in Alaska are shipped through U.S. mail, the U.S. Postal Inspectors Service conducts interdictions with direct support from the Alaska State Troopers and the Alaska National Guard Counter Drug Support Program. Through this program, alcohol seizures with a street value of over $90,000 and illicit drugs with a street value of over $475,000 were interdicted in 2010.[6]

In 2011, the Alaska State Troopers partnered with the United States Marshals Service to conduct several outreach and crime reduction programs including: Badges to Books, a community outreach program where Troopers and Marshals visited traditional summer fish

[5] Alaska Bureau of Alcohol and Drug Enforcement, *2010 Annual Drug Report*
[6] *Ibid*

camps and handed out reading books to children; the Village Crime Reduction and Community Oriented Policing Program, which teamed with State Troopers, VPSOs, U.S. Marshals, U.S. Postal Inspectors, and local law enforcement to travel to villages to enforce sex offender registry, interdict alcohol and drugs, and to meet with schools, tribal and village councils.

These examples illustrate some of the federal, state, and tribal partnerships with respect to public safety that are already in place and making a positive difference in rural Alaska.

Other state agencies are working collaboratively with tribes and rural villages as well. The Department of Health and Social Services, in particular, has a number of statewide and regional programs that work directly with tribal organizations to expand and improve the delivery of health care services in rural Alaska. For example, the agency's Tribal Health Program provides statewide technical assistance to tribal health systems on Medicaid enrollment, billing, and staff recruitment and training. In the North Slope Borough and Kotzebue region, DHSS provides more than $1.4M annually for public health nursing services run by tribal health organizations. In Dillingham, a public health nurse is working with the Bristol Bay Area Health Corporation to conduct health screenings of school children, which includes immunizations, sports physicals, TB testing, and vision and hearing screening. And in Homer, public health nurses have worked with the Seldovia Village Tribe to develop a culturally appropriate screening tool for domestic violence.

The Governor's sexual assault domestic violence initiative has also funded and completed baseline studies, both statewide and regional, of the actual incidence of sexual assault and domestic violence in Alaska to obtain verified statistics, not just anecdotal evidence, on how and where this violence is occurring. In State Fiscal Year 2011, Dr. Andre Rosay, through the State and the University of Alaska Anchorage's Justice Center, completed a preliminary victimization survey.[7] In State Fiscal Year 2012, the survey narrowed its focus to specific regional statistics for Anchorage, Fairbanks, Dillingham, and Juneau. More data collection from rural communities is expected.

The governor's initiative has also funded pilot project prevention and early intervention programs in Dillingham, Kodiak, Sitka, and Bethel. And the initiative continues to fund the highly successful Family Wellness Warriors initiative for Alaska Natives: $200K for State Fiscal year 2012 Dillingham project; and in State Fiscal Year 2011, Dillingham received $200K and Bethel received $200K. The core of this initiative is an intensive education and training program that is culturally centered, faith based, and consists of both large group meetings and small

[7] http://justice.uaa.alaska.edu/avs/index.html

group sessions. It's based on the premise that individuals who have been subjected to trauma and abuse themselves have learned coping skills that negatively impact or harm others. Participants are challenged to identify and replace harmful relational styles with methods that enhance safe and healthy relationships through 3-5 day gatherings that integrate spiritual and cultural renewal with evidence-based psychology.

In the past two legislative sessions, Alaska passed new laws that toughen penalties for crimes of sexual assault and domestic violence and address the uses of new technology, like GPS stalking and Internet pornography, to commit those crimes.

Problems with sexual assault and domestic violence in rural Alaska are systemic and longstanding. But State law enforcement efforts, through the State's concerted efforts to hire and train local officers to serve in rural communities, and through the programs in the Governor's initiative, demonstrate the state's commitment to improving the quality of life in these communities. I submit to you that Alaska's rural justice system can be improved, and there is a justifiable perception that supports the notion that it has been under-funded. But the system is not broken. We are encouraged that Congress is evaluating Alaska's law enforcement needs, and suggest that collaborative efforts among the state, the federal government and the tribes are required to tackle this problem.

How can the federal government help?

There are significant provisions within the Alaska Safe Families and Villages Act that will promote safety and enable local communities to take a more active role in their own wellness. However, ambiguous provisions that may create Indian Country and criminal jurisdiction will be counterproductive to the collaborative efforts already in place.

For example, rather than creating a new category of law enforcement officer (as the proposal does), federal dollars directed to train existing officers, such as VPSOs and VPOs, would go a long way to increasing services in rural Alaska. Local law enforcement officers, whether village police officers, tribal police officers, or VPSOs, would benefit greatly from training and assistance in the following areas: organizing their departments and activities to provide effective services; writing police reports; documenting crime scenes with cameras and tape recorders; caring for evidence once seized; testifying in court; and ensuring that discovery is made available to criminal defendants and their attorneys. Alaska State Troopers have mini-academies in rural Alaska and a full-scale academy in Sitka with established training programs. With federal support, those programs could be expanded and rural officers could receive culturally relevant training with minimal disruption to their home and family life.

Social issues like substance abuse and truancy are at the root of many law enforcement issues. Because of this, targeted programmatic federal assistance to address these underlying issues

through prevention and early intervention programs, substance abuse programs, and education would be of benefit.

The Alaska Safe Families and Villages Act assumes that the federal government must step in and impose jurisdictional solutions. We don't believe that having the federal government divide the State into jurisdictional project areas for roughly 230 separate tribes is a practical approach for the long term. Alaska can point to specific needs for law enforcement training, technical and programmatic support to village and tribal councils, and other programs at the regional and community levels where the federal government can truly be part of the solution. We hope you will consider those.

We have previously commented on Alaska-specific jurisdictional issues that are presented by the Alaska Safe Families and Villages Act and we are attaching a recent letter from Attorney General John Burns to Senator Lisa Murkowski that specifically addresses those concerns. The State's chief concerns regarding the proposed legislation include: the creation of jurisdictional "project areas" that appear to create ambiguity as to the status of these areas and their relationship to Indian country in Alaska; the apparent provision of tribal court criminal jurisdiction both off-reservation and over non-tribal members, in derogation of the U.S. Supreme Court's decision in *Oliphant v. Suquamish Tribes*;[8] the provision of general tribal civil jurisdiction over non-members where consent to a tribal court's jurisdiction can be inferred by the mere fact of a "relationship" with a tribal member, which we believe is an expansion of law not supported by the U.S. Supreme Court's decision in *Plains Commerce v. Long Family Cattle*;[9] and, the provision of full faith and credit recognition of tribal court orders, when a more appropriate and conventional recognition standard would be under the doctrine of comity.

SAVE Native Women Act

I would also like to comment briefly on the SAVE Native Women Act. Decreasing violence against Alaska Native women is a goal that is part and parcel of Governor Parnell's sexual assault and domestic violence initiative, an initiative that reaches every man, woman, and child in the state. Thus, the State fully supports efforts to assure that violence against all women, including Native women, is curbed at its root.

Historically, because of the Alaska Native Claims Settlement Act and the U.S. Supreme Court's interpretation of it in *Alaska v. Venetie*,[10] the jurisdictional paradigm, especially regarding tribal criminal jurisdiction in Alaska, is unique. Alaska has only one reservation, and apart from that

[8] Oliphant v. Suquamish Tribe, 435 U.S. 191 (1978)
[9] Plains Commerce Bank v. Long Family Land and Cattle, 554 U.S. 411 (2008)
[10] Alaska v. Native Village of Venetie Tribal Government, 522 U.S. 520 (1998)

reservation, virtually no Indian country. In a previous draft version of section 204 of the SAVE Native Women Act, tribal court criminal jurisdiction was explicitly limited to Indian country and therefore did not extend to most of Alaska. Thus, in these comments, Alaska would ordinarily leave it to states like New Mexico with Indian reservations to weigh in on whether this legislation, on its merits, appropriately aids in the protection of Native women. But as introduced, S. 1763 contains language in section 201 (amending 204(b)(1) and (e)(3)) that may create ambiguity as to its applicability in Alaska. We believe the explicit limitation of tribal criminal jurisdiction to Indian country, as defined in 18 USCU.S.C. § 1151, has been made less clear by referring to "inherent" tribal criminal jurisdiction in section 201. We also believe that Section 202(e)'s reference to "Indian land" could be clarified by referring instead to "Indian country." These changes would leave intact the overall laudable and important goals of the Act, while making clear that the Act is not intended to confer criminal jurisdiction outside of Indian country in Alaska.

Again, we look forward to working with the committee and staff to seek programmatic solutions that assist rural Alaska.

In summary, we are grateful for the opportunity to address this committee today on issues of such critical importance. Alaska's leaders, through the administration, my agency, the Departments of Law, Health and Social Services, Corrections, and others, are working hard to bring justice to all of its citizens, rural and urban alike. We are one state, one people. We respect and acknowledge the role of the federal government in Alaska's affairs, but ask that that role include consultation and collaboration with the State. We believe there are practical, programmatic solutions to the issues of violence and crime in our rural communities, short of legislation that imposes a top-down, federal jurisdictional solution. We welcome the opportunity to work with the committee and staff to seek a consensus about how best to proceed in Alaska.

Attachment

STATE OF ALASKA
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August 19, 2011

Via U.S. Mail and E-mail to: Kristen_Daimler@murkowski.senate.gov
Amy_Erickson@murkowski.senate.gov

The Honorable Lisa Murkowski
709 Hart Senate Office Building
Washington, D.C. 20510

Re: Alaska Safe Families and Villages Act
S. 1192

Dear Senator Murkowski:

I am writing to you because of concerns the State of Alaska has with the Alaska Safe Families and Villages Act (S. 1192-ASFVA) introduced by Senator Begich. The State of Alaska shares the goal of addressing domestic violence and alcohol problems in Alaska. However, Alaska does not agree with the approach proposed in S. 1192. ASFVA was drafted in part by tribal advocates who have goals far beyond addressing domestic violence and alcohol problems. Not surprisingly, the legislation unnecessarily emphasizes issues of sovereignty and Indian country rather than focusing on addressing the difficult drug and alcohol problems faced by Alaska citizens. The legislation, if passed, would effectively divide Alaska into multiple jurisdictional operating zones. Alaska does not believe this solution is prudent in the long term for Alaska, or Alaskans.

ASFVA is a complex piece of legislation with wide-ranging problems. A few of the more troubling aspects of the legislation are as follows:

(1) Congressional Findings Used to Justify Federal Intervention

ASFVA starts with a list of what are purportedly Congressional "findings" which are used to justify Congressional intervention in Alaska. The findings indict State law enforcement efforts, and suggest that, as a result of the perceived deficiencies, Congress must exercise its "plenary authority" in Alaska to establish a federally mandated system of concurrent state-tribal jurisdiction.

It's not entirely clear where these "findings" came from, or whether any study or studies were ever done to support them. These findings should not be made lightly.

Congressional findings can last for decades, and have the potential to influence federal-state-tribal relations for years to come. For example, the Congressional findings in the Indian Child Welfare Act—enacted in 1978—are still commonly cited today in court decisions, by federal administrative agencies, and in child custody literature. Even if the ASFVA pilot program ends after the stated five year duration, the findings could be used for many years to justify future broad-based federal interventions in Alaska.

We recognize, of course, that Alaska—particularly rural Alaska—poses challenges. That is why the Parnell Administration plans to fund, train and support a VPSO for every community that asks for that law enforcement presence. There were 46 filled VPSO position in July 2008. Since then, the State of Alaska has added 41 VPSOs and intends to add 17 more by the end of 2011 under current authorized funding. The State also supports training for Village Police Officers (VPOs). These and other ongoing efforts demonstrate a long-term State commitment to address and improve the very issues which are the subject of proposed findings. Memorializing the negative findings in law when so much positive momentum is underway is bad policy, and it will accomplish nothing more than to drive a larger wedge between the federal government and the State of Alaska.

While tribal advocates may want to encourage broad-based federal intervention in Alaska, we believe the more appropriate focus is on existing and future State efforts to care for state citizens. The roughly $18 million budgeted for establishing a comprehensive "pilot program" could be put to better use in existing State programs and initiatives such as VPSO housing.

(2) The "Project Areas" Could Be Construed as Indian Country, and Undermines ANCSA by Geographically Dividing the State Based on Claims of Native Use or Occupancy

The statute provides that Tribes and the Office of Justice Programs will establish "project areas" within which Tribes will exercise jurisdiction concurrent with the State of Alaska. The project areas are specific, geographically identified zones proposed by a Tribe and approved by the OJP. The State has no apparent role in the project area designation process.

The federal government has a trust responsibility to Tribes, and the act of creating a geographic area within which Tribes exercise concurrent jurisdiction raises concerns about the creation of Indian country. Merely saying that the legislation neither "confirms nor denies" (Sec. 4(k) the existence of Indian country only heightens the overall concern. Although we do not support the idea of project zones, at a minimum the legislation should clearly and unequivocally state that no Indian country is created.

Allowing Tribes to exercise geographically-based jurisdiction runs counter to the Alaska Native Claims Settlement Act which settled Indian land claims. The project areas raise the specter of a state divided into various geographic zones—with different rules and laws depending on which zone a person works or lives in.

ANCSA was intended to end the "sort of federal supervision over Indian affairs that had previously marked federal Indian policy." *Alaska v. Native Village of Venetie*, 522 U.S. 520, 523-24 (1998). ANCSA sought to end all claims of "aboriginal right, title, use or occupancy of land or water areas," or claims based on statutes or treaties. 43 U.S.C. § 1603(c). ANCSA specifically intended to avoid any "permanent racially defined institutions, right, privileges or obligations," or creating a "lengthy wardship or trusteeship." 43 U.S.C. § 1601(b). ASFVA, by contrast, moves the State of Alaska in the wrong direction by revisiting these issues, and it directly and indirectly undermines the spirit and intent of ANCSA.

Interestingly, ASFVA does not offer any hints about what happens when the demonstration project ends. Does the project area disappear as a matter of law? What becomes of the tribal rules and authorities? Difficult questions about state-tribal relations are simply not addressed.

(3) Potential Creation of Tribal Criminal Jurisdiction Outside Indian Country

As a general matter, no tribal criminal jurisdiction exists outside Indian country. Yet ASFVA does not clearly limit its scope to civil jurisdiction matters. ASFVA does not place any explicit limitations on the topics of tribal laws or ordinances "certified" by the Office of Tribal Justice. (Sec. 4(h)(2).) Perhaps more troubling, ASFVA would appear to invite criminal sentences of incarceration by Tribes. (See Sec. 4(j)(3), Sec. 7.) ASFVA also recognizes banishment as a penalty. (Sec. 4(j)(4).) Permanent banishment is almost certainly "punitive" and therefore a criminal penalty, and Congress may not by legislative fiat simply treat punitive measures as being a "civil remedy." Finally, the appropriate "sanctions" are also not explicitly restricted to civil remedies, saying only that Tribes may impose any sentence as "appropriate." (Sec. 4(j)(2).)

ASFVA's overall intent is simply not clear enough. If the goal is to allow the imposition of certain non-punitive, civil remedies, that goal must be clearly and unequivocally stated.

(4) Jurisdiction Over Non-members

ASFVA broadly provides that Tribes can exercise jurisdiction over anyone who has a "consensual relationship" with the Tribe. Current federal law narrowly limits the circumstances under which a Tribe may exercise jurisdiction over a nonmember to areas such as commercial dealings. A broad and ill-defined nonmember "consent" standard represents a truly enormous expansion of tribal jurisdiction. Virtually any act could be deemed "consent": living in a project area, entering a personal relationship with a tribal member, or perhaps even driving through a project area. On the important issue of "consent," ASFVA fails to provide any guidance. This lack of detail is unfair to all Alaska citizens, but it is particularly unfair to non-tribal members who as a general rule have no role in setting tribal policies or rules.

The proposed ASFVA statute does not limit project areas to rural regions, thus raising the prospect of a Tribe exerting concurrent jurisdiction with the State of Alaska even in urban regions like Anchorage, Fairbanks, or Juneau. Merely living in those areas could potentially subject thousands of Alaska citizens—whether tribal members or not—to a Tribe's jurisdiction. To most non-tribal members, this would be a baffling, probably unfathomable, outcome.

Two central problems with ASFVA exist: (1) ASFVA focuses too much on trying to advance tribal jurisdictional goals, and not enough on the specific problems it claims it wants to address: alcohol and drug problems, and law enforcement; (2) it is too vague about topics like criminal jurisdiction and Indian country. The way to move forward on these issues is to work in tandem, not to further balkanize the State of Alaska into multiple jurisdictional operating zones.

The State of Alaska is closely monitoring this legislation with John Katz in our Washington, D.C. offices. I know John has spoken with you about this legislation on one or more occasions. We would be happy to answer any follow-up questions or concerns you might have.

Sincerely and appreciatively,

John J. Burns
Attorney General

The CHAIRMAN. Thank you very much, Commissioner Masters.

I will hold my questions. I will ask Senator Murkowski to make a very quick statement, and then I will call on Senator Franken for his questions and remarks.

Senator MURKOWSKI. Mr. Chairman, thank you. And I apologize particularly to our two Alaska witnesses, Commissioner Masters and Mr. Andersen. I have to duck out of the Committee here and go over to the Capitol, and I am hoping that I can dash back in time to ask my questions. If I am not able to, I will be submitting those questions for the record.

But I first want to thank you not only for making the long haul back here, but for your testimony and for your commitment to work with us to address the issues that have been discussed here today, not only on Senator Begich's bill, but as we look at the bigger legis-

lative issue which faces so many in our reservations and up in Alaska.

So Mr. Chairman, I am going to dash and I am hoping that I am going to be back in time.

Thank you.

The CHAIRMAN. Thank you, Senator Murkowski.

Senator Franken?

Senator FRANKEN. Thank you, Mr. Chairman.

Ms. Koepplinger, when this Committee met in July, we heard testimony about the cycle of violence in Indian Country. Children who were exposed to violence at a young age are more likely than their peers to commit acts of violence or suffer from acts of violence when they become adults. According to the Shattered Hearts report that you cited in your testimony, young Indian sex trafficking victims believe, "that a cycle of violence has been normalized in their communities."

The SAVE Native Women Act authorizes services for children and for non-abusing parents, and I think this is a good step for breaking the cycle of violence in Indian Country. I would imagine that you would agree.

Ms. KOEPPLINGER. Yes.

Senator FRANKEN. What types of services should these children be receiving to keep them off a path toward violence?

Ms. KOEPPLINGER. Thank you, Senator Franken. I do agree that services to our young people and to entire family systems is part of the solution. The services are complex and they need to be holistic and they need to be culturally based.

Housing is a critical need. We have young people on the streets of our towns and our cities who have no place to go, who engage in what they refer to as survival sex simply to have a place to sleep at night or to have food to eat. So housing, safe appropriate shelter that is long term, that meets these children where they are and can address their multiple needs is absolutely critical.

Family reunification and preservation when possible is absolutely critical. We want to make sure that when there's a safe adult for a young person to be reunified with, whether that is on the reservation or in the city, that we are able to facilitate that.

Mental health, chemical help services, parenting services, educational assistance, the list goes on and on. But these kids didn't fall into these dangers in a short amount of time. They typically have been accumulating traumas since they were very young, which makes them extremely vulnerable to predators. And so we have to work entire family systems and we have to work with the school system and our law enforcement and public health officials and the Tribes to makes sure that we are providing the wrap-around services that these young people need.

Senator FRANKEN. You brought up homelessness. You recently wrote a report for the Online Resource Center on Violence Against Women in which you point out that sex traffickers target homeless Native women and children. And the Minnesota Indian Women Resource Center's Shattered Hearts report notes that nearly one-third of Native women were physically or sexually attacked while they were homeless.

I know there is a huge unmet demand for homeless shelters and for transitional housing services, and we must do more to meet that demand. We also must do more to ensure that victims of domestic and sexual violence do not become homeless in the first place. So I am working on a bill that will make it unlawful to evict a woman from federally supported housing just because she is a victim of domestic violence, dating violence, sexual assault or stalking. This is a preventive measure that will allow victims to keep their homes when they need shelter the most.

I am so grateful to you, Ms. Koepplinger, for the Minnesota Indian Women's Resource Center's endorsement of that bill and I would like to thank you personally for the valuable feedback you provided on it. I am looking forward to introducing that bill soon.

Can you talk a little bit more about the relationship between homelessness and sexual violence, and explain why stable housing is so important to victims?

Ms. KOEPPLINGER. We see very strong links between sexual assault, being vulnerable to predators, and the lack of stable and secure housing. And we are very happy to support the bill that you referenced. We think it is a critical step in keeping women safe.

We know that many women stay in abusive situations because they can't afford to move out, which puts them a greater risk for additional violence. We know that when women are forced to leave because the violence is too great or they fear for their children, if they are on the streets, if they are couch-hopping, if they are sleeping in shelters, they are again more vulnerable to predators.

We know that some women who have no other options, if they don't have an education or they have no functional job skills and they can't find a job will turn to the streets because they have children to feed. Perhaps their welfare benefits have run out. And because of the normalization of sexual violence, it in some ways has become an option for some people.

But we absolutely see this every single day with the women that we work with at the Indian Women's Resource Center. If there is not a safe place to stay and if there is not a place for the children to go to school on a regular basis, it only adds to the risk that they are facing every single day.

Senator FRANKEN. Thank you very much.

Mr. Chairman, I see I am out of time. I do have a question for Mr. Heffelfinger.

The CHAIRMAN. Please proceed.

Senator FRANKEN. I can proceed? Thank you.

Mr. Heffelfinger, thank you for coming. In your written testimony, you say that the SAVE Native Women Act will empower Tribes who are on the front lines of the efforts to fight domestic violence.' I would like to hear a little bit more about that.

Drawing on your experience as a Federal prosecutor, can you explain why it is so important that Tribal courts be given jurisdiction over cases involving non-Indians who commit acts of violence against women in Indian Country?

Mr. HEFFELFINGER. Chairman Akaka, Senator Franken, in addition to having been a Federal line prosecutor, I was also a State prosecutor in Minneapolis. And it is based on that experience that it is my conclusion domestic violence is among those types of crimi-

nal offenses which are most properly handled as close to the community, as close to the act level as you possibly can.

Compare, say, crimes like drug dealing or bank robbery, these are ones in which you can form a regional or a statewide kind of strategy. But you have to deal with crimes like domestic violence, which are within the family kinds of crimes, child abuse is another good example, at the level of the community itself. The community is in the best position to respond to those crimes, to prevent those crimes.

What is wonderful about this Act is that it lets the courts and the law enforcement and the prosecutor, who are right there in the community and have the ability to respond immediately and directly to the violence going on in that community. And that is not simply making arrests and initiating prosecutions. It is also the ability to give the courts jurisdiction to fashion a sentence that can not only punish, but prevent and deter. And that is much better if done on Red Lake than it is if done to a Red Laker by a judge sitting in St. Paul.

That is why I believe one of the reasons this bill will be very effective when implemented.

Senator FRANKEN. I just want to follow up, because part of the question I was trying to get it is jurisdiction over non-Indians. And this is partly the *Oliphant* decision. Why is that important? That, in other words, on Red Lake, maybe it isn't a domestic violence situation. Maybe it is a sexual assault. Why, in your opinion, is it important that Red Lake have jurisdiction over a non-Indian perpetrator?

Mr. HEFFELFINGER. Well, it starts with the statistics, Senator. As the Amnesty International report showed, something like 60 percent of domestic violence offenders are non-Indian upon Indian. And how can a local law enforcement officer, a local prosecutor, respond to a crime if it makes a difference what the race is? You are taking 60 percent of the offenders and basically making them immune.

In the local community, where you are attempting to respond to domestic violence, if you have 60 percent of your offenders that are outside the jurisdiction of your local police and your local courts, you have 60 percent that are untouchable.

Senator FRANKEN. I just want to make sure that we are working on the same definition of domestic violence because I am talking about sexual violence, say, from a non-Indian who may not know the victim.

Mr. HEFFELFINGER. Domestic violence includes, as defined in this Act, Senator, both date violence as well as a longer-term relationship. And so domestic violence as laid out in the Act as I would interpret it physical violence, but I would also interpret that as sexual violence in the domestic or dating arena.

And if Tribal law enforcement, which is in the best position to address these crimes, is to be effective, it has to have jurisdiction over all the offenders in that community. Otherwise, you have a group of offenders who are essentially immune because you are relying on people who are outside of the community and remote from the community to provide that support.

Senator FRANKEN. And thus your very, very eloquent statement from the gentleman that you quoted at the beginning of your testimony.

Mr. HEFFELFINGER. Without sovereignty, how can you protect? How can you have sovereignty when you can't protect?

Senator FRANKEN. How can you have sovereignty when you can't protect your women and children?

Thank you both for coming.

The CHAIRMAN. Thank you very much, Senator Franken.

Let me call on Senator Begich for any questions he may have.

Senator BEGICH. Thank you very much, Mr. Chairman.

I do have just a couple of questions. And again, thank you for allowing me as a non-Member of the Committee to have some opportunity to ask questions and I appreciate that greatly.

To both members from Alaska, thank you, as Senator Murkowski said, it is a far distance to travel and those that are coming, especially from western Alaska, experienced an incredible storm that has hit with waves up to 30 feet high and winds up to 100 miles an hour and a little bit of snow and a little bit of ice. It is a very devastating impact that is occurring right now. And so I thank you for being here.

First, Commissioner, if I can ask you just a couple of questions. And I want to take a couple of exceptions, but I want to take you up first, as we talked yesterday, on your offer that we figure out and resolve some of the State's issues. I disagree with, as you know, as I said yesterday, the Attorney General's discussion about how this has jurisdiction or Indian Country implications, because as you have heard from the Co-Chair of AFN and myself, that is not the intent.

But I want to make it clear this is not a top-down approach. You stated that in your comments. This only allows the opportunity for Tribes to make a decision to develop a demonstration project from the community up. So I want to make sure we are on the same page here. If it was top-down, we would just dictate and say this is the way you are doing it. That is not what we are doing in this legislation. It creates another tool in the toolbox.

And I would beg to differ that the court systems are working. With 60-plus percent of offenders repeating their offenses in Alaska and a disproportionate amount of Alaska Natives in the judicial system, the system is broken. And we can argue what you define as broken, but when 60 percent re-offend, it is a system that is not working.

And when I faced this when I was Mayor of Anchorage, we, with the young people of our city, we introduced a program that was already in existence, but expanded it which was a simple program called Youth Court, designed and developed by youth themselves. No adults participated in the judicial process. The impacts, 90 percent of those kids do not re-offend; 89 percent pay their restitution. The State has embraced Youth Court all over the State. We had one. Now there are multiple.

The concept of youth Courts are based on Tribal courts, elder courts, youth and elder courts. They work.

So what is the real fundamental problem with allowing a tool to Tribes, not dictating to the Tribes, saying here is a tool. Because,

maybe we will disagree, I don't think 60 percent re-offender rate is a system that is working.

Mr. MASTERS. I guess, Senator, you are asking for a comment. I didn't hear the question.

Senator BEGICH. The question is what do you object to specifically in the idea of allowing Tribes to——

Mr. MASTERS. Senator, in response to that, first off there are already existing Tribal courts operating in Alaska. There are some semblances of community-type court or youth courts operating in Alaska as well, as you state.

There are currently officers that are employed by Tribes acting as peace officers in the State of Alaska. And there is a concerted effort by the State to put law enforcement in every community. A lot of the basic structure provisions are already in place in Alaska to be worked with and expanded upon, and that can be collaborative in order to be effective.

I do agree with the concept that offenses should be dealt with at the lowest level possible. I think that Tribal courts that already exist in Alaska can be effective in dealing with minor offenses and they can be very effective in dealing particularly with truancy and other types of issues in communities.

I think there is a great opportunity for the State of Alaska and Tribes to work together through some of the work that you are proposing in this bill. The primary concern the State of Alaska has with the bill is, like I stated in my testimony, and that is the potential expansion of criminal jurisdiction and the creation of Indian Country or de facto Indian Country. If we can get past that piece of the bill, I think this is a great opportunity to work together to provide programmatic, fiscal, policy, and pragmatic solutions to the issues in rural Alaska.

Senator BEGICH. Last question, if I can ask very quickly to the Co-Chair of AFN. I know, Ralph, this was just a concept, but really it was several Tribes that came to us and said we need some tools. And how do you see this issue of Indian Country, which I do not see this as part of this piece of legislation?

You said it more than once that it is not part of what your intent is. But do you see this as an effective method or tool, what we are trying to propose here, as a way to go after some of these issues that are not truancy, you are right, truancy and so forth, but we have to step it up. Because the real issues are domestic violence, sexual assault, the issues of substance abuse at a higher level.

Tell me why you think the Tribes really want to do this? I mean, I think I know, but——

Mr. ANDERSEN. Okay, thank you, Senator. It was the Bristol Bay Native Association, the Tanana Chief's Conference and Kawerak, three regional Tribal consortiums, and AFN that got together about two years ago, primarily because we had seen domestic violence, sexual assault perpetrators, bootleggers walking the streets at home.

People in the village of Gambell on St. Lawrence Island, there was a person that was there that was convicted or suspected of child abuse. Because the State trooper couldn't make it out there for a week or 10 days, that person was walking the streets. Fami-

lies, parents were keeping their children at home. They were afraid to live in their own village.

And that is just one example. We have other examples, too. We finally said enough is enough; that we have had enough. We have to do something about this. We can't have our own people, we can't have any person regardless of color, regardless of race, living in any of our communities in constant fear; constant fear of being beat up; constant fear of being molested or raped.

Trying to get a person arrested somewhere and getting them through the court system is really, really, really difficult; really expensive. Again, we don't want to take over jails. We don't want to take over criminals. We don't want to prosecute murders. We don't want to prosecute DUIs and those kinds of things, the criminal cases.

But we believe if we are able to prosecute and use our Tribal courts, use our elders, that is who the Tribal courts normally are. They are elders in the community, well respected, to tell kids, to tell delinquents you have to behave yourself, and sentence them to community service so the whole town sees they are set as examples.

Senator BEGICH. Thank you, Ralph.

And let me say again, Mr. Chairman, thank you for the opportunity to present the bill today. Thank you for both.

And Commissioner, we will take you up on the opportunity because I think the mission is the same. We have to change the way we do the business in rural Alaska. We have to change and create an opportunity of some new tools in the tool box to create a system that creates justice and ensures that people, no matter where they live in Alaska, don't have to fear living in their own community. So I look forward to working with you, Commissioner.

And again, Ralph, to you and your organization, thank you for your last two years of working aggressively on this legislation, and I underline aggressively. I look forward to working with you as we move this forward.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Begich. It is good to have you here with us. Thank you.

I would like to ask the Chairperson of Lytton Rancheria Mejia, can you describe the change in circumstances that led the Tribe to withdraw its support for the legislation?

Ms. MEJIA. Certainly, I would be happy to, Mr. Chairman.

There was a change in DOI policy for the restored lands exception. When I first started, I met with DOI and they had a different position. I mean, it was almost impossible to get a restored lands exception allowing you to have the land and do gaming on the land.

So that is why we sought authorizing legislation so that we could have our facility and start generating revenue for the Tribe. In 2009, we had seen the policy had changed within the Bureau of Indian Affairs on the restored lands exception, and we had conversations with them. In 2009, my team met with Senator Feinstein's staff and said at this point, we don't think we can continue on with the compromise, given this reason. And we laid it all out there.

So that is why we had to withdraw our willingness to work on that particular compromise.

The CHAIRMAN. Thank you very much.

Mr. Mayor?

Mr. MORRIS. Yes, Mr. Chairman?

The CHAIRMAN. Mayor Morris, in Congress, we are working to find ways to improve job and economic opportunities in this period of high unemployment. If this legislation passes, what would the economic impact be to your community?

Mr. MORRIS. Well, the economic impact would be substantial, Mr. Chair. When you look over the history of the City of San Pablo, back in 1993 and 1994, the city was broke. We were just about to close our doors when there was a proposal by the card room, and we went out to the citizens to get a vote on what they thought of bringing a card room into the City of San Pablo. Almost 70 percent of the residents said yes, let's do it. And had we not, we would have either had to dis-incorporate and become part of the county or to be annexed by the neighboring City of Richmond.

So then you fast forward to today where the City of San Pablo and the City Council, the city staff, the City Police Department up to this year have exercised extreme fiscal responsibility by balancing our budget on good ideas to not spend as other cities do on things that we just don't need.

So on one hand, we have the threat from this legislation, which says that if the Tribe is not allowed, like other casinos, to expand their business, then we have almost the, should I say, this is income that would be going away. This is income that would be leaving the community because other Tribes will be allowed to go to level III gaming for example, where if the Lytton Tribe is not, then it leaves them at a tremendous disadvantage, and then leaves them open to this severe competition where business will go away. If business goes away, being our single largest business in the City of San Pablo, then we can see a lot of our services now disappearing, and programs.

So the fact that the Tribe and the city worked so closely together and always have done, as I said in my testimony, that from day one. There is no problem. The problem is being created by the threat of this bill. And I think it is too bad that Senator Feinstein had to leave, because she is hanging onto an old idea, which goes back to her original bill of S. 113 three years ago.

So the letter that was signed between the Tribe, the city, and herself said they can remain the way they are, but I don't think the Tribe is doing anything other than being competitive to stay in business, stay competitive. And I think that is the bottom line, Mr. Chair. It would have a severe impact on the city, it really would.

We are trying to attract right now other businesses and other entities in the community. We have done very well this year. There are about 600 new jobs happening in San Pablo, from a new Auto Zone, a new Walgreen's, a new barber college, a new 42,000 square foot supermarket, Hispanic, which 91 of those employees at that supermarket are hired from the City of San Pablo. And then there is a new county health clinic being built and there are 200 new jobs there just in the construction, and there will be about 200 permanent jobs once it opens.

So this is because of the ability to financially attract these types of businesses into our community, to not be so reliant on one big

entity. But our relations with the Tribe is exemplary, as I mentioned several times. There is no problem. The bill will cause the problem.

The CHAIRMAN. Thank you very much.

Mr. MORRIS. I hope I have answered your question. I know it is a long answer.

The CHAIRMAN. Thank you for your responses.

I want to tell you that I am impressed with your patience. You have been very helpful with your responses. It will help the Committee as we move forward with these bills, and it will, I am sure, make a difference in what we do. And hopefully, if it needs to, we can try to improve them better than they are.

But it is good to hear directly from you, and the way I put it is that I like to hear from the trenches, and you have been very gracious in providing as much of that kind of information, which will help us in our deliberations.

So I want to again express a warm mahalo, thank you to the witnesses at today's hearing. I want to thank my Senate colleagues and the Administration for providing their views on these bills. And I especially want to thank the Tribal representatives and other stakeholders who traveled so far to be with us today and have been so patient.

So we will consider your comments very carefully as we consider how to move forward with these bills. And I want to wish you well with your issues and say that all we are doing here is to try to help the indigenous people of our Country. And I thank you so much for being part of that.

Thank you.

This hearing is adjourned.

[Whereupon, at 5:10 p.m., the Committee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. GEORGE MILLER, U.S. REPRESENTATIVE FROM CALIFORNIA

Please accept this letter as my testimony for the official record of the hearing that you are holding today on S. 872, a bill to "amend the Omnibus Indian Advancement Act to modify the date as of which certain tribal land of the Lytton Rancheria of California is considered to be held in trust and to provide for the conduct of certain activities on the land."

As you know, the House is not in session this week and I am working in my congressional district and thus unable to testify before the Committee in person. Thank you very much, however, for the opportunity to comment on this bill. And thank you for inviting Mayor Paul Morris of the City of San Pablo, a constituent of mine, accompanied by the city's Vice-Mayor Cecilia Valdez, also a constituent, to testify. Mayor Morris and Vice Mayor Valdez and I work closely together to improve the economy for all the residents of San Pablo.

Let me state at the outset that I strongly oppose S. 872 and believe that there is no justification for its passage by your Committee or Congress. S. 872 is unfairly prejudicial against a single tribe that has clearly satisfied the federal courts and the United States Congress as to its right to conduct gaming in San Pablo, CA, in accordance with federal laws and regulations.

The history of the Lytton Rancheria is well known to this Committee and I do not intend to retell that history today. I have testified before this Committee at length in the past concerning similar legislation that would have reversed Congress' original intent by unfairly singling out the Lytton Rancheria for unique restrictions and burdens that are unwarranted and unjustified.

The fact of the matter is that the Lytton Rancheria has the right to conduct gaming in the city of San Pablo, a right that was given to them by the federal courts and by Congress. Furthermore, there exists a process to approve or disapprove any plans by the Lytton Rancheria to expand or alter its facility or change the Class of gaming at its facility. That process requires the tribe to receive the approval of the State of California and the Department of the Interior for any plans to expand its operations. There is no need nor justification for Congress to apply additional restrictions and burdens on the Lytton Rancheria.

I do not take lightly any question affecting Indian gaming. As a member of House Natural Resources Committee for more than three decades, and as its former chairman and ranking member, I am well versed in the laws governing Indian gaming as well as the varied concerns about and support for Indian gaming that exist in Congress and throughout the country.

Personally, I am neither a proponent nor opponent of gaming per se. I am, however, a strong defender of Indian sovereignty. And I am also actively engaged in helping communities in my district to create jobs and grow economically.

It is important to note that, having been properly approved by the federal courts and Congress, the casino in San Pablo quickly became, and remains today, a very important source of revenue and employment to this struggling East Bay community. The positive impacts for the city of San Pablo and its residents that were projected by the city and the Lytton Rancheria when the casino was being proposed have been realized. Meanwhile, the negative impacts that opponents of the casino warned of, such as increased crime and traffic, have not materialized.

Mr. Chairman, S. 872 is unjustified and unfair and I strongly oppose its passage.

Thank you for the opportunity to make my views on this legislation known, once again, to the Committee.

PREPARED STATEMENT OF ALAN J. TITUS, LAWYER, ROBB & ROSS

Dear Chairman Akaka and Ranking Member Barrasso:

I write with written testimony for the record concerning S.872, which would amend section 819 of the Omnibus Indian Advancement Act to modify the date as of which certain tribal land of the Lytton Rancheria of California is considered to be held in trust and to provide for the conduct of certain activities on the land.

At the hearing on November 10, Margie Mejia, Chairwoman of the Lytton Rancheria, made a number of factual statements concerning the history of the Lytton Indians. However, many of those statements are not consistent with the documentary record.

It is important that Congress is aware of the documentary record of the history of the Lytton Rancheria as it considers this bill. Congress did not have an opportunity to familiarize itself with that documentary record before passing section 819 in 2000.

Section 819, which was contained in Title VIII of the Act entitled Technical Corrections, was not in fact a correction. It directed the Secretary of Interior to accept title to certain land in the middle of the San Francisco Bay Area then owned by Sonoma Entertainment Investors, L.P., for the benefit of the Lytton Rancheria of California, to declare that such property was held in trust for the Lytton Indians and that such land is part of the reservation of such Rancheria. Section 819 further provided that the land was deemed to have been held in trust and part of the reservation of the Rancheria prior to October 17, 1988. Section 819 was added

to H.R. 5528 just before the bill passed the House, and had not previously been part of any separate bill and had never been heard in Committee.

When considering issues of Indian sovereignty among California tribes, it is important to know that there have never been any treaties between the Federal government and any California Indian tribe. Nor were there any existing treaties when the United States succeeded to the lands under the Treaty of Guadalupe Hildago (Feb. 2, 1848, 9 Stat. 922). Further, neither the California Constitution nor the Act of Congress admitting California into the Union on September 9, 1850 reserved any land for California Indians. 9 Stat. 452; See *United States v. Bateman*, 34 F. 86, 89 (1988).

Below we provide factual summaries of the history of the Lytton Rancheria *in italics*, followed by identification of documents which pertain to the subject matter summarized, followed by bullet points which quote from the documents. Copies of the documents, or just excerpts from longer documents, are enclosed. If the Committee would like to view the longer documents in full, please let me know, and full un-excerpted copies will be provided.

Documents related to California Indians in General

California rancherias, like the Lytton Rancheria, were created to house landless Indians near non-Indian populations, where the Indians could serve as laborers. Rancherias were not to be like reservations where Indians were herded onto separate communities. Where the lands purchased had been governed by state laws, state laws would continue to govern them. Nor were such lands considered the same as usual Indian trust lands.

1906 Kelsey Report. On June 30, 1905, Congress passed an act authorizing the Secretary to hire someone to investigate the "existing conditions of the California Indians, and to report to Congress." The Secretary appointed, C.J. Kelsey, an attorney and the Secretary of the Northern California Indian Association. In 1906, Kelsey submitted his report to the Secretary. He tells the history of how the Indians had been evicted from the good lands they historically occupied onto unproductive lands, and a state of destitution. Of a total population of 16,500, he finds a non-reservation population of 11,200.

- "[Historically, e]ach California village was independent of all others, and there seems to have been but little idea of tribal organization." p. 2.

- "Most of the Indians have now been crowded out of anything like good soil and are found in waste places not having value enough to attract anyone else. It is now a matter of difficulty for an evicted Indian to find any place of refuge except in other Indian settlements already overcrowded." p. 9.

- "The Indians are for the most part settled in little villages called in California rancherias. These little settlements contain all the way from 20 souls up to 250, the usual size being about 50....These Indian settlements are for the most part located upon waste or worthless land as near as possible to their ancestral home. These remnants of each stock or tribe or hand occupy today almost exactly the same territory their ancestors did a century ago." p. 13

- "Most of the Northern California Indians being landless, the opportunity to work for themselves is wanting, and they must of necessity work for others." p. 13.

- "The landless Indians cannot be placed in status quo ante.... It seems that we are under the necessity of civilizing the Indian whether we like the job or not, or whether the Indian wants to be civilized or not... ¶Your special agent is inclined to object strongly to anything in the nature of reservations for these people. The day has gone by in California when it is wise to herd the Indians away from civilization, or to subject them to the stinting influences of reservation life....Moreover, the expense of establishing reservations, and more especially maintaining them, would be enormous. Reservations therefore seem out of the question." p. 15

- "It should, however, be feasible and comparatively inexpensive to give these Indians allotments, and there would be no expense connected with the allotments after they are once made. It would, however, be necessary to buy a considerable amount of the land, as there is very little land in the public domain left to allot them....Your special agent is not in favor of giving them farms. They would be unable to use farms. Small tracts, not exceeding ten or fifteen acres, if the land is good land, will be ample, and in many places five acres per family, or less, will be sufficient. It is not necessary that the Indians should be made rich. All that is proposed is that they shall have footholds with fixity and tenure. This will not change their present status as laborers, but will give opportunity to teach them some of the common every-day lessons which they need so much. I would therefore recommend the appropriation of a sufficient sum for the purchase of land in the immediate localities where the Indians live to be allotted or assigned to them in small tracts under such rules as the Secretary of the Interior may prescribe." p. 15-16.

June 19, 1912 — Letter from Asst. Commissioner in the Office of Indian Affairs to the Supt. of the Round Valley School regarding jurisdiction over a break in at an Indian school and directing the superintendent to report the theft to the "proper State authorities for prosecution."

- "Inasmuch as the lands occupied by these Indians were purchased from private individuals while same were under the jurisdiction of the State of California, said jurisdiction would continue until such a time as the State ceded its police jurisdiction."

Feb 15, 1932 — Letter from O.H. Lipps, Supt. Sacramento Indian Agency to O. Boggess, Supt., Hoopa Indian Agency. Defines "rancheria" as "a tract of land purchased by the United States Government for

homeless Indians." Letter quotes from an April 13, 1927 letter from Washington to former Supervisor Dorrington as follows:

- "The Office has not attempted to set up rules and regulations to govern assignments of land to California Indians. It was thought best to permit superintendents having jurisdiction to formulate such rulings as might be necessary to meet conditions on each locality."

- "At present we are employing the following system. If an Indian desires to move upon one of these tracts we have him secure a letter addressed to the Superintendent from the other bonafide resident assignees to the effect that they have no objection to him moving on the rancheria.... Upon receipt of this notice he is given permission to construct his house on one of the vacant lots."

Testimony to Congress on Act to distribute rancheria lands to Indians. Hearings Before Subcommittee on Indian Affairs, 85th Congress, 1st Session, pp. 77-79. BIA testified:

- "[These lands] are distinguishable from the lands that are held in trust for an Indian tribe, such as the Klamath Tribe or the Menominee Tribe. Those are, strictly speaking, trust lands, but these lands that we are speaking of here are lands that are not held in trust for any particular group...[P]eople who are living there now also have no legal rights to the land. They can be ousted if the Secretary should ever dare do it, so that in terms of rights, no one, no Indians, have any rights to stay on that land, and it is the custom that when an Indian leaves the land, he has ceased to have any connection with that rancheria.

  "Judge Shuford, I bring this up. It is a controversial and technical point, but I do it for one purpose, and that is to indicate that the legal title

to these rancherias is not the same, or in the same status, as the ordinary trust title for Indian lands." .

July 22, 1958 Senate Report No. 1874, 85th Congress, 2d Session, entitled Providing for the Distribution of the Land and Assets of Certain Indian Rancherias and Reservations in California. To accompany HR 2824. This report concerns distribution to rancheria residents of 41 rancherias which had been purchased and owned by the government to care for Indian dependents to the Indians to further self-determination. The report states:

- "The State legislature memorialized Congress in 1951 to dispense with all restrictions on California Indians (S.J. Res. No. 29, ch. 123, California Statutes, May 18, 1951), and a representative of the Governor's office testified in favor of the termination of the Federal supervision program as early as 1952."

- "The preparation of [membership] rolls would be impracticable because the groups are not well defined. Moreover, the lands were for the most part acquired or set aside by the United States for Indians in California generally, rather than for a specific group of Indians, and the consistent practice has been to select by administrative action the individual Indians who may use the land."

The report makes clear that all 41 rancherias included in the bill had submitted resolutions requesting that legislation to terminate Federal control over their lands be enacted. The report contains information from the Bureau of Indian Affairs regarding each rancheria, and makes clear that on 27 of the 41 rancherias, the Indians had not organized under the Indian Reorganization Act.

March 15, 1960 Letter from the Office of Solicitor, Department of Interior to Western Title Insurance Company regarding implementation of the Rancheria Act of 1958. The title company had refused to

issue title insurance citing constitutional concerns with the Rancheria Act. The Solicitor responded that although in some respects "the rancherias constitute Indian country,... they do not have all the indicia of Indian reservations."

August 1, 1960 — The Solicitor of the Department of Interior issued an opinion (2 Ops. Sol. DOI 1882) to address issues of title, so that the title company would be willing to issue title insurance.

- "The United States has accepted the fact that it long ago acquired the lands of the California Indians, extinguishing their Indian title."
- The Opinion concludes, "the rancheria properties belong to the United States, in law and equity."

Jan 14, 1994 — Letter from Acting Asst. Secretary William Babby to George Miller, Chairman of House Natural Resources Committee regarding BIA's longstanding distinction between historic tribes and non-historic tribes. The letter makes clear that historic tribes are considered to have inherent sovereignty over their lands, and non-historic tribes do not.

- "Since passage of the IRA the Department of the Interior (Department) has distinguished between the powers possessed by an historic tribe and those possessed by a community of adult Indians residing on a reservation, i.e. a non-historic tribe."
- "In implementing the reorganization of tribes, the Department made the distinction between groups which were organized as historic tribes and groups which were organized as communities of Indians residing on one reservation."
- "The distinctions were based on the differing requirements of the IRA, i.e., the reorganization of existing tribes and the creation of "new" tribes, and the

unique historical circumstances that existed in some parts of the country. For instance, self-governing tribes generally did not exist in California in the same sense as they did elsewhere.... Most of the California rancherias have unique historical circumstances and were organized without regard to tribal affiliation or historical tribal status. Generally, these rancherias did not represent tribes but were collections or remnants of Indian groups for whom the United States bought homesites for homeless California Indians under various statutes. They were placed on trust land which was purchased for landless, homeless California Indians without regard to tribal status."

- "The BIA's view is that an historic tribe has existed since time immemorial. Its powers derive from its extinguished, inherent sovereignty. Such a tribe has the full range of government powers except where it has been expressly limited by Congress or is inconsistent with the dependent status of tribes."

- "In contrast, a community of adult Indians is composed simply of Indian people who reside together on trust land. A community of adult Indians may have only those powers which are incidental to its ownership of property and to its carrying on of business and those which may be delegated to it by the Secretary. In addition, a community of adult Indians may have a certain status which entitles it to certain privileges and immunities. . . . However, those privileges and immunities are derived as necessary incidents of a comprehensive Federal statutory scheme to benefit Indians, not from some historical inherent sovereignty."

- "...we believe that most, if not all of the original California rancherias listed in the Act of August 18, 1958... would fall within the nonhistoric tribal designation."

Documents related to the Lytton Rancheria

The federal government bought the land for the Lytton Rancheria in 1926. During the first 11 years, no Indians occupied the site. Rather, the Salvation Army was allowed to grow corn on the land.

Aug 24, 1926	Letter from L.A. Dorrington, Supt., Sacramento, to Commissioner of Indian Affairs in Washington concerning proposal to purchase land from Mr. R. A. Gobbi for $10,000 for "Dry Creek and Geyserville Band of Indians, Alexander Valley, Sonoma County, California."
Nov 24, 1926	Letter from Congressman Clarence F. Lea to L.A. Dorrington, Supt. Of Indian Agency in Sacramento regarding purchase of lands at Lytton that he could not improve on the location.
Jan 29, 1927	Letter from L.A. Dorrington, Supt., to Mrs. Belle Leroux, a leader of a Woman's Club in Santa Rosa, who wants to solicit club members to help Indians moving into area, about her desire to mention to members the planned purchase of land near the Lytton school for the "Dry Creek and Geyserville Indians." Mr. Dorrington is concerned about "unpleasant results following too much publicity" and the fact that Lytton residents "have been so very unreasonable and inconsistent." It appears Indians were being moved onto lands in areas settled by non-Indians.
March 11, 1927	Letter from E. Meritt, Asst. Commissioner in Washington to L.A. Dorrington, Supt., Sacramento, approving purchase of the Lytton lands "for homeless California Indians."
March 16, 1927	Deeds recorded, one for 45 acres and one for 5 acres. Land purchased from R. Gobbi for $10,000.
Dec 1, 1928	Letter from Brigadier W.G. White of The Salvation Army to L.A. Dorrington, Supt. of Indian Affairs in Sacramento, asking to use 50 acres at Lytton station to grow corn for feeding their dairy. He notes land has been idle.

Finally, in 1937, an Indian from Northern Mendocino area was allowed to move onto the land; followed by his wife's brother and the brother's wife. They were not from the tribes for which the land was purchased and that caused considerable acrimony with the local Indian community. There is no evidence that the two families residing on the Lytton Rancheria ever exercised any government powers over the rancheria, and the government dealt with them as individuals.

Jun 17, 1937 — Letter from Roy Nash, Supt. Sacramento Indian Agency, to Phil Ponzo, indicating that an Indian desires to make use of Lytton Rancheria "which has lain idle for so many years" and if a well is put down, it will make an excellent homesite.

Nov 17, 1937 — Letter from Roy Nash, Supt., Sacramento, to Commissioner of Indian Affairs seeking monies for various sites, including for Lytton $300 for Bert Steele for material to build a house and $50 for domestic water.

Nov 19, 1937 — Letter from Bert Steele to Roy Nash, Supt. asking for money for a building loan. Also says they need roadwork and a well.

Nov 23, 1937 — Letter from Roy Nash, Supt., to Bert Steele informing him that he has requested grant monies of $300 for material for a house and $50 for domestic water.

Mar 16, 1938 — Letter from Washington DC approving monies for Lytton Rancheria.

Dec 6, 1938 — Letter from Geyserville Band of Indians from the Dry Creek Rancheria to Roy Nash, Supt., regarding Lytton Rancheria.

- "[We wish] to protest against allowing Mr. Bert Steele, and others not members of the Dry Creek Bank of Indians, to live on the tract of land near the Lytton school house, which was purchased several years ago for the Dry Creek Indians of the Geyserville Band of Indians."

The letter tells how some Dry Creek Indians wanted to move onto the land but Mr. Dorrington and then Mr. Lipps told them

to wait until money was available for houses. They further point out that Bert Steele had been given land at the Round Valley Reservation in Covelo (Northern Mendocino County) and had sold it.

- "We also believe that he was given a piece of land some place else and has had his opportunity and sold his rights at Covelo."

The letter then notes that another man John Wesley Myers "has erected a one-room cabin on the property. We understand Myers has a piece of land at Stewarts Point and is a member of the Stewarts Point Band of Pomo Indians." Their biggest complaint seems to be that Bert Steele has insulted and bullied them.

- "If Mr. Steele had treated us decent, we would have had no objections for him to live there, as we were not using the land, but he told us that we were degraded people and that we did not know how to handle our own affairs...."

Dec 14, 1938 Memorandum from "E.H.H." to Roy Nash

- "Mrs. La Rue [sic] of Geyserville, Sonoma County, called long distance ... as she was afraid there would be trouble over the Lytton Rancheria. She had papers, etc, showing that it was purchased for the Dry Creek Band, or the Geyserville Band of Indians, and that now Indians from Round Valley and Stewarts Point had moved on the land."

Jan 9, 1939 Letter from Mrs. Belle Leroux to Congressman Clarence Lea in Washington about Bert Steele.

- "You will no doubt remember when several years ago the Dept., at Washington bought a piece of land here near the Litton school house. Now we are having trouble here about it.... Three or four years ago, our people went over

to Sacramento asking Mr. Lipp for permission to move onto their land, and was refused on the grounds that the dept., did not wish them to build shaks [sic] there and would soon have plans for getting money to build decent houses. They have never heard from that again. This winter, a man named Bert Steel from the Covelo reservation who was undesirable there, tried to get in at the Stewards Point place, and then came over here, together with another man from the Stewards Point reservation, and took 16 acres apiece of the Litton place, built them houses on the most desirable parts of the land and these people hate this man Steel, and positively resent his coming here, and feel with those who have heard of it that neither one of them have any right on this place, there is bitter feeling and serious trouble will result if something is not done about it soon."

The letter proceeds to discuss the burning down of a house of a local Wappo Indian as if to imply some connection to Bert Steele.

- "Now the cabin belonging to an Indian named Marion Miranda, of the Wahpo reservation, down along the river toward Healdsburg, burned down while back.... None of our two bands, the Geyserville and Drycreek bands, that the place was purchased for have had permission to go there and build, and not one of them would live near this Steel. There is very bad blood between them and always has been between those tribes, the one he belongs to and these."

Feb 1, 1939 — Letter from Roy Nash, Supt., to Stephen Knight to arrange a meeting at Geyserville Rancheria on February 10 to discuss their objection to the assignment of land on the Lytton Rancheria.

Feb 15, 1939 — Letter from Edward (aka Bert) Steele to Roy Nash evidences the governments dealing with him as an individual.

- "As you promised to survey, and assign a certain piece of land to me on the Lytton Reservation, I have as evidence of good faith and trust in you, relative to the promise made, gone ahead and cleared the land of stumps and brush. Also I am plowing all of the high land, and in addition I am planning to build just as soon as the water is made available. ¶I want to fence the swamp land for pasture, for the horses. Will it be possible to have the boundary lines surveyed as soon as possible?"

Feb 21, 1939 — Letter from Stephen Knight to Roy Nash, Supt. regarding Lytton and Bert Steele. The letter discloses Bert Steele's opposition to the IRA, how he led a faction of the Geyserville Indians who resided off the rancheria in opposition to the IRA against the faction of tribal members who lived on the rancheria and wanted to approve the IRA.

- "Bert Steel was one of the most outspoken Indians in opposition to the Wheeler-Howard Bill....¶The Collett Faction in and around Geyserville is in the majority, and Bert Steel, more than any-one else, is responsible for holding the Indians in line for Collett and in opposition to everything sponsored by the Government. This attitude on the part of Steel and his later change of mind, as they see it, to get himself in on the Lytton place, is mostly the reason for the bitter feeling the Indians have for Steel. They think he sold them down stream."

Mar 2, 1939 — Letter to Roy Nash, Supt., presumably from Mrs. Leroux, to inform him of two incidents regarding Fred Steele. Mrs. Leroux had hired a Secretary to transcribe the proceedings at the February 10 meeting with the Geyserville Indians.

- "I received a letter a few days ago that the copies were ready, but before I could get in town to get them, a young Indian came to the Sect., and said he was one of our boys and that he wanted very badly to borrow a copy of my notes, and that he then would get the rest of them

and deliver them to me as he said he passed our place every day, and we were friends.

"Mr. Condit wrote a letter telling me of this. I got it yesterday. This morning I called him, and he said this boy would not tell his name. I knew that not one of the boys or men in our bunch would have done such a thing so I said it must have been one of Fred Steel's sons, misrepresenting himself again. And he later called and said that ---------- been ---------- and that ---------- had ---------- for the fellow and that it was for Steel.

"So that's the way he works things. What use he will make of it I do not know.

"The day of the meeting in Healdsburg, my husband and I stopped at the store in the valley, and as we were going out a man blocked our way, and asked if we knew him. We did not, and he said, "I am Fred Steel, the man you folks were talking about murdering today, in your meeting. I said of course ---------- , before we could get passed him and out side.

"I think I know our local Indians pretty well, and know them to be honest; Steel is anything but that.

...

"Among other things Mr. Steel said I was getting money for the things I did, for the Indians which I never have at any time. That I can swear. I have never even been offered a cent, and have been out quite a great deal, my husband and I for the sake of humanity only."

March 11, 1939 Letter from Congressman Clarence F. Lea to Roy Nash acknowledging receipt of a report of the meeting regarding the Lytton matter.

- "I appreciate your attitude in the unfortunate development at Lytton. I, too, was utterly unconscious of the fact that Mr. Steel was regarded as an intruder or that he belonged to other tribes."

Mar 17, 1939 Letter from Roy Nash to the Commissioner in Washington with the subject line: "LYTTON RANCHERIA: THE SONOMA COUNTY WAR".

- "There is a somewhat tense situation among Sonoma County Indians over a question of land assignment on Lytton Rancheria, with murder threatened against Bert Steele and John Myers, so I will set out the situation in full."

- "Note that the deed runs to the United States, that the purchase was made "for Landless Indians in California," and that no tribe or band is mentioned in the deed."

The letter then recounts use of the land by the Salvation Army to grow corn, which apparently was approved by the Assistant Commissioner and Assistant Secretary of the Interior on Dec. 17, 1928. Then it recounts receipt of a request from Bert Steele to live on the Lytton Rancheria.

- "On February 10, 1937, I received the following:

  Feb. 9, 1937

  Sacramento Indian Agency:

  Would it be possible for I, Bert Steele, as my wife is a Sonoma Co. Indian, to build a house on the land near Lytton Station, as we were flooded out of a home. It has been impossible for us so far to find a home to rent. Please let me know as soon as possible."

- "Inquiry revealed that the Salvation Army was still using Lytton Rancheria; that no Indian ever had lived on it; that Bert Steele was a 1/4 blood Indian with a reputation for industry, living in the town nearest said rancheria; and married, as he said, to a Sonoma County Pomo Indian woman. I, therefore, wrote him the same day his letter arrived, authorizing him to build a home on the rancheria.

Shortly thereafter I served notice on the Salvation Army that their permit to use the place would be terminated as soon as they removed the crop then growing."

- "Lytton Rancheria is an irregular shaped tract, with one parcel of 16 acres off by itself in the northeast corner. As much of this corner is low and wet, I told Steele I would assign him this 16 acres, out of which he might get 10 acres that are cultivable. I further told Steele that if he had any relatives or friends who were desirous of building a home and cultivating land, to send them around to see me, because it was embarrassing for the Government to be buying more land for California Indians while much already bought was growing weeds or leased to white men."

- "Steele built a one-room cabin with his own money in 1937 and moved in. Out of the last Rehabilitation fund I then made him a grant of $350 for materials out of which he built with his own hands and the help of his sons, the house in which he now lives. This was finished in July of 1938. Our Roads Division shaped up and graveled a road to his house. Our Irrigation Division has drilled two wells, one in the 16 acre tract where Steele lives, the other at the south end of the property."

- "Steel's brother-in-law, John Myers, a Stewarts Point, Sonoma County, Pomo, married to a charming Indian girl from Bodega Bay, came to me and was given permission to build his home on the south end of the rancheria. I promised to assign him 10 acres of land to cultivate. He built his home in November, 1938, moved in during the first week in December. It is just a small one-room frame cabin, built entirely with his own money without assistance from Government."

The letter then recounts receipt of the December 6, 1938 letter quoted above from the Geyserville Band of Indians from the Dry Creek Rancheria. This letter then continues.

- "On receipt of the above, I did what of course I should have done before putting Steele on the land, got out the voluminous files and familiarized myself with the history. The above statement is about correct. In the agitation for the purchase of this tract, the Geyserville and Dry Creek Indians were in everybody's mind; Congressman Lea was in on it and will remember."

- "Also it is true that Bert Steel is an outsider. His mother was a half-blood Pit River; his father a half-blood Nomelackie. Steele was allotted in Round Valley, 10 acres in the valley and 50 acres mountain. The valley allotment was entirely in the bed of Short Creek and when Steele sold it for $40 he got more than it was worth. The mountain allotment was worthless except as part of some large grazing unit. He got fee patents and sold both in 1920. His wife is Pomo and from Sonoma County."

- "The other fellow, Myers, does hail originally from the Stewarts Point Rancheria on the coast, a roost that is absolutely worthless."

- "On the 10th of February, Mr. Fred Baker, Land Field Agent, and myself met all the Indians of this district in Healdsburg. It was as heated a session as I have attended in some time. There had been a lot of loose talk about shooting Steele; the children in school were telling his children that they would never live to drink the water from the wells we were drilling, etc, etc. Steele countered by getting himself sworn in as a deputy sheriff and keeping his rifle handy and his powder dry."

- "Now, legally, since the land was bought under the appropriation "Landless Indians of California" with no tribe or band mentioned in the deed, of course I had the right to settle any landless Indian thereon. There has been no legal error on my part, although I freely admit the tactical error. But since Steele has built his house, occupied it for a year and a half, ploughed up his ground and planted his crops, I cannot see the Government permitting him to be run off by threats of bodily injury. I have told both Steele and Myers just to sit tight. The whole thing is much ado about nothing."

- "For the land itself is not worth squabbling over. We paid at least twice what it is worth. The idea of its being a home for 80 Indians is preposterous. I wouldn't think of putting more than four families on the place."

- "The practical question is, What can we do toward rehabilitating these homeless Sonoma County Indians somewhere else? ¶ Unfortunately, the Geyserville band of the rancheria voted against the Indian Reorganization Act; so present funds cannot be used for purchasing additional land for them. There were 50 eligible voters at the original election; the vote was 8 for; 17 against."

Apr 22, 1939 Letter from F. S. Slaugh, Arg. Ext. Agent, and approved by Roy Nash, Supt., to Bert Steel

- "After a conference on land assignment of the Lytton Indian Rancheria, it was decided, that because of existing conditions, no more land will be assigned to members of your family on the Lytton Rancheria."

It appears that Bert Steele also constantly harassed John Myers. Steele wanted Meyers land for his daughter and son-in-law. Steele sabotaged Meyers' land, putting stakes down through his grain field. Finally Myers wound up in the hospital.

Oct 2, 1939 — Letter from Allen F. Space, Roads Supervisor to Superintendent Sacramento Indian Agency.

- "Mr. J.W. Myers of the Lytton Rancheria called at this office this morning. He was interested in fencing his assignment at Lytton. ¶ He sated that Mr. Nash had informed him that ten (10) acres would be surveyed off for his use. He wanted us to make this survey."

Mar 3, 1940 — Letter from Harold J. Brodhead, Farm Agent to Roy Nash, Supt., Sacramento Indian Agency.

- "I made contact with [John Myers and Bert Steele] March 2nd. Mr. Myers is quite anxious to sell out and leave the Lytton Rancheria."

Apr 3, 1940 — Letter from Harold Brodhead to Roy Nash, Supt., Sacramento.

- "Glen Martin is asking for information if he can purchase the improvements of Wesley Myers, who at present is living on the Lytton Rancheria."

- "Monday morning Bert Steele of the Lytton rancheria was here asking about the same property. [Mr. Steele wants the property to go to his son-in-law, Frank Madera, who is married to Rosaline Steele.] ¶ Mr. Steele is anxious for your decision. He wanted me to ask you, that if you should decide his son-in-law is not eligible to live on this land that you make no other choice until it may be reviewed in Washington.!!!!!!"

Apr 10, 1940 — Letter from Harold J. Brodhead to Roy Nash, Supt., Sacramento Indian Agency

- "It never rains, but it pours. One time it is Bert Steele asking about Lytton Rancheria. Next, it is Wesley Meyers. This time it is Meyers. He is once more asking about permission to sell his improvements and move...

"[Meyers] told me one thing that I did not know before, that Steele had told him he was using too much land last year, and put stakes down through his grain field....

"Meyers complaints were so many that I see no advantage of attempting to write them all to you. He says he would like to talk to you personally...."

Sep 1940 — Memo. For file on Lytton.

- "Wesley Meyers has been in hospital at Santa Rosa but it is not known whether he is there now or not. He is a brother of Mrs. Bert Steele but it is believed he and Bert Steele had some trouble."

Bert Steele blocks others from obtaining assignments at Lytton Rancheria.

Sep 1, 1943 — Letter from Bert Steele to Harold Brodhead, Sacramento Indian Agency, regarding request of Mr. and Mrs. E.J. Maysee for permission to build a small cabin on the Lytton Rancheria.

- "I object to this permission being granted for several reasons which I do not care to put in writing at this time, but which I will be glad to communicate to you or your representative who might be in this territory. I trust you will not feel my objection is unreasonable and I am sure will not after I have an opportunity to tell you personally just why I make this objection."

Bert Steele died in November 1943. Over the next few years there were issues involving succession to the land.

1944 — Assignments were finally issued to the two families, the Steeles and the Meyers.

Mar 30, 1945 — Letter from local BIA Superintendent to Washington that "Mr. Steele is not a member of an organized group."

After repeated request of the residents for ownership of the land, and to be freed from government supervision, the Lytton Rancheria was distributed to the residents in 1961, pursuant to the Rancheria Act of 1958. No tribe existed; the residents had never organized as a tribe, and distribution of the Lytton rancheria did not terminate any tribe.

Nov 3, 1962 — Letter from Dolores M. Myers and John W. Myers to the Area Director of the California Indian Agency in Sacramento, asking for title to the land:

- "I have improved land near Lytton, on the Lytton Rancheria...I should like to secure a patent in fee or a deed to this property. I obtained it as a life assignment from your agency at the time Mr. Nash was in charge. I was assured by Mr. Nash that if I made improvements that I would receive a patent in fee or a deed. I have made many improvements consisting of the building of a home; have fully fenced and sub-divided pastures for my cattle and have also renewed and rebuilt the water supply service. These several improvements have cost me a total of Four Thousand ($4,000.00) Dollars or more....Quite recently, with the intention of further improvements, I invested in 30,000 feet of lumber, but am inclined to believe I should have a deed or patent in fee before proceeding further."

Nov 13, 1962 — Letter from Leonard Hill, Area Director, Bureau of Indian Affairs to Mr. and Mrs. John W. Myers in response to letter of November 3.

- "The pending withdrawal bill, S.3005, if enacted, would grant such authority, but until Congress acts on this matter we can not take action.... It is my earnest hope that some action will be taken by the ensuing Congress so that we may be able to take care of your situation and other problems of similar nature on other rancherias."

Oct 1, 1955 Letter from John W. Myers and Dolores Myers to Area Director, Bureau of Indian Affairs in Sacramento,

- "However, we are both very much in favor of the plans of your office to try to get Congressional authority to allot and deed the land to the assignees. We (wife, son & I) have lived on our assignment eighteen years and have made many improvements consisting of the building of a home, electricity installed for home and water system. I have fully fenced and subdivided pastures for our cattle and have renewed and rebuilt the water service and build small barn and correls. These several improvements have cost me a total of five thousand ($5,000.00) dollars or more. I also invested in 30,000 feet of lumber with the intentions of further improvements but held off building until I had a possible chance to secure a title deed or patent in fee for this property before proceeding further."

------, 1955 Letter from J. N. Lowe, Assistant Area Director, Sacramento Area Office to John W. Myers in response to his October 1 letter.

- "We hope to obtain congressional authority to allot the land of such rancherias in California whose members submit written requests for such allotments. ¶ As you know, the Lytton Rancheria has been assigned to two families, namely yours and that of Bert Steel. ¶It is our understanding that Bert Steel's widow is still living; therefore, if both you and Mrs. Steel will sign all copies of the enclosed resolution and return to me the self-addressed enclosed envelope we will include the Lytton Rancheria in our request for authority to allot Indian lands....¶If is noted that Daniel Steel spoke for the Steel Family during the hearings in Sacramento on November 22 and 23, 1954, conducted by the State Interim Committee on California Indian Affairs."

The Resolution that was apparently enclosed with the letter restates that the residents want to obtain title to the land. It is also clear they were not seeking installation of new water supply or sewer lines.

- "...such transfer of title should be conditioned upon the completion by the Federal Government of an internal survey and subdivision of the assignments of the reservation so that each person will receive an insurable title to his lot and, further, that such transfer of title should be conditioned upon the cancellation of any debts and liens held by the Federal Government against the Lytton Rancheria or Reservation.

  "NOW, THEREFORE, be it resolved by the assignees of the Lytton Reservation that the United States is requested to take whatever action is necessary and appropriate, by legislation or otherwise, to complete the surveys, cancel the indebtedness mentioned above and to issue a fee patent to each of the assignees of the Lytton Reservation for the share of the reservation land now assigned to such individual."

Jan 10, 1957 — Letter to Congressman Hubert B. Scudder from Dolores and John Myers, Mary Steele, and Daniel F. Steele (the residents of Lytton rancheria) requesting assistance to obtain title to the land.

- "The Lytton Indian Rancheria of Sonoma County, California, was purchased for and assigned to the Myers and Steele families. ... ¶We have requested the Bureau of Indian Affairs on many occasions to deed this land to us and they have informed us that they do not have the authority to do so without an act of Congress. We are heartily in favor of the passage of the Rancheria Bill that has been proposed by the Bureau which will allow them to deed the land to us. ¶Will you please do all that you

can to have this bill passed during the next session of Congress."

Feb 26, 1957 — Second letter to Congressman Scudder from Dolores Myers and John Myers repeating request.

- "In reply to your letter of January 17, 1957 with reference to Bill H.R. 2576, we wish to state that we wrote you on January 10, 1957 and signed by all assignees of the Lytton Rancheria, stating that we, the assignees of the Lytton Rancheria, most heartily approve of the passage of the Rancheria Bill H.R. 2576, and wish to be included with the Rancherias that are named on Bill H.R. 2576, which we understand will enable us to secure a fee title or deed for our property. ¶ Since we, my husband and I, have expended between six and seven thousand dollars in improvements to the property in the last eighteen years, we feel that we are entitled to receive a deed for our share of the property."

July 22, 1958 — Senate Report No. 1874, cited above, contains background data submitted by the Bureau of Indian Affairs on each of the Indian rancherias enumerated in the bill. For Lytton, the report reads:

- "The Indians living at Lytton Rancheria have no tribal organization."

Aug 18, 1958 — H.R. 2824 was passed and became Public Law 85-671. Section 3 required installation or rehabilitation of irrigation or domestic water systems "as [the Secretary of Interior] and the Indians affected agree." No provision was made for installation of sewerage facilities.

May 29, 1959 — A Plan for Distribution of the Assets of the Lytton Rancheria was approved. It did not require the government to make any improvements to the water facilities.

- "The land is almost level and is used principally for homesites. Each homesite has been provided with an ample domestic water supply from private wells and no further improvement for water is necessary."

Sept 13, 1960 — Office Memorandum from Area Land Operations & Roads Officer to the file regarding Lytton Rancheria.

- "...instructions for completing the works on this rancheria includes as Item 4 instructions for showing easements for waterlines.

  "During the preparation of the map for recordation it was concluded not to show water-line easements because only two families live on this rancheria and the existing wells are on parcels to be deeded to each. Also, irrigation is of little value since the property will most probably be residential. It was also concluded that domestic water for other parcels could best be obtained from shallow wells to be drilled by the distributees if so desired."

1961 — List of original distributees and map of the rancheria lands, showing distributions. BIA subdivided the Lytton Rancheria into eight parcels and distributed the parcels to the eight distributees.

Aug 10, 1961 - May 26, 1964 — Deeds. All eight distributees sold their parcels.

Distribution of the lands of Lytton Rancheria to the distributees did not breach any duties of the government under the Rancheria Act. That Act required that water facilities be installed or rehabilitated as the Secretary and the Indians affected agree, and the Plan of Distribution did not require any installation or rehabilitation.

Aug 11, 1964 — Congress passed H.R. 7833 (Public Law 88-419; 78 Stat. 390) to amend the Rancheria Act. Section 3(c) was amended to address sanitation facilities, which had not been addressed at all

in the Act as originally passed. The original language had been limited to water supply.

Feb 15, 1977 — Memorandum from Area Director of Bureau of Indian Affairs, Sacramento, CA to Director, Office of Trust Responsibilities in Commissioner of Indian Affairs office regarding termination of Lytton Rancheria.

- "The Sacramento Area Termination Review Committee maintains that section 3 improvements were adequately completed at the Lytton Rancheria. The Rancheria, therefore, should be considered as having been properly terminated."

In 1986, Carol Steele, who had been married to Daniel Steele, one of Bert Steele's sons, sought to have property restored to trust status and to organize a new tribal government. In 1987, the Lytton Indian Community joined a pending lawsuit, Scotts Valley Band of Pomo Indians v. United States. In 1991, the United States Stipulated to Entry of Judgment to recognize the Lytton.

Sept 22, 1988 — Letter from California Indian Legal Services to William Babby, Area Director, BIA, Sacramento, asserting desire of Carol Steele to have "Lytton Rancheria[] restored to trust status" and for "members of the ... Lytton Rancheria[] to officially organize a new tribal government." The letter does not claim that there were any wrongful acts of the government.

Aug 25, 1987 — Second Amended Class Action Complaint for Declaratory and Injunctive Relief and Damages filed in the United States District Court, Northern District of California, and included the Lytton Indian Community of the Lytton Rancheria as a plaintiff. The complaint alleged breaches of the Rancheria Act and breach of trust. The Complaint did not seek damages, but that the termination proclamations should be rescinded. Regarding the Lytton Rancheria, the complaint alleged that the water services were inadequate to serve the parcels distributed. It did not identify any agreement of the government to improve the water system or any breach of such an agreement;

- "Prior to and at the time of distribution of deeds to individual distributees, water services on the Rancheria were inadequate to serve these parcels. Only two parcels had developed wells; the other six were without a water supply." ¶35, p. 16, lines 24-27.

Bert Steele had been given a single assignment of 16 acres. On distribution, this single assignment was divided into seven parcels.

March 22, 1991 Stipulation for Entry of Judgment [included in full with Margie Mejia's testimony]. Notwithstanding the failure of the Lyttons to allege a breach of the Rancheria Act, and despite the failure of the BIA to consider recognition of the Lytton under the then existing regulatory procedures, the government stipulated to recognize the Lytton. The County of Sonoma had intervened in the proceedings, because of concerns that the Lyttons would build a casino on any newly acquired lands, and the Lytton voluntary relinquished rights to conduct gaming on any restored lands in Sonoma County.

- "5.(b) Lytton Rancheria: With respect to land within the exterior boundaries of the former Lytton Rancheria...the [Secretary of Interior's July 19, 1990] policy and guidelines [for placing land into trust] would preclude the Secretary from accepting such land in trust for any use that is inconsistent with the Sonoma County General Plan.

  "(c) Alexander Valley: With respect to land within the Alexander Valley ... the above-reference guidelines would preclude the Secretary from accepting such land in trust to be used for gambling purposes, including but not limited to high stakes bingo, unless such use is authorized under the County's General Plan."

The Stipulation raises another issue. It provided that the government could recognize the Lytton under the IRA.

- "The parties recognize that this agreement contemplates the future reorganization and federal recognition of the Lytton Indian Community as a tribal entity exercising self-governing powers under the Indian Reorganization Act."

However, the Supreme Court has made clear that the IRA allows for federal recognition only of a "tribe that was under federal jurisdiction at the time of the statute's enactment" in 1934. *Carcieri v. Salazar*, 129 S.Ct. 1058 (2009). Since no one lived on the Lytton Rancheria in 1934, the group in 1991 did not qualify for recognition under the IRA.

August 13, 1991 Letter brief from California Department of Justice to Honorable Vaughn R. Walker, Judge of the U.S. District Court, regarding Scotts Valley Ban of Pomo Indians v. United States regarding the Lytton Rancheria.

- "...the State notes that the procedures set forth in Title 25 of the Code of Federal Regulations for such acknowledgment were apparently not followed in this case, and the State to our knowledge was not afforded the opportunity to comment on recognition."

- "...if it is the intent of the agreement and the Department of Interior, to obtain by purchase, condemnation or derivative title from or on behalf of any Indian or Indian descendent, any lands which have been patented our of the public domain, or otherwise have historically been subject to State jurisdiction regulation, or sovereignty, ... consent of the State Legislature will have to be obtained prior to placement of such lands in trust. Under Article 1, section 8, clause 17 [of the U.S. Constitution], Congress can derivatively acquire legislative power from a State over land consensually obtained by purchase or grant of the property owner or through the federal power of eminent domain either by agreement of the Legislature of that State or by cessation of legislative authority by the

State following obtaining of the title of the land by the federal government [cites omitted]."

- "Jurisdiction in the United States would only become exclusive if the State concedes that jurisdiction [cites omitted]."
- "Insofar as neither the Secretary's policy dated July 19, 1990, nor the procedures established by the proposed settlement provide for or contemplate State approval or cessation of jurisdiction, the State of California believes and asserts that the procedures are flawed and not in accordance with the requirements of the Constitution or law."
- "...the State in no way waives its jurisdictional right to test said acquisition if said acquisition and designation is not in full accordance with the provision of the Constitution.... In order to assert this position and not waive said rights, a letter to the Secretary of Interior will be sent setting forth this position and expressing the concern of the State that the policies and procedures of the Secretary of Interior not unintentionally violate the sovereignty of the State...."

Sept 6, 1991 — Judgment was entered on the Stipulation. [No document included.]

***

Any claim that during the existence of the Lytton rancheria, its few residents constituted a tribe, are not supported by the historical record and not consistent with the government's own historical conclusions. The further claim that the tribe was somehow wrongfully terminated also fails to find any support in the historical evidence. The government did all that was required of it under the Rancheria Act before transferring the lands to the families of the rancheria residents.

In 1991, despite the Lyttons' lack of history as an tribe, despite the Lyttons lack of any showing of a breach of the Rancheria Act, and despite the failure of the BIA to follow its own regulatory procedure for recognition of tribes, the government simply stipulated that the Lytton rancheria was not terminated and agreed to treat the descendants of the residents as a tribe.

Similarly, in 2000, Congress adopted the Lytton Amendment (section 819) as part of the Omnibus Indian Advancement Act without committee hearings and without any consideration of the historical background of the Lytton, the fact that the land to be taken into trust is located 70 miles (by road) and three counties around the bay from the former rancheria lands and that the new lands are in the center of the heavily-populated urban Bay Area.

Nor was there any consideration of the legal issues. The site of Casino San Pablo had been privately owned land and governed by state law as long as the state has existed. As the BIA's 1912 letter acknowledges, as the California Attorney General's 1991 letter to Judge Walker asserts, when the government obtains title to privately-owned lands under state jurisdiction, the government retains jurisdiction over such lands. Further, as the DOI's 1994 letter to George Miller concedes, only historic tribes have inherent tribal sovereignty.

These facts regarding Lytton and all the legal issues raised should be taken into account in considering S.872.

The attachments to this prepared statement have been retained in Committee files

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PREPARED STATEMENT OF THE UNITED STATES DEPARTMENT OF THE INTERIOR

The Department of the Interior (Department) has reviewed S. 872, a bill that would modify the date as of which certain tribal land of the Lytton Rancheria of California is to be considered held in trust and to provide for the conduct of certain activities on the land. The Department opposes S. 872, as currently drafted, at this time.

Public Law 106–568 (Dec. 27, 2000) required the Secretary to acquire certain lands in trust in northern California on behalf of the Lytton Rancheria, and deemed those lands to "have been held in trust and part of the reservation of the Rancheria prior to October 17, 1988." The Indian Gaming Regulatory Act (IGRA) generally prohibits Indian tribes from conducting gaming on lands acquired after October 17, 1988, subject to several exceptions.

The Department of the Interior placed the land in question in trust on behalf of the Lytton Rancheria on October 9, 2003.

The Lytton Rancheria (Tribe) lawfully operates a Class II gaming facility on those trust lands in northern California. The Tribe does not have a tribal-state gaming compact with the State of California; meaning, the Tribe is not able to operate a Class III gaming facility on the site.

S. 872 would amend P.L. 106–568 by deeming the land in question to have been acquired in trust on October 9, 2003. The bill would also limit the Tribe's existing Class II gaming activities by providing, "the Lytton Rancheria of California shall not expand the exterior physical measurements of any facility on the Lytton Rancheria in use for Class II gaming activities on the date of enactment of this paragraph."

The Department's policy is to support tribes' inherent governing authority over their own lands by protecting their ability to control tribal land use. S. 872 would diminish the Lytton Rancheria's land-use authority by essentially imposing a zoning restriction on existing facilities on its trust lands. By modifying the legal date of the trust acquisition of the Tribe's lands, S. 872 would also restrict the ongoing operation of the Tribe's economic enterprises, which were within the limits of federal law at the time they were established. In the Department's view, Indian tribes should be permitted to reasonably rely upon the scope of federal laws governing the use of their lands when making decisions regarding land-use.

Importantly, Lytton Rancheria cannot develop and operate a Las Vegas-style, Class III gaming facility on the lands at issue until the Tribe enters into a valid tribal-state gaming compact.

The Department's position with respect to S. 872 should not be interpreted to mean that the Department would support future legislation that would modify a tribe's trust acquisition of lands in a manner similar to P.L. 106–568. Nevertheless, the Department opposes retroactive restrictions on lands that have already been acquired in trust on behalf of Indian tribes and individual Indians in reliance on existing federal laws.

PREPARED STATEMENT OF HON. MICHAEL FINLEY, CHAIRMAN, CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

On behalf of the Confederated Tribes of the Colville Reservation ("Colville Tribes" or the "Tribes"), I am pleased to provide this statement for the record on S. 1763, the *Stand Against Violence and Empower Native Women Act,* and would like to thank the Committee for convening this hearing.

The Colville Tribes supports S. 1763 as introduced. The provisions providing for tribal jurisdiction over certain federal crimes against women is a critical first step to restoring inherent tribal jurisdiction over all offenders in Indian country. The Colville Tribes applauds the Administration and the Department of Justice for endorsing this concept and its inclusion in Title II of S. 1763.

When the Committee disseminated the draft bill that was ultimately introduced as S. 1763, the Colville Tribes proposed an additional section that would address the gap that exists on many Indian reservations for the enforcement of misdemeanor offenses. This proposed new section, the "Misdemeanor Enforcement Demonstration Project" ("Demonstration Project"), is described in more detail below and the text is included at the end of this statement.

The Colville Tribes has discussed this Demonstration Project proposal with the Committee's majority and minority staff, representatives from the Department of the Interior and the Department of Justice, the U.S. Attorney for the Eastern District of Washington, and other Indian tribes. We are hopeful that the Committee will include this proposal, or a variation of it, in any manager's amendment to S. 1763 if or when the Committee takes action on the bill. The Colville Tribes offers this Demonstration Project proposal as an addition to, not a substitute for, the substantive provisions of Title II of S. 1763 as introduced.

Presently, only state or federal law enforcement officers possess jurisdiction over non-Indians in Indian country. Cross-deputization or other agreements with state and local governments that delegate authority to enforce state criminal laws to tribes mitigate this problem to some extent. State and local governments, however, are under no obligation to enter into such agreements with tribes and are often unwilling to do so. Consequently, many Indian reservations lack the ability to provide any law enforcement response to crimes committed by non-Indians.

The Demonstration Project proposal addresses this problem in a unique manner by authorizing the Secretary of the Interior ("Secretary") to (i) promulgate regulations of general applicability with misdemeanor criminal penalties to apply within Indian country and (ii) delegate the authority to Indian tribes to enforce them. Tribal officers would have authority to issue citations but any processing of fines or prosecution would be handled by the applicable federal district court, specifically the Central Violations Bureau (CVB). The CVB is the entity created by the federal courts for processing tickets issued and payments received for misdemeanor federal violations. The Demonstration Project is intended to grant tribal officers the authority to take immediate action to intervene in misdemeanor criminal activity and refer such violations to federal authorities.

This concept is modeled on Section 303 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1733), which grants the Secretary similar authority to promulgate regulations and delegate enforcement to state and local officers on Bureau of Land Management land.

The proposal is of limited duration and is discretionary on the part of the Secretary. Any regulations issued by the Secretary would be subject to notice and comment rulemaking and neither the Act nor any regulations promulgated under a demonstration project would affect, diminish or otherwise preempt the criminal jurisdiction of any state or local government, or affect or diminish P.L. 280. Any regulations promulgated would be concurrent with any state or local law enforcement efforts. Finally, any person cited by a tribal officer for violation of regulations would be subject to the adjudicatory jurisdiction of the applicable federal district court, not tribal courts, and all federal constitutional protections would apply.

The Demonstration Project would provide a mechanism for tribal officers to intervene in criminal conduct in Indian country where they currently lack the authority to do so. The Demonstration Project would, therefore, allow for a potentially broader range of conduct to be subject to tribal law enforcement intervention than Title II does as introduced. The difference is that the substantive offenses are established through federal regulations, are misdemeanors, and are subject to federal—not tribal—court adjudication.

The report to Congress contemplated by the Demonstration Project would provide a valuable record to gauge the effectiveness of the projects in evaluating a longer term solution to the issues caused by the *Oliphant* and other federal court decisions. The Colville Tribes appreciates the Committee convening this hearing and is grateful of its consideration of these comments. The text of the Tribes' proposal is set forth below.

SEC. 206. MISDEMEANOR ENFORCEMENT DEMONSTRATION PROJECT

Subchapter I of chapter 15 of title 25, is amended by adding at the end the following new section:

"SEC. 1306. MISDEMEANOR ENFORCEMENT DEMONSTRATION PROJECTS

(A) IN GENERAL.—In each of fiscal years 2012 to 2018, the Secretary may select up to five Indian tribes to participate in demonstration projects to carry out enforcement of federal regulations as authorized by this section.

(B) DEMONSTRATION PROJECTS.—For each Indian tribe selected by the Secretary for a demonstration project under this section, the Secretary shall—

(1) in consultation with the selected Indian tribe, issue regulations with respect to the management, use, and public safety of and within Indian country, including the property located thereon. Any person who knowingly and willfully violates any such regulation issued pursuant to this section shall be fined not more than $1,000 or imprisoned not more than twelve months, or both. Any person charged with a violation of such regulation may be tried and sentenced by any United States magistrate judge [P.L. 101–650, 1990] designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions and limitations as provided for in section 3401 of title 18 of the United States Code; and

(2) at the Indian tribes' request, negotiate agreements with the selected Indian tribes to allow tribal officers to enforce regulations promulgated under this section. Such agreements shall reflect the status of the applicable tribal officers as Federal law enforcement officers under [25 U.S.C. § 2804(f)], acting within the scope of the duties described in [25 U.S.C. § 2802(c)].

(C) APPLICATION AND SELECTION.—Within 180 days of enactment of this Act, and after consultation with Indian tribes, the Secretary shall publish application requirements and selection criteria for demonstration projects authorized under this section. In selecting tribal applications, the Secretary shall—

(1) ensure that the Indian tribe has notified the applicable state and local governments where the Indian country subject to the proposed demonstration project is located; and

(2) give preference to those applications where the United States attorney for the district where the Indian country subject to the proposed demonstration project is located consents to the proposed project.

(D) DURATION OF REGULATIONS.—Any regulations promulgated by the Secretary under this Act may remain in effect for up to four years after the expiration of the applicable demonstration project.

(E) EFFECT ON OTHER LAWS.—Nothing in this Act or any regulations promulgated under any demonstration project authorized herein shall be construed to modify or affect section 1152 of title 18, United States Code or to modify or diminish the criminal jurisdiction of any state or local government.

(F) REPORT.—Not later than September 30, 2016, the Secretary shall submit to Congress a report that describes, with respect to the reporting period—

(1) a description of each demonstration project approved under this section; and

(2) an assessment of the effectiveness of the demonstration projects.

PREPARED STATEMENT OF HON. TOM MAULSON, TRIBAL PRESIDENT, LAC DU FLAMBEAU TRIBE

I am writing to you in reference to Senator Feinstein's bills S. 771 and S 782 and Senator McCain's bill S. 1424.

As Lac du Flambeau Nation President and on behalf of the Lac du Flambeau Tribe, I am asking your opposition to Senator Feinstein's bills S.771 and S. 872 and Senator McCain's bill S. 1424

On April 8, 2011, Senator Feinstein introduced S. 771, a bill to amend the Indian Gaming Regulatory Act to modify a provision relating to gaming on land acquired after October 17, 1988, titled Tribal Gaming Eligibility Act.

It is our belief the bill reduces historic land of tribes to 1988, and allows Tribes only 25 miles from the Agency Headquarters as historical Tribal Land. This would also create a law that would limit Tribal land claim now pending in court and future claims. This would also allow Congress to change current legislation enacted by Congress to protect Tribes.

Senator Feinstein's statement "in part" on the Congressional Record "I know that some may try to mischaracterize my legislation and say that I am trying to limit the sovereignty of Native American tribes or destroy their ability to undertake much needed economic development." This is a direct attack on the Sovereignty of Native American Tribes.

Senator Feinstein is now trying to introduce S. 872 into the Omnibus Indian Advancement Act 5 (Public Law 106–568; 114 Stat. 2919) specifically targeting the LYTTON RANCHERIA OF CALIFORNIA, in an attempt to change a law for the protection of Tribe established by Congress.

Senator Feinstein will be testifying before the Senate Indian Affairs Committee on November 10, 2011 attempting to introduce this bill which will harm all Native American Tribes in the future.
In June 2011, the Obama Administration rescinded a rule that blocked Indian tribes from building casinos far from their reservations. In response Sen. Jon Kyl and Sen. John McCain introduced in late July, 2011 the Off-Reservation Land Acquisition Guidance Act of 2011, S. 1424.

That on behalf of my Tribe, we oppose Senator Feinstein's bills S 771 and S. 872 and Senator McCain's bill S. 1424. We urges support for Senator Daniel K. Akaka (D-Hawaii), Chairman of the Committee on Indian Affairs, introduced S.676, a bill that is virtually identical to Kildee's proposal. The proposed legislation would "fix problems created by a Supreme Court ruling in Carcieri v Salazar which will lead to inequities in federal Indian policy if not corrected,"

I would, respectfully request our Congressional Delegates and the Senate Indian Affairs Committee to oppose Senator Feinstein's bills S. 771 and S. 872. We ask for your support in Senator Akaka bill S 676 Congressman Dale E. Kildee, bill introduced as H.R. 1234.

PREPARED STATEMENT OF TOVA INDRITZ, CHAIR, NACDL NATIVE AMERICAN JUSTICE COMMITTEE

I am writing on behalf of the National Association of Criminal Defense Lawyers to provide our views on the SAVE Native Women Act. While domestic violence is a serious issue for Indian tribes, we believe any federal effort to bolster tribal law enforcement must be accompanied by measures to increase the quality of justice in tribal courts. For the reasons outlined below, we believe the SAVE Native Women Act fails to provide the requisite safeguards, including an adequate right to counsel, for the proposed fundamental change in tribal court jurisdiction.

NACDL is the preeminent organization in the United States advancing the mission of the nation's criminal defense lawyers to ensure justice and due process for

persons accused of crime or other misconduct. A professional bar association founded in 1958, NACDL's more than 10,000 direct members—and 80 state, local and international affiliate organizations with a total of 35,000 members—include private criminal defense lawyers, public defenders, active-duty U.S. military defense counsel, law professors, and judges committed to preserving fairness within America's criminal justice system.

Title II of the S. 1763 would (1) provide for the first time since *Oliphant v. Suquamish Indian Tribe,* 435 U.S. 191 (1978), for tribal court jurisdiction over non-Indians, (2) provide that non-Indians have greater rights to due process and representation by counsel than do Indians charged with the same crimes and facing the same term of incarceration, (3) shift the burden of proof of an element of a crime from the prosecuting sovereign government to the defendant to assert lack of proof, contrary to historic American criminal procedures, and (4) increase penalties for various federal crimes and create new federal crimes.

Native Americans are, after all, U.S. citizens. When charged in state or federal court, Indians have the same rights to due process and right to counsel as do all other persons. When Congress enacted the Indian Civil Rights Act (ICRA) in 1968, the trade-off for not requiring appointment of counsel and other indicia of due process in tribal courts was to restrict tribes to maximum penalties of six months' incarceration and a fine of $500. In 1986, ICRA was amended to provide for penalties of up to one year and a fme of $5,000. Then in 2010, the Tribal Law and Order Act (TLOA) allowed tribal courts to impose sentences up to 3 years, but only where, if the sentence was to be more than one year, there is a right to counsel, a qualified judge, and certain other aspects of due process.

If Indian tribal courts had to adhere to the same constitutional standards and guarantees as all federal and state courts, there would be no objection to allowing tribal courts to prosecute anyone who comes into their physical jurisdiction, just as a resident of Arizona cannot object to the jurisdiction of the state courts of Kansas if that resident travels to Kansas. If this proposed bill extended tribal court jurisdiction to non-Indians who have a nexus to the tribe, and those non-Indians and also Indians had the same rights in tribal court as they do in state or federal court, NACDL would not object. However, this bill would not increase constitutional protections, but would lower them, and therefore we do object to the bill.

Argersinger v. Hamlin, 407 U.S. 25 (1972), guarantees an indigent defendant the right to counsel in any case where that defendant is facing incarceration. This bill purports to give the right to counsel to a non-Indian facing imprisonment, while an Indian facing the exact same penalty, possibly as a co-defendant in the exact same case, does not have that right if the maximum penalty is one year. How can that be fair? Instead of going to the least common denominator in terms of rights, Congress ought to raise the level of individual rights so that all persons who face incarceration, including in tribal court, have the right to counsel and full due process.

Section 204, the definitions section, should define "licensed defense counsel" (as used in section 204(g)(2)), to mean a lawyer licensed to practice law in any state or the District of Columbia, and section 204(e) should spell out specifically a right to "licensed defense counsel." Some tribes have tribal bar admission requirements that do not even include high school graduation, no less completion of law school; in these tribes, "tribal advocates" who are akin to paralegals and are not lawyers represent defendants. Such non-lawyer members of the tribal bar do not fulfill the requirement ofrepresentation by counsel in the sense of *Gideon v. Wainright,* 372 U.S. 335 (1963), *Argersinger v. Hamlin, supra,* nor the Sixth Amendment to the U.S. Constitution.

Section 204(e) should also spell out specifically the full right to counsel, due process, protection from illegal search and seizure, and all other rights that persons facing incarceration in state and federal courts are entitled to receive.

The burden of proof must always be on the prosecuting government to prove beyond a reasonable doubt every element of a charged offense. Section 204(d)(4) purports to shift the burden of proof of a reasonable nexus between the non-Indian defendant and the tribe to the defendant by providing that if the defendant does not file a pre-trial motion contesting that element, then the issue is waived. That is like shifting to a defendant the burden of raising any element of proof in a criminal case and is completely inappropriate. Also, the standard of proof should be spelled out in section 204(d)(B) as "beyond a reasonable doubt."

The creation of new crimes, in section 203, is unnecessary. If there is a special statute for assault by strangling or suffocating, why should there not be a special statute for assault by use of a knife, or a firearm, or a rock, or a chair as a weapon? The current assault statute, with various levels of harm imposed, is sufficient. In section 205, the increase in penalties for various assault statutes and the expansion of the 20-year penalty for any assault that is a felony again subjects those charged

in federal court with Indian Country crimes to much greater penalties than are those persons charged in most state courts. This penalty scheme creates a disparity that is unwarranted and may ultimately undermine the federal role in maintaining the safety and welfare of those who reside in Indian Country.

Thank you for considering our views. We stand ready to assist the committee and its staff in improving this legislation so as to adequately ensure fairness and due process in tribal courts.

PREPARED STATEMENT OF HON. MIKE WIGGINS, JR., TRIBAL CHAIRMAN, BAD RIVER BAND OF LAKE SUPERIOR TRIBE OF CHIPPEWA INDIANS

Dear Senator Akaka

First, we would like to thank you and the Senate Indian Affairs Committee for its attention to the issue of violence against Native women. We note that the Committee has held several hearings in the past few months on the topic of justice for Native people, culminating in the introduction of the SAVE Native Women Act.

American Indian families in the United States are victimized by crimes of violence at much higher rates than people of all other races. One in three Native women is raped in her lifetime; three in five Native women are physically assaulted. According to the Department of Justice, American Indians are more than twice as likely to experience violent crime. One of the main reasons for these high rates of violence is the failure of the justice system within the United States to provide for the effective prosecution and punishment of abusers within Indian reservations. Unlike all other local communities within the United States, tribal governments have no authority to prosecute or punish non-Native abusers. The jurisdiction to prosecute and punish non-Natives who violate the law was stripped from tribal governments in 1978 with the decision of *Oliphant v. Suquamish*

We welcome your efforts to restore the inherent jurisdiction of Native Nations to prosecute and punish all who violate our laws within our territorial boundaries. We strongly support the SAVE Native Women Act because it addresses barriers that our governments face the protection of our communities.
It would allow tribal governments to prosecute crimes involving at least one Native party (victim or accused). We appreciate that the language does not restrict tribal governments from prosecuting crimes involving tribal members only because many non-member Indians live and work within our communities. We also appreciate that the SAVE Native Women Act would fund programs administered by tribes and by tribal coalitions related to domestic abuse, sexual assault and trafficking.

What we find problematic with the SAVE Native Women Act is that the inherent special domestic violence criminal jurisdiction of tribes is limited to prosecuting crimes between domestic partners and dating partners and excludes crimes inflicted upon Native children. Within our community, domestic violence occurs within families, with children often suffering from the same types of violence as their mothers and fathers do. As we consider our children to be our most important asset, their health, safety and welfare are paramount to the tribe. We would like to see Congress and the courts recognize that tribal governments have the concurrent and inherent criminal jurisdiction to prosecute and punish those who commit crimes against children within our territorial boundaries.

Without greater access to funding sources, however, our government and many other tribal governments will not be able to exercise the inherent special domestic violence criminal jurisdiction. At this time, we do not have a sufficient level of resources to hire law-trained judges, prosecutors and public defenders. Accordingly, we welcome efforts to assist tribal governments in creatively raising money to improve our court systems, and thus enabling our governments and our people to solve the epidemic of violence within our communities.

PREPARED STATEMENT OF JANA L. WALKER, SENIOR ATTORNEY, INDIAN LAW RESOURCE CENTER

Chairman Akaka and distinguished members of the Committee. The Indian Law Resource Center (Center),[1] a non-profit legal organization, respectfully submits this

[1] Founded in 1978 by American Indians, the Center assists indigenous peoples in combating racism and oppression, realizing their human rights, protecting their lands and environment, and achieving sustainable economic development and genuine self-government. The Center works throughout the Americas to overcome the devastating problems that threaten Native peoples by advancing the rule of law, by establishing national and international legal standards

testimony to be included in the record of the Committee's legislative hearing, held on November 10, 2011, concerning violence against Native women. The Center strongly supports federal law reform that will end the epidemic of violence being experienced throughout Indian country and Alaska Native villages every minute of every day. Protection of Native women and communities will not be fully realized without strengthening the ability of Native nations to effectively police their lands and prosecute offenders on their lands. Passage of legislation such as S. 1763, the SAVE Native Women Act, would be a first step.

On November 10, 2011, the Center's staff once again listened to the sobering testimony of panelists testifying before the Committee about the epidemic of violence against Native women. Sadly, these horrific rates of sexual and physical violence being committed against Native women in the United States are all too familiar to Native communities—1 in 3 Native women will be raped in their lifetime and 6 in 10 will be physically assaulted. On some reservations, the murder rate for Native women is 10 times the national average. Even worse, it is strongly believed that the actual incidence of violence against Native women is even higher due to improper and under-reporting.

At the root of this violence are restrictions on the inherent jurisdiction of federally recognized American Indian and Alaska Native tribal governments over their respective territories. Major legal barriers obstructing the ability of tribes to protect women living within their jurisdictional authority include:

a. Federal assumption of jurisdiction over certain felony crimes under the Major Crimes Act (1885);

b. The stripping of tribal criminal jurisdiction over non-Indians by the United States Supreme Court (1978);

c. Imposition of a one-year, per offense, sentencing limitation upon tribal courts by Congress through passage of the Indian Civil Rights Act (1968);[2]

d. Transfer of criminal jurisdiction from the United States to certain state governments through passage of Public Law 53–280 and other similar legislation (1953); and

e. Failure to fulfill treaties signed by the United States with tribes as recognized by the court in *Elk v. United States* in 2009.

These federal laws and decisions of the United States Supreme Court have created a jurisdictional maze, involving federal, tribal, and state governments and requiring a case-by-case analysis of the location of each crime, race of the perpetrator and victim, and the type of crime. This jurisdictional scheme perpetuates violations of women's human rights, because it treats Native women differently from all other women and causes confusion over who has the authority to respond to, investigate, and prosecute violence against Native women. In no other jurisdiction within the United States does a government lack the legal authority to prosecute violent criminal offenses illegal under its own laws.

Restrictions on the criminal authority of tribes also denies meaningful access to justice for Native women who are victims of sexual and domestic violence on tribal lands. Appallingly, it is believed that 88 percent of the violence against Native women is perpetrated by non-Natives, many of whom are very aware that they may commit violence against Native women with impunity. The erosion of tribal criminal authority over all persons committing crimes within their jurisdictions, coupled with a shameful record of investigation, prosecution, and punishment of these crimes by federal and state governments, has directly resulted in the disproportionate rates of violence against Native women.

The truth of the matter is that many violent crimes go unprosecuted in Indian country. According to a recent United States Government Accountability Office study, from 2005 through 2009, U.S. attorneys failed to prosecute 52 percent of all violent criminal cases, 67 percent of sexual abuse cases, and 46 percent of assault

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that preserve their human rights and dignity, and by providing legal assistance without charge to indigenous peoples fighting to protect their lands and ways of life. One of our overall goals is to promote and protect the human rights of indigenous peoples, especially those human rights recognized in international law.

[2] In 2010, the Tribal Law and Order Act (TLOA), Pub. L. No. 111–211, was enacted, amending the Indian Civil Rights Act to allow tribal courts to sentence offenders for up to three years imprisonment, a $15,000 fine, or both for any one offense, but only if certain requirements are met. Tribal courts also may stack sentences for up to nine years total imprisonment. In order for tribes to use enhanced sentencing authority, they must provide a number of specific defendant protections, including: defense counsel for indigent defendants, legal trained and licensed judges, detention facilities certified for long term detention, and publicly available tribal codes. For the vast majority of tribes, additional resources will be needed to meet these requirements.

cases occurring on Indian lands.[3] As these numbers reflect, Native women are routinely denied their right to adequate judicial recourse. This treatment separates Native women from other groups under the law. The United States' restriction of tribal criminal authority combined with its failure to effectively police and prosecute these violent crimes violates its obligation to act with due diligence to protect Native women from violence and punish perpetrators.

Enforcement inequalities permit perpetrators to act with impunity on Native nation lands, thereby condoning violence against Native women and denying them the right to equal protection under both United States and international law. The rights to personal security and freedom from fear are internationally recognized human rights. If the United States ignores ongoing systemic problems relating to crimes in Indian country, it does so in violation of various international principles and of the human rights of Native women under international law.[4] Global attention is now being directed to violence against Native women in the United States. In January 2011, Rashida Manjoo, the UN Special Rapporteur on Violence Against Women, conducted an in-depth investigation of violence against women in the United States, including violence against Native American women. In October 2011, Ms. Manjoo presented her report to the General Assembly of the United Nations in New York City. The report cites restrictions placed on tribes' criminal jurisdictional authority as one of the causes of the extremely high rate of violence against Native women. Very recently, on October 25, 2011, the Inter-American Commission on Human Rights also called attention to this issue in a thematic hearing on this human rights crisis affecting Native women in the United States.

Often, various federal laws and policies still perpetuate, instead of reduce, violence against Native women. This is quite apparent in United States federal court decisions regarding protection orders. In *Town of Castle Rock, Colo. v. Gonzales,* the United States Supreme Court held that the Federal Constitution does not require state law enforcement to investigate or enforce alleged violations of domestic violence protection orders.[5] Thus, state law enforcement chooses whether to enforce these orders, and may always choose not to.[6] Such decisions by local law enforcement leave Native women vulnerable to ongoing violence by domestic abusers.

Federal courts have further undermined the safety of Indian women by holding that tribal courts do not have jurisdiction to issue domestic violence protection orders requested by a non-member Native woman against her non-Native husband.[7] In Martinez, the federal district court held that the tribal court did not have the authority to issue the protection order because the issuance of the order was not necessary to protect tribal self-government and the non-Native's conduct was not a menace to the safety and welfare of the Tribe. The Martinez decision fails to recognize the current reality of life within a Native community and the importance of tribal courts to maintaining law and order in Native communities. Non-member Indians and non-Indians as well as member Indians live within the territorial bound-

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[3] United States Government Accountability Office, U.S. Department of Justice Declinations of Indian Country Criminal Matters 3 (December 13, 2010).

[4] Less than a year ago, on December 16, 2010, President Obama announced the United States' support of the United Nations Declaration on the Rights of Indigenous Peoples. Significantly, Article 22(2) of the Declaration speaks directly and unequivocally to the United States' obligation to ensure the safety of Native women: "States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination." Unacceptably high rates of violence against Native women also violate several international human rights treaties. Article 5, Section B, of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), states that regardless of race, all peoples should be guaranteed their right to "security of person and protection by the State against violence or bodily harm." However, the current epidemic of violence against Native women in the United States, perpetuated by systemic inequality and confusion, not only violates this provision of ICERD, but also other provisions of ICERD by denying Native women freedom from racial discrimination (Article 2), equal protection under the law (Article 5(a)), and access to effective judicial remedies (Article 6). Additionally, the United States is one of 167 states that have ratified another international treaty, the International Covenant on Civil and Political Rights (ICCPR). Article 3 of the ICCPR explicitly states that the civil and political rights guaranteed under the ICCPR apply to *both* men and women. In living lives impacted by daily violence, Native women are thwarted in their ability to fulfill many of their civil and political rights guaranteed in the ICCPR. As the preamble of the ICCPR asserts, "in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and *freedom from fear* and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights." (emphasis added).

[5] 545 U.S. 748 (2005).

[6] *Id.*

[7] *See, e.g., Martinez v. Martinez,* Case No. C08–5503 FDB, Order Denying Defendants' Motions to Dismiss and Granting Plaintiff Declaratory and Injunctive Relief (W.D. Wash. Dec. 16, 2008).

aries of most Native communities. The tribal court may be the most responsive institution to meet the needs of the residents of the community (Native communities are often located in rural areas, physically distant from state courts and police stations). Orders of protection can be a strong tool to prevent future violence, but they are only as strong as their recognition and enforcement. Federal law undermining the integrity of civil protection orders is especially harmful to Native women. Because of the restrictions that have been placed on the criminal authority of tribal governments, often the only recourse that a Native woman has against an abuser is a civil protection order. It is absolutely critical that Native women can trust that police will answer their calls for help when their abuser is violating a protection order.

The United States has made some strides in its fight to prevent violence against Native women, but unquestionably, much, much more is needed. As members of this Committee have recognized, systemic problems continue to perpetuate a cycle of violence against Native women, who have few places to turn to for help. This must change. Now is the time to identify solutions that will directly and substantially protect the lives and safety of Native women. By providing tribes with the opportunity to exercise life-saving protections for women within their jurisdiction, S. 1763, the SAVE Native Women Act has the potential to increase both security and justice to Native women. We appreciate greatly this Committee's attention to protecting Native women and strengthening Native nations. At your request, we would welcome the opportunity to provide additional information on violence against Native women.

PREPARED STATEMENT OF TANANA CHIEFS CONFERENCE (TCC)

The Tanana Chiefs Conference (TCC), an Alaska Native nonprofit and consortium of 39 federally recognized Indian Tribes located in the interior of Alaska, is submitting the following testimony in full support of the Alaska Safe Families and Villages Act, S. 1192. We would like to thank you for holding a hearing on this important legislation, and providing us with the opportunity to submit testimony.

We would like to begin our testimony by thanking Senator Begich for introducing this bill, which has the potential of substantially improving the safety of villages throughout Alaska, and providing consistent support for the safety and well-being of all communities in Alaska, including Alaska Native communities. We would also like to thank Senator Murkowski for the leadership role she has taken in women's issues, her attempt to find solutions to domestic violence, and her advocacy on ending the sex-trade practices in Alaska. We appreciate the strong leadership Alaska has in the United States Congress and would like to take this opportunity to express our gratitude.

We are equally thankful to Governor Parnell and his Administration for all of the investments that have been made to improve rural justice services throughout the State in the past three years. The Governor implemented a 10-year State initiative to end domestic violence and sexual assault through prevention and collaboration, has taken steps to increase law enforcement presence in rural Alaska by increasing the hiring of Village Public Safety Officers (VPSOs), and has increased State funding for the VPSO program. This hard work on the part of Governor Parnell and his Administration has had a positive impact on public safety and well-being on Alaska Native Villages, and our support of this bill in no way detracts from the importance of State jurisdiction over the provision of public safety services throughout Alaska and our gratitude towards the many positive steps that have been made.

However, despite these positive strides, there are many holes in the provision of public safety in our most remote villages that exist not because of the shortfall of the State, Tribes, or the Federal Government, but because of the very real, and quite unique, challenges presented by Alaska's geography. This bill would establish a small-scale demonstration project to weigh the effectiveness of additional civil tools in plugging these holes. We provide more direct comments below.

Statement of need. This bill is constructed around studies completed by such respected institutions as the Institute of Social and Economic Research from the University of Alaska Anchorage and the Alaska Rural Justice and Law Enforcement Commission, and would implement some of the most simple, yet direct, responses to the causes these studies have found to be at the base of much of the crime that is occurring in our remote villages—causes that have been recognized by the State of Alaska. These studies have found that the suicide rate in Alaska Native Villages is 6 times the national average, and that Alaska Native women suffer the highest rate of forcible sexual assault in the United States with an Alaska Native woman being assaulted every 18 hours.

These studies have also found that more than 95 percent of all crimes committed in rural Alaska—including domestic violence and child abuse—can be attributed to alcohol and, as the State itself admits, Alaska Native Villages suffer from disproportionately high rates of alcohol abuse. Unfortunately connected to that disproportionate rate, Alaska Native Villages also suffer from disproportionately high rates of suicide and domestic violence. Alcohol-related deaths in Alaska Native Villages occur at a rate 3.5 times that of the general national population. In addition to these sad numbers, drug and alcohol abuse is estimated to cost the State of Alaska $525 million per year.

Currently, in response to these issues, we are faced with two options—either we must wait for an Alaska State trooper to arrive and respond to these crimes, or we do nothing and the perpetrator gets a free pass. Both options leave members of our communities facing unsafe situations, which should be unacceptable to anyone. When dealing with incidents of domestic violence or child abuse, it is imperative that law enforcement respond immediately to diffuse the situation and take steps to ensure the safety of all involved. It is equally imperative that protective orders be issued immediately to enforce the safety of the domestic partner or child.

Despite the increases in VPSOs mentioned above, many rural Alaska Native Villages lack local law enforcement presence. There are currently approximately 71 VPSOs serving in Alaska, but there are over 200 remote Villages throughout the State. The presence of VPSOs is helpful, and the members of the Villages greatly appreciate their presence, but the truth is that they are unarmed and sometimes face situations that they cannot handle on their own. Even when they are there to address incidents of domestic violence or child abuse, they can merely hold the alleged perpetrator until a State trooper arrives to take over. In Villages where there are no VPSOs, nothing can be done until a State trooper arrives. Again, this testimony is in no way meant to condemn either the VPSO program or the performance of State troopers in these situations. However, the truth of life in Alaska is that it contains many remote villages that are separated from law enforcement hubs, many without direct road access, and that it often has extreme weather conditions. In instances where a State trooper must fly to reach a village, extreme weather will delay his or her arrival for days. These same realities face those who need protective orders. Providing Indian Tribes in Alaska simple civil tools to address these immediate needs would go far in protecting our communities.

What this bill would do. This bill would create a limited demonstration project that would implement some of the most simple, yet direct, responses to the causes at the base of much of the petty crime occurring in Native Alaska Villages and tools to address those petty crimes so that we can all, as a team, evaluate the effectiveness of these new tools. These responses are minimal, but have the potential to have dramatic and far-reaching positive effects in our communities.

This bill would establish a demonstration project where a maximum of three Tribes in Alaska would be selected in each of three fiscal years (nine Tribes total) would be chosen to participate for a five-year period. Each Tribe selected to participate would be required to complete a planning phase to ensure it has the capacity to effectively participate, including making sure they have developed proper written Tribal laws or ordinances detailing the structure and procedures of the Tribal court. Only after completing such a planning phase would the Tribes then begin exercising civil jurisdiction over drug, alcohol, or related matters within a specified project area, and over people of Indian or Alaska Native descent, or those people who have consensual relationships with the participating Tribe or a member of the Tribe. This *civil* jurisdiction would be exercised concurrently with the State of Alaska under State law. The civil remedies available to the participating Tribes would be limited to such remedies as restorative justice, imposing community service, charging fines, commitments for treatment, issuing restraining orders, and emergency detentions. Importantly, this bill would not authorize any of the participating Tribes to incarcerate a person unless the Tribe has entered into an intergovernmental agreement with the State and the Federal Government.

We strongly believe that the civil authority for participating Tribes to impose such civil remedies will allow these Tribes to not only respond to criminal offenses, but to attempt to address the underlying causes of many of these offenses in culturally-appropriate ways that have often proven to be effective. Recently, in Huslia a young woman who was a repeat offender for many petty crimes participated in a community circle. The Huslia Tribal Court was asked by the State's magistrate to suggest a sentence for a recent violation. The Tribal Court organized a community circle in which fifty community members participated by sharing stories and concerns while offering support to the defendant. In addition, the community circle suggested a sentence which aimed to both support the defendant's sobriety and deter her from future violations. This experience shows the commitment of our Tribal Courts to ad-

dress problems that are occurring in those communities, and such community involvement has the power to substantially impact individual lives through community healing.

This bill would also establish an Alaska Village Peace Officer Grants program through which the Tribes participating in the demonstration project may apply to carry out a contract program to employ Village Peace Officers in Alaska Native Villages. Not only would this increase law enforcement presence in Villages that need every additional resource available to them, but the bill would provide that Village Peace Officers would be eligible to attend the Bureau of Indian Affairs (BIA) Police Officer Training Program—ensuring that these officers would have the highest level of training available. We fully support this program, but also suggest that, as an alternative, this bill could instead supplement the VPSO program, and authorize the VPSOs assigned to the participating Tribes to attend the BIA Police Officer Training Program.

What this bill would not do. The responses authorized in this bill are minimal, with the potential for great impact. This bill would not upset the long-standing agreements represented in the Alaska Native Claims Settlement Act by creating Indian Country anywhere in the State, including in the Villages that would be participating in the demonstration project—nor do we wish to do so. The bill is clear on that, both explicitly and through its operation. The recognition of the concurrent civil authority of Tribal governments—entities that are already performing governmental services—to issue protective orders is a far cry from creating a new jurisdictional regime. The construction of geographical "project areas" is necessary to define the limits of this concurrent civil authority to the areas where Tribal governments already operate.

This bill would not divide the State into jurisdictional project areas for 230 separate Tribes. The demonstration project will allow for the participation of nine Tribes, with nine separate project areas. This is the maximum. In the future, if this project proves to be successful in addressing alcohol and drug abuse, domestic violence, child abuse, and other crimes, Tribes would be more than happy to work in cooperation with the State to find a way to implement these responses to an increased number of Tribes in a mutually-agreed upon way, and to find ways in which these responses can best enhance the State provision of public safety responses throughout Alaska.

The bill would also reaffirm that the State of Alaska has the primary responsibility for the provision of public safety throughout the State, and would not open the State up to increased Federal presence or authority. The bill would merely provide Tribes with the options and civil tools to provide the very basics of protection when they are needed most and would have the most effect. Likewise, the operation of this demonstration project would not limit the eligibility of the State of Alaska to any Federal assistance under any other Federal law. The money provided to operate this project, including the new Alaska Village Peace Officer program, would not be used against the State when applying for Federal assistance.

This bill would authorize appropriation of $2.5 million for each fiscal year from FY 2012 through FY 2018. Because we want to offer this bill every chance to be approved and become law—to see this demonstration project succeed—we suggest that the project can be successfully implemented and maintained at a much lower amount. With only nine Tribes eligible to participate, we believe that the project may be successfully implemented and maintained for $1.5 million per fiscal year. We also believe, with such a limited number of Tribes eligible to participate in the program, the Village Peace Officer program can be maintained for $3 million per fiscal year from FY 2012 through FY 2018—a reduction of $2 million from what is currently authorized in the bill.

Conclusion. In conclusion, we would like to reiterate our full support for this critical bill. We believe that this bill will give all of us the tools and information necessary to evaluate the best way to address domestic violence, alcohol- and drug-related crime and suicide, and child abuse in Alaska Native Villages. These Alaska Native Villages embody many of the very real and unique roadblocks to addressing such crime in remote villages in Alaska—remoteness, lack of access, geographical complications and limitations of infrastructure—that require unique solutions. Success in this program will allow us all to understand how to best provide public safety to all remote villages throughout Alaska.

The Tanana Chiefs Conference and its member Villages look forward to continuing to work with the State and with our Senators in finding these solutions. TCC would like to thank you for taking the time to read our testimony.

PREPARED STATEMENT OF JAN W. MORRIS, MEMBER, CHOCTAW NATION OF OKLAHOMA

Good day,

I wish to submit the following testimony for consideration by the Committee regarding S. 1763, the Stand Against Violence and Empower Native Women Act. I offer these comments as a Native person (I am an enrolled member of the Choctaw Nation of Oklahoma) with a background of over two decades of service in nearly a dozen tribal courts as a non-attorney practitioner (including service as either prosecutor or defense counsel), a trial judge, an appellate judge, and court administrator. My experience also includes service over the past ten years as a trainer, instructor and lecturer in tribal justice systems, judicial skills development, court administration, and advocacy skills development.

While I agree with the concept of expanding tribal criminal jurisdiction to its original scope to include the criminal prosecution of a non-Native who commits a crime against a Native person in Indian Country, I believe the conditions imposed upon tribes to reassume criminal jurisdiction over non-Natives by Section 201 of S. 1763 far outweigh any potential benefits, for three reasons:

(1) If the purpose is to address domestic violence crimes committed in Indian Country by non-Natives against native victims, a more effective remedy was already created by the Tribal Law and Order Act;

(2) The imposition upon tribal justice systems of "all other rights [of defendants] required under the Constitution of the United States" will unduly burden the vast majority of those systems; and

(3) Rather than strengthening tribal sovereignty, the imposition upon tribal justice systems of "all other rights [of defendants] required under the Constitution of the United States" actually diminishes tribal sovereignty by supplanting tribal justice standards with the full panoply of U.S. Constitutional protections.

Regarding my first reason stated above, Section 213 of the Tribal Law and Order Act (TLOA) authorizes each United States Attorney to "appoint Special Assistant United States Attorneys . . . to prosecute crimes in Indian Country as necessary to improve the administration of justice . . . " Under this authority, tribes can hire their own prosecutors who can then be appointed as SAUSAs to initiate and conduct federal court prosecutions of non-Native perpetrators who commit domestic violence crimes (whether misdemeanors or felonies) against Native victims under either the General Crimes Act (18 U.S.C. § 1152) or the Assimilative Crimes Act (18 U.S.C. § 13). By doing so, there is no adverse impact or federal imposition on the sovereignty of the tribes and their justice systems, and the cost to tribes of hiring a prosecutor is miniscule in comparison to the expenditure of scarce financial resources that would be needed to revamp a whole criminal justice system to address the panoply of constitutional rights imposed by Section 201 of the proposed bill.

Regarding the second reason stated above, and in addition to the applicable comments in the previous paragraph, the Committee needs to bear in mind that very few tribal justice systems are as large and complex as, for example, the Navajo Nation judiciary. Most tribal courts are small. A survey of tribal justice systems by the American Indian Law Center in 2000 reported that of all tribal respondents, over 78 percent had fewer than 1000 cases filed annually. The survey results also revealed that the mean and median number of full-time judges was 1, and the majority of responding tribes put less than $300,000 into their tribal courts annually. The specter of the funding necessary to guarantee "all other rights required under the Constitution of the United States," including the employment and training of judges, prosecutors and defenders versed in the behemoth that is the body of U.S. Constitutional law could easily cause most tribes to forego this exercise of "strengthening" in favor of maintaining the status quo.

Regarding the third stated reason above, and in addition to the applicable comments in the previous two paragraphs, Congress had the foresight in 1993 to include in the language of the Indian Tribal Justice Act (P.L. 103–176, 25 U.S.C. § 3601 *et seq.*):

> "Nothing in this Act shall be construed to . . . encroach upon or diminish in any way the inherent sovereign authority of each tribal government to determine the role of the tribal justice system * * * impair the rights of each tribal government to determine the nature of its own legal system * * * [or] alter in any way any tribal traditional dispute resolution forum . . . "

The mandate in Section 201 of S. 1763 that tribal courts must offer defendants the full protection of all constitutional rights under the U.S. Constitution conflicts with and contradicts the implicit promise of Congress in the Indian Tribal Justice

Act and flies in the face of the concept of strengthening the sovereignty of tribes. Congress is saying, in essence, that tribal justice systems are inferior and substandard and incapable of properly administering justice within their own tribal communities. This is hardly the position one government should take within the context of a government-to-government relationship.

Considering all of these reasons, it would be no small wonder that any tribe would seriously consider becoming a "participating tribe" as defined in S. 1763. Perhaps the intentions of Congress in considering the "expansion" of tribal criminal jurisdiction to include non-Native domestic violence perpetrators via S. 1763 are commendable, but from a tribal perspective, many Native people will simply find the proposition misguided, patronizing and insulting. I know I do.

Kindest regards.

PREPARED STATEMENT OF IRENE BEDARD, ACTRESS/SINGER, ALASKA

My name is Irene Bedard. I am the daughter of an Inupiaq and Yupik mother and my father was Metis' Cree. I am many things to many people: Movie star, singer, storyteller, teacher, activist, entrepenuer, tribal member, friend, daughter, mother. But, first and foremost, I am but a tiny human being. If it please you, friend and stranger alike, I am just a girl from Alaska. My spirit, however indomitable it may seem to some, is just as fragile as any human being facing the incredible journey of life.

As with so many other Alaska Native and American Indian people that face the multigenerational cultural deconstruction of historical trauma, I too faced a childhood marked by abuse. I was born and raised in Alaska and I was also born and raised in abuse. And , like so many others, I grew up in it and then I married it, and now my son is living with the repercussions of a life of fear and manipulation. This is a multigenerational problem. Will you hear me? Do you hear us?

After finally escaping 17 years of abuse, I opened every door to no avail. My tribe could not assert jurisdiction, for they were ill equipped. Another tribe was willing to assert jurisdiction, but the law did not support it and the only way they could have was if my non native abuser was willing to accept their jurisdiction, which, of course, was not going to happen. I have read the UCCEA, the VAWA of 1994, the UCCJEA, the Indian Child Welfare Act, the Indian Child Protection and Family Violence Prevention Act, the Tribal Law and Order Act, and now I have read the proposed legislation before you.

This must be signed. No human being, no mother, should be victimized in any way by violence and then revictimized by the system. I speak for my son, for the coming generation, and so that others might not have to open so many doors as I have only to find walls behind them. Respectfully, let our tribes have the ability to care for our own. We did so since the beginning and we will do so again, with your kind authorization.

"The world is a better place because you are here. You are loved and you are an important part of creation. I am your family and I am well." THIS is what a child should know. Will you hear me? Will you hear us? I humbly submit that your wisdom will make it happen.

Please accept this correspondence as my testimony for the Congressional Record. I strongly support the VAWA act (Violence Against Women's Act). The proposed language of the existing is good, but it needs to go further in order to ensure Native women are fully protected under the proposed reauthorization. One of the amended provisions of the VAWA is heading in the right direction, making sure Native Women's rights are protected in all jurisdictions of the judicial branch of government.

Please feel free to contact if you need me to submit further information, or if you need witnesses in future hearings on this all important matter for the protection of Native Women across the country.

OFFICE OF MAYOR GAYLE MCLAUGHLIN

City of Richmond

November 9, 2011

The Honorable Dianne Feinstein
United States Senate
Washington, D.C. 20510
Attn: Joseph Jankiewicz

RE: S. 872 - A bill to amend the Omnibus Indian Advancement Act to modify the date as of which certain tribal land of the Lytton Rancheria of California is deemed to be held in trust and to provide for the conduct of certain activities on the land.

Dear Senator Feinstein:

I write to reaffirm my strong support for your bill, S.872, limiting the ability of the Lytton Indians to expand their gambling operation in San Pablo and to urge you to exercise all efforts to obtain final passage of the bill. We are quickly reaching a point where the presence of casino gambling in the East Bay could become irreversible, and it is critical now more than ever to keep local funds in the community, and not to outside investors.

As you know, the casino would take in hundreds of millions of dollars in revenue from local residents, largely from seniors and low-income citizens. The profits, however, would not go back into our community, but would be redirected to gambling investors in Nevada and interests out of the state. Given the dire financial situation local governments face in California, we cannot afford to lose local dollars that can support our community's basic services.

The negative effects of casino gambling remain a threat looming over the Bay Area. As the community is buffeted by crime, drugs, and abuse due to the casino and the dismal economy, this bill is critical to help stem the tide. Many citizens remain concerned that gambling at the site will be expanded, and that the negative effects, including traffic, drunk driving, and crime, will proliferate.

When voters approved Proposition 1A, they were told that Indian gaming would be limited to Indian reservations. In 2000, the Lytton Tribe was given an exemption from provisions of IGRA that apply to all other tribes. That exemption deprives the community of a local voice. Your bill would thankfully repeal that exemption for Class III games, and allow our community to have a stake in this process.

I applaud your efforts to pursue these issues persistently the last few years. Your leadership on this issue is extremely appreciated. Please do all that you can to pass S. 872 this year.

Sincerely,

Gayle McLaughlin
Mayor, City of Richmond

ALASKA STATE LEGISLATURE

Session
State Capitol Building
Juneau, Alaska 99801-1182

District
718 West 4th Avenue
Anchorage, Alaska 99501-2133

SENATOR CATHY GIESSEL

November 7, 2011

Honorable Senator Daniel Akaka, Chairman
US Senate Committee on Indian Affairs
141 Senate Hart Office Building
Washington, DC 20510

Re: S. 1192 (Alaska Safe Families and Villages Act of 2011)

Dear Senator Akaka,

I am writing to underscore the points made by my Alaska State Senate colleague, Senator John Coghill, related to S. 1192. On November 4, 2011, Senator Coghill communicated with you about many serious aspects of concern with S. 1192, and provided supporting data for those concerns.

S. 1192 will undermine and dilute the authority of the State of Alaska to govern itself and provide for public safety through our Village Public Safety Officer (VPSO) program.

Alaska Governor Sean Parnell and his cabinet have been working diligently to ensure the effectiveness of the Alaska VPSO program which places officers in our rural communities. These well-trained officers are making a significant difference in protecting rural citizens.

I would encourage you to review the data that Senator Coghill provided.

I urge you to support and cooperate with the State of Alaska regarding our Village Public Safety Officer (VPSO) program. Governor Parnell, Attorney General John Burns and Public Safety Commissioner Joseph Masters understand and are focused on the safety of all the citizens of Alaska.

Respectfully,

Senator Cathy Giessel

CITY OF OAKLAND

CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

Larry E. Reid
President of the City Council
lreid@oaklandnet.com

November 9, 2011

The Honorable Dianne Feinstein
United States Senate
Washington, D.C. 20510
Attn: Devin Rhinerson

Re: S 872 – A bill to amend the Omnibus Indian Advancement Act to modify the date as of which certain tribal land of the Lytton Rancheria of California is deemed to be held in trust and to provide for the conduct of certain activities on the land.

Dear Senator Feinstein:

I write to reaffirm my strong support for your bill, S 872, limiting the ability of the Lytton Indians to expand their gambling operation in San Pablo and to urge you to exercise all efforts to obtain final passage of the bill.

As you know, the casino would take in hundreds of millions of dollars in revenue from local residents, largely from seniors and low-income citizens. The profits, however, would not go back into our community, but would be redirected to gambling investors in Nevada and interest out of the state. Given the dire financial situation local governments face in California, we cannot afford to lose local dollars that can support our community's basic services.

The negative effects of casino gambling are a threat to the bay Area. This bill is critical to help stem the tide of crime, drugs, and abuse due to the casino and the dismal economy. Many citizens are concerned that gambling at the site will be expanded, and that the negative effects, including traffic, drunk driving, and crime, will proliferate.

When voters approved Proposition 1A, they were told that Indian gaming would be limited to Indian reservations. In 2000, the Lytton Tribe was given an exemption from provisions of IGRA that apply to all other tribes. That exemption deprives the community of a local voice. Your bill would thankfully repeal that exemption for Class III games, and allow our community to have a stake in this process.

I applaud your efforts to pursue these issues persistently the last few years. Your leadership on this issue is extremely appreciated. Please do all that you can to pass S. 872 this year.

Sincerely,

Larry E. Reid
President, Oakland City Council

SAN PABLO / Indians, Feinstein strike deal that keeps casino from growing

May 10, 2007|Zachary Coile, Chronicle Washington Bureau
http://articles.sfgate.com/2007-05-10/bay-area/17243072_1_pomo-indians-casino-san-pablo-lytton-band

2007-05-10 04:00:00 PDT Washington — The Lytton Band of Pomo Indians -- who stirred an outcry by proposing a megacasino with 5,000 slot machines in the East Bay -- have agreed to a deal with Sen. Dianne Feinstein to abandon future plans to offer slot machines and build a Las Vegas-size facility at Casino San Pablo.

The agreement would allow the Sonoma County tribe to continue to operate its 70,000-square-foot casino near Interstate 80 with 1,050 electronic bingo machines -- a multimillion-dollar business that has no major competitors in the East Bay.

The tribe pushed for the deal to end Feinstein's threat to shut down the casino with legislation that would have forced the Lytton band to go through rigorous federal and state approvals to offer even the Class II gaming now played in the casino. The senator agreed to relent, but only if the tribe gave up its dreams of Class III slot machines and erecting a 600,000-square-foot casino.

"This is a win-win," Feinstein, D-Calif., said. "By effectively foreclosing the possibility of a major expansion of the Lytton's San Pablo casino, this legislation ensures that a major Nevada-style casino will not be built in the Bay Area in the near future."

Tribe officials said they were pleased with the compromise, saying it would end the uncertainty over the future of their casino.

"Although it has been a difficult process ... Sen. Feinstein's legislation will allow us to operate the casino for the long term without the threat of closure," said Margie Mejia, chairwoman of the Lytton Band of Pomo Indians, who's also chief executive officer of the casino.

The deal is contained in legislation that Feinstein introduced late Wednesday.

The measure would strike language included in the 2000 Omnibus Indian Advancement Act by Rep. George Miller, D-Martinez, which allowed the tribe to backdate its purchase of an aging San Pablo card club. The backdating effectively let the Lytton band evade federal rules that make it difficult for tribes to build casinos on lands acquired after 1988 when Congress passed the Indian Gaming Regulatory Act.

Under Feinstein's bill, the tribe could continue to offer Class II electronic bingo, but would be barred from using Class III slot machines unless it gets state and federal approval -- an all-but-impossible task in the current political climate. The bill also would block the tribe from expanding the casino's physical structure.

THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA
PASSED by the following vote of the Board of Supervisors on this fifth day of April 2005
AYES:
NOES:
ABSENT:
ABSTAIN:

RESOLUTION NO. 2005/181

Subject: Indian Gaming in Contra Costa County

WHEREAS, Contra Costa County is supportive of California Native Americans' right to exercise control over their tribal lands and recognizes and respects the tribal right of self-governance to provide for the welfare of tribal members and to preserve traditional tribal culture and heritage;

WHEREAS, Contra Costa County also has a legal responsibility to provide for the health, safety, environment, infrastructure, and general welfare of its residents;

WHEREAS, casino-style gambling on Indian lands was authorized by the voters through the passage of Proposition 1A in March 2000 with the assurance that tribal gaming operations would be limited to existing Indian reservations, none of which were then in urban areas;

WHEREAS, the people of the State of California and of Contra Costa County have expressed their desire to curtail the expansion of casinos and gambling in the State of California by overwhelmingly rejecting in November 2004 two statewide initiatives to expand Nevada style gambling to non-tribal lands and permit unlimited numbers of slot machines on tribal lands;

WHEREAS, the federal government, through the Bureau of Indian Affairs, has the authority to take land into trust for Indian reservations anywhere in California and under certain conditions to authorize Indian gaming and in doing so, has no obligation to ensure mitigation of off-reservation impacts of the reservation or casino;

WHEREAS, Contra Costa County supports the California State Association of Counties' Policy Documents regarding Development on Indian Lands and Compact Negotiations for Indian Gaming, including opposition to the practice known as "reservation shopping" where a tribe seeks to place land into trust outside its aboriginal territory over the objection of the county;

WHEREAS, there has been no objective determination as to whether any of these tribes has a significant historic connection to Contra Costa County;

WHEREAS, there is already one Indian casino in the densely populated urban area of western Contra Costa County, with two other tribes seeking to put land into trust and operate casinos, all within 8 miles of each other;

WHEREAS, numerous studies and actual experience of other communities have shown that Tribal casino operations have caused extensive off-reservation impacts, such as increased traffic congestion, noise, air and water pollution and water supply demands, as well as increased law enforcement and public safety burdens, and additional social and health impacts on surrounding communities, costing local governments hundreds of millions of dollars annually;

THEREFORE, BE IT RESOLVED, that the Contra Costa County Board of Supervisors opposes the creation or expansion of any further Indian gaming casinos within Contra Costa County, an urban county, as well as the establishment of reservations on which there could be gaming operations;

BE IT FURTHER RESOLVED, that the Contra Costa County Board of Supervisors authorizes and directs its staff to take and support any and all administrative, legal or legislative actions in furtherance of this position.

RESOLUTION NO. 2005/181

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U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

JUN 19 2012

The Honorable Daniel K. Akaka
Chairman
Committee on Indian Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Enclosed please find responses to questions for the record arising from the appearance of Associate Attorney General Thomas J. Perrelli at a July 14, 2011, Committee hearing entitled "Native Women: Protecting, Shielding, and Safeguarding Our Sisters, Mothers, and Daughters."

We apologize for the delay, and hope that this information is helpful to the Committee. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter. The Office of Management and Budget has advised us that from the perspective of the Administration's program there is no objection to submission of this letter.

Sincerely,

Judith C. Appelbaum
Acting Assistant Attorney General

Enclosure

cc: The Honorable John Barrasso
Vice Chairman

Questions for the Record for
Thomas J. Perrelli
Associate Attorney General
U.S. Department of Justice

Committee on Indian Affairs
United States Senate
July 14, 2011

Questions from Chairman Daniel K. Akaka

1. There is a baseline study mandated under the Violence Against Women Act, among other reporting requirements.

Question: What is the Department's progress on this study?

The Violence Against Women Act of 2005 (Public Law Number 109-162), at Title IX, Section 904(a) (codified at 42 U.S.C. § 3796gg-10 note) calls for the National Institute of Justice (NIJ) to conduct "a national baseline study to examine violence against Indian women in Indian country." Using funds appropriated for purposes consistent with this authority, and in consultation with the Office on Violence Against Women, NIJ has implemented a new research program that will collect information on violence against Indian women in Indian country and in Alaska Native communities focusing on domestic violence, dating violence, sexual assault, stalking, and murder. This will be the first national effort to collect information from enrolled American Indian and Alaska Native people in Indian country and in Alaska Native communities.

With guidance from the program's Federal Advisory Task Force, NIJ's federal partners, and leading research experts in the field of violence against American Indian and Alaska Native (AI&AN) women, RTI International, and NIJ developed a draft survey instrument that was approved by the Office of Management and Budget (OMB) on November 2, 2011.

As Phase I of the research program, the Violence Against Indian Women (VAIW) pilot study was specifically designed with input from tribal stakeholders to help ensure that the proposed national survey is culturally and community appropriate, respectful of those who will participate in the study, and that the information collected will be relevant and helpful. With the approval of tribal leadership, several tribal communities were selected to participate in a pilot study of the VAIW survey and methods for selecting and recruiting survey participants. The VAIW pilot study was conducted by RTI International in collaboration with NIJ in late 2011 and early 2012. RTI International and NIJ staff expect to release the scientific findings of the pilot study along with lessons learned from the three field tests in 2012. The information gathered from the pilot

study along with input from the field is anticipated to help ensure that NIJ's national VAIW study is viable, systematic, and comprehensive.

Full field implementation is expected to begin in late calendar year 2012 for a 30- to 42-month period. In partnership with NIJ, a research team comprised of AI&AN research and evaluation expertise will implement the study.

Based on a solid, scientific sampling design plan, tribal nation participation, and OMB approval, a satisfactory number of sites will be identified for data collection that reflect a strong geographic distribution of AI&AN women for the entire United States that reside in Indian country (including Alaska Native communities). The number of sites selected for implementation will be contingent on funding availability.

2. <u>Question:</u> How does the Department plan to use this study to improve its efforts to address violence against women?

Over the past three years, the Department has engaged in a host of efforts to improve our response to violence against American Indian and Alaska Native women. We have added additional law enforcement and prosecution personnel, increased training, and committed more resources to providing services for victims. We anticipate that the NIJ research will shed additional light on the nature of these crimes, the needs of the victims, where victims are currently accessing services, the characteristics of perpetrators, and how the criminal justice system is responding when crimes occur. This information will allow us to further refine our efforts and better direct resources to meet the most pressing needs.

Questions from Vice-Chairman John Barrasso

Your testimony recommends that an area for potential Federal legislation involves extending tribes' concurrent criminal jurisdiction over non-Indians for certain domestic or sexual assault crimes in Indian Country. This recommendation would require Congress to overturn, in part, the *Oliphant v. Suquamish Indian Tribe* decision.

1. Question: How do you propose to address the constitutional concerns raised in the decision in *U.S. v. Lara*? Please be specific.

In *United States v. Lara*, 541 U.S. 193 (2004), the Supreme Court addressed a Federal statute providing that Indian tribes' governmental powers include "the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians," including Indians who are not members of the prosecuting tribe (*i.e.*, "nonmember Indians"). *Id.* at 210 (appendix, quoting the statute). The Court held generally that Congress has the constitutional power to relax restrictions on the exercise of tribes' inherent legal authority, *id.* at 196, and more specifically that "the Constitution authorizes Congress to permit tribes, as an exercise of their inherent tribal authority, to prosecute nonmember Indians," *id.* at 210.

The Department of Justice's proposed legislation, which has now been incorporated into S. 1763, Chairman Akaka's SAVE Native Women Act, uses language that is nearly identical to the statutory language at issue in *Lara*: Specifically, Section 201 of the SAVE Native Women Act provides that a tribe's governmental powers "include the inherent power of that tribe, which is hereby recognized and affirmed, to exercise special domestic violence criminal jurisdiction over all persons," including non-Indians. As *Lara* strongly suggests, Congress has the constitutional authority to enact this statute.

The central question raised in *Lara* was whether Congress has the constitutional power to recognize Indian tribes' "inherent" authority to prosecute nonmembers. The Court's conclusion that Congress did indeed have this power under the Federal Constitution rested on six considerations, all of which apply to Section 201 of the SAVE Native Women Act as well: (1) "the Constitution grants Congress broad general powers to legislate in respect to Indian tribes," *id.* at 200; (2) "Congress, with this Court's approval, has interpreted the Constitution's 'plenary' grants of power as authorizing it to enact legislation that both restricts and, in turn, relaxes those restrictions on tribal sovereign authority," *id.* at 202; (3) "Congress' statutory goal — to modify the degree of autonomy enjoyed by a dependent sovereign that is not a State — is not an unusual legislative objective," *id.* at 203; (4) there is "no explicit language in the Constitution suggesting a limitation on Congress' institutional authority to relax restrictions on tribal sovereignty previously imposed by the political branches," *id.* at 204; (5) "the change at issue here is a limited one, . . . [largely concerning] a tribe's authority to control events that occur upon the tribe's own land," *id.*; and (6) the Court's "conclusion that Congress has the power to relax the

restrictions imposed by the political branches on the tribes' inherent prosecutorial authority is consistent with [the Supreme Court's] earlier cases," *id.* at 205.

Each of these six considerations also applies to Section 201 of the SAVE Native Women Act. That is self-evident for the first four of those six considerations.

As to the fifth consideration, like the statute at issue in *Lara*, Section 201 of the SAVE Native Women Act would effectuate only a limited change. Section 201 would touch only those criminal acts that occur in the Indian country of the prosecuting tribe and therefore would not cover off-reservation crimes. Section 201 would affect only those crimes that have Indian victims. Tribal courts could not try cases involving only non-Indians. Unlike the statute at issue in *Lara*, which covered all types of crimes, Section 201 is narrowly focused on a particular subset of crimes: those involving domestic violence, crimes of dating violence, and criminal violations of protection orders.[1] The term "domestic violence" is expressly defined in Section 201 to deal with violence committed by the victim's current or former spouse, by a person with whom the victim shares a child in common, or by a person who is cohabiting or has cohabited with the victim as a spouse. Similarly, Section 201 expressly defines the term "dating violence" to mean violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Likewise, protection orders typically involve spouses or intimate partners.

In combination, these three features of Section 201 — being limited to narrow categories of crimes such as domestic violence and dating violence, the requirement that the crime occurred in the prosecuting tribe's Indian country, and the requirement that the victim be an Indian — will confine prosecutions to conduct that seriously threatens Indians' health and welfare and is

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[1]The Senate Committee on Judiciary has found that violence against Native women has reached epidemic proportions and that an expansion of tribal jurisdiction is needed to address this epidemic:

> Responding to the crisis of violence against Native women has been a core principle of VAWA from its inception, and significant strides have been made in combating domestic violence in Indian country committed by Indian men. Unfortunately, much of the violence against Indian women is perpetrated by non-Indian men. According to Census Bureau data, well over 50 percent of all Native American women are married to non-Indian men, and thousands of others are in intimate relationships with non-Indians. Tribes do not currently have the authority to prosecute non-Indian offenders even though they live on Indian land with Native women. Prosecuting these crimes is left largely to Federal law enforcement officials who may be hours away and are often without the tools or resources needed to appropriately respond to domestic violence crimes while also addressing large-scale drug trafficking, organized crime, and terrorism cases. As a result, non-Indian offenders regularly go unpunished, and their violence continues... This leaves victims tremendously vulnerable and contributes to the epidemic of violence against Native women. The Committee seeks to address this specific jurisdictional gap by incorporating a provision almost identical to section 201 of the SAVE Native Women Act into this reauthorization of VAWA.

S. Rep. 112-153 at 9.

committed by persons who, though non-Indian, have entered into consensual relationships with the tribe or its members. The paradigmatic example of a crime covered by Section 201 would be an assault by a non-Indian husband against his Indian wife in their home on the reservation. Section 201 would not cover crimes involving two non-Indians, two strangers, or two persons who lack ties to the Indian tribe.

Section 201 is also limited in its impact on non-tribal jurisdictions. Under Section 201, tribes would exercise criminal jurisdiction concurrently, not exclusively. The Act would not create or eliminate any Federal or State criminal jurisdiction over Indian country. Nor would it affect the authority of the United States or any State to investigate and prosecute crimes in Indian country.

In most respects, then, Section 201 of the SAVE Native Women Act is far narrower than the statute upheld by the Supreme Court in *Lara*.

As to the sixth consideration analyzed by the *Lara* Court, concerning the Supreme Court's precedents, it is noteworthy that in *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978), the key precedent here, the Court suggested that Congress has the constitutional authority to recognize and thus restore Indian tribes' inherent power to exercise criminal jurisdiction over non-Indians. *Id.* at 195 & n.6, 210-12. Indeed, the *Oliphant* Court expressly stated that the increasing sophistication of tribal court systems, the Indian Civil Rights Act's protection of defendants' procedural rights, and the prevalence of non-Indian crime in Indian country are all "considerations for Congress to weigh in deciding whether Indian tribes should finally be authorized to try non-Indians." *Id.* at 212.

As the *Lara* Court explained, the *Oliphant* decision "did not set forth constitutional limits that prohibit Congress from changing the relevant legal circumstances, *i.e.*, from taking actions that modify or adjust the tribes' status." *Lara*, 541 U.S. at 205 (citing *Oliphant*, 435 U.S. at 209-10). *Oliphant* "make[s] clear that the Constitution does not dictate the metes and bounds of tribal autonomy," and the Federal courts should not "second-guess the political branches' own determinations" about those metes and bounds. *Id.* In short, under both *Oliphant* and *Lara*, it is constitutional for "Congress to change 'judicially made' federal Indian law through [the] kind of legislation" that the Department of Justice has proposed. *Id.* at 207.

After analyzing the six considerations listed above and concluding that Congress can recognize tribes' inherent authority to prosecute nonmembers, the Court responded to three ancillary arguments that Mr. Lara had raised. Each of those arguments is also well addressed by Section 201 of the SAVE Native Women Act.

First, Mr. Lara argued that the Indian Civil Rights Act does not protect an indigent defendant's constitutional right to appointed counsel in cases imposing a term of imprisonment. *Id.* at 207. But under the SAVE Native Women Act, in any case in which a term of imprisonment of any length is imposed, the tribe must provide to an indigent defendant — at the tribe's expense — the

effective assistance of a licensed defense attorney at least equal to that guaranteed by the United States Constitution.

Second, Mr. Lara argued that the statute at issue there made "all Indians" subject to tribal prosecution while excluding all non-Indians, which he claimed violated the Equal Protection Clause. The Court did not address the argument because it would not have altered the outcome of Mr. Lara's case. But in any event, no such argument could be made against Section 201 of the SAVE Native Women Act, because Section 201 recognizes tribes' "inherent power . . . to exercise special domestic violence criminal jurisdiction over ***all*** persons" (emphasis added). So the plain text of this legislation, unlike the statute at issue in *Lara*, does not distinguish nonmember Indians from non-Indians.

Third, Mr. Lara argued that United States citizens cannot be tried and convicted by a political body that does not include them unless the citizens are provided all Federal constitutional safeguards. This, too, is addressed in the SAVE Native Women Act. Under Section 201 of that Act, a non-Indian citizen of the United States would effectively have at least the same rights in tribal court that he would have in state court. For example, in any case involving imprisonment, the following rights would all be protected:

- The right not to be deprived of liberty or property without due process of law.
- The right to the equal protection of the tribe's laws.
- The right against unreasonable search and seizures.
- The right not to be twice put in jeopardy for the same tribal offense.
- The right not to be compelled to testify against oneself in a criminal case.
- The right to a speedy and public trial.
- The right to a trial by a jury of not fewer than six persons.
- The right to be informed of the nature and cause of the accusation in a criminal case.
- The right to be confronted with adverse witnesses.
- The right to compulsory process for obtaining witnesses in one's favor.
- The right to have the assistance of defense counsel.
- The right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution.
- The right of an indigent defendant to the assistance of a licensed defense attorney at the tribe's expense.

- The right to be tried before a judge with sufficient legal training and who is licensed to practice law.

- The rights against excessive bail, excessive fines, and cruel and unusual punishments.

- The right to access the tribe's criminal laws, rules of evidence, and rules of criminal procedure.

- The right to an audio or other recording of the trial proceeding and a record of other criminal proceedings.

- The right to petition a Federal court for a writ of habeas corpus, to challenge the legality of one's detention by the tribe.

- The right to petition a Federal court to be released pending resolution of the habeas corpus petition.

Furthermore, under Section 201 of the SAVE Native Women Act, non-Indians will not be convicted by tribal juries from which non-Indian jurors have been systematically excluded. As an initial matter, many of the tribes that are most likely to exercise jurisdiction under Section 201 already have integrated jury pools that reflect a fair cross-section of the community. For example, the Navajo Nation Code provision on eligibility of jurors encompasses "[a]ny person residing within the territorial jurisdiction of the Navajo Nation," and the Code expressly mandates that lists of eligible jurors "shall constitute a fair cross-section of the Judicial District where jury trials will be held." Likewise, the Tulalip Tribes' Law and Order Code requires jury pools to include non-Indian "residents of the Tulalip Indian Reservation," as well as non-Indians "who have been employed by the Tribes for at least one continuous year prior to being called as a juror."

Moreover, if a tribe tried to systematically exclude the reservation's non-Indian residents from the jury pool, the tribe would likely face legal challenges, in Federal-court habeas proceedings, on at least three grounds: (1) the Indian Civil Rights Act's due-process clause; (2) the Indian Civil Rights Act's equal-protection clause; and (3) the SAVE Native Women Act's constitutional catch-all provision, which requires tribes to provide non-Indian defendants "all other rights whose protection is necessary under the Constitution of the United States" in order for Congress to authorize tribal prosecutions of non-Indians. And, to help make these legal requirements fully effective, Section 201 of the Act authorizes the Department of Justice to award grants to tribes to help them "ensure that, in criminal proceedings [with non-Indian defendants], jurors are summoned, selected, and instructed in a manner consistent with all applicable requirements."

Finally, one last constitutional concern was aired in *Lara*, although it was not discussed in the Court's majority opinion. Writing only for himself, Justice Kennedy suggested that the Constitution's structure, based as it is on "a theory of original, and continuing, consent of the

governed," forbids a tribe from prosecuting any U.S. citizen who never consented to be subjected to the tribe's jurisdiction. *Lara*, 541 U.S. at 212 (Kennedy, J., concurring in the judgment). Of course, the majority of the Court in *Lara* — including Chief Justice Rehnquist, who wrote the Court's opinion in *Oliphant* — implicitly rejected Justice Kennedy's view, since Mr. Lara himself was a U.S. citizen who had never consented to be subjected to the jurisdiction of the tribe that prosecuted him. *Id.* The majority correctly rejected Justice Kennedy's originalist argument because most treaties that the United States entered into with Indian tribes between 1785 and 1795 — that is, both immediately before and immediately after the drafting and ratification of the Constitution — expressly provided for tribal criminal jurisdiction over non-Indians residing in Indian country. For example, the very first Indian treaty ratified by the United States Senate under the Federal Constitution — the 1789 Treaty with the Wyandot, Delaware, Ottawa, Chippewa, Potawatomi, and Sac Nations — provided that, "[i]f any person or persons, citizens or subjects of the United States, or any other person not being an Indian, shall presume to settle upon the lands confirmed to the said [Indian tribal] nations, he and they shall be out of the protection of the United States; ***and the said nations may punish him or them in such manner as they see fit***" (emphasis added). Similar language appeared in the last Indian treaty ratified before the Constitutional Convention – the 1786 Treaty with the Shawnee Nation. It is difficult, then, to say that allowing non-Indian citizens of the United States to be tried and punished by Indian tribes for crimes committed in Indian country is somehow contrary to the Framers' understanding of the Constitution's design. Thus, the *Lara* Court's holding that Indian tribes' status as domestic dependent nations does not prevent Congress from recognizing their inherent authority to prosecute nonmembers is solidly grounded in our constitutional history. And with Congress's express authorization, an Indian tribe can prosecute a non-Indian U.S. citizen, regardless of whether he has consented to the tribe's jurisdiction.

It is important to note that while the elements of Section 201 discussed above are more than sufficient to address the considerations raised by the *Lara* Court, we do not mean to suggest that each of these elements is *required* in order to address these considerations.

2. <u>Question:</u> Would the Department's proposal create legal risks for other areas of tribal jurisdiction (i.e., risks that a court will decide a case arising for the proposed legislation in such a way that tribal court jurisdiction in other kinds of cases will be drawn into question)? If yes, please describe how the legislation could be drafted to minimize any such risks.

Largely for the reasons described above, we do not believe that the legislation, as drafted by the Department of Justice and now incorporated in S. 1763, the SAVE Native Women Act, would create legal risks that a court will decide a case arising from the legislation in such a way that tribal court jurisdiction in other kinds of cases will be drawn into question.

3. Question: Would extending tribal court jurisdiction over non-Indians in the manner suggested by the Department have a significant impact on the public safety dangers faced by women and children in Indian Country on reservations that lack the detention facilities and/or sufficient resources to pay for the incarceration of violent offenders?

The Department's proposed legislation, now incorporated in S. 1763, the SAVE Native Women Act, recognizes that some Indian tribes lack the resources to fully and properly implement the bill's tribal criminal jurisdiction provision today. Section 201 of S. 1763 therefore authorizes Federal grants to Indian tribes to strengthen their criminal justice systems, and expressly allows these grants to be used to improve "detention and correctional facilities," as well as "alternative rehabilitation centers." Furthermore, some domestic-violence offenders convicted in tribal court under Section 201 could serve their sentences at appropriate Federal facilities, at the expense of the United States, pursuant to the pilot program established by the Tribal Law and Order Act of 2010. The availability of these options (tribal grants and Federal incarceration) will expand the set of reservations where Section 201 of the SAVE Native Women Act has the potential to significantly improve public safety.

4. Question: Has the Department analyzed how many or which Indian tribes in the U.S. have the financial resources and facilities to incarcerate offenders who are subject to the criminal jurisdiction of Indian tribes under current Federal law? If yes, please describe the analysis in detail.

Last August, about a month after this Committee's hearing, the Departments of Justice and the Interior submitted to Congress a 49-page report on tribal justice systems, with a heavy emphasis on these very issues. The report, prepared pursuant to Sections 211 and 244 of the Tribal Law and Order Act of 2010, assessed tribal and Federal detention facilities in Indian country, tribes' contracts with State and local detention centers, and alternatives to incarceration that were developed in cooperation with tribal court systems. We are attaching a copy of that report.

5. According to prior testimony received by the Committee, the prevalence of violence and sexual abuse in Indian communities raises the potential of Indian youth engaging in risky behaviors such as substance abuse and even prostitution.

Question: How can the Department of Justice be more aggressive in addressing the risk factors that sometimes force Indian women and children into these situations?

The Department of Justice has worked with its tribal partners to address the devastating impact that violence and sexual abuse can have on Indian youth. The Department's Office of Justice Programs (OJP) plays a key role in these efforts. OJP's Office of Juvenile Justice and Delinquency Prevention (OJJDP) and Office for Victims of Crime (OVC) both administer

programs that are part of the Department's Coordinated Tribal Assistance Solicitation (CTAS). OJJDP's Tribal Youth Program (TYP) supports prevention and intervention services for youth and families that target a number of risk factors such as, mental health services, traditional healing methods and services, trauma-informed care, drug and/or alcohol education, substance abuse counseling, drug testing, and screening. In addition, tribes can use TYP funding to assist youth in the juvenile justice system including mental health and substance abuse treatment, skill development, and comprehensive reentry services. TYP seeks to increase protective factors for tribal children while reducing their risk factors. It provides additional supports and resources to enable recipients to live within stable family networks and safe communities, succeed in school supports the provision of healing services when trauma and victimization cannot be prevented, and supports the prosecution of perpetrators to the full extent of the law in both tribal and federal courts, when appropriate.

OJJDP is continuing to expand its research regarding tribal youth and families to identify gaps and ways to improve prevention, intervention, and responses for at-risk youth in Indian country. Currently, the Tribal Field Initiated Research Program is supporting projects that are investigating how to address childhood trauma by applying evidence-based practices that are culturally-appropriate, alternatives to detention, and the intersection of positive cultural identity development and delinquency prevention.

OJJDP also funds the Native American Children's Alliance, which works to create and support child advocacy centers in tribal communities. Child Advocacy Centers bring together multidisciplinary teams including prosecutors, law enforcement, child protection investigators, mental health and medical professionals, and victim advocates to provide a coordinated child-centered response to victims of child abuse.

OVC's CTAS programs are the Tribal Victim Assistance Program (TVA), and Children's Justice Act Partnerships for Indian Communities (CJA). TVA supports comprehensive, multi-disciplinary services for Tribal crime victims. CJA supports services that improve the investigation, prosecution, and overall handling of child abuse, child sexual abuse or severe physical abuse cases. A copy of the FY 2012 CTAS solicitation is attached. The application deadline was April 18, 2012.

OVC is also working with the Department of the Interior, Bureau of Indian Affairs, and Bureau of Indian Education, to help students at the Flandreau Indian School (FIS), an off-reservation boarding school in South Dakota. OVC funding supports specialized counseling services; therapeutic and culturally appropriate extra-curricular activities; training and technical assistance regarding evidence-based trauma interventions; and annual evaluations of the students' mental health. The hope is that providing targeted therapeutic services, strengthening bonds with

heritage and tradition, and building a trauma-informed community will improve the FIS students' mental and emotional well-being.

The Department is also examining the impact of children's exposure to violence through the Attorney General's Defending Childhood Initiative. This effort seeks to prevent children's exposure to violence, mitigate the harmful impacts when violence occurs and promote research and public awareness around the issue. Part of the initiative is a demonstration project which includes two tribal sites: Chippewa Cree and Rosebud Sioux. The initiative also includes a federal task force with nationally renowned experts to help provide high-level policy recommendations to advise the Department on innovative approaches to children's exposure to violence.

Finally, the Department's robust participation in the Indian Alcohol and Substance Abuse Interdepartmental Coordinating Committee (IASA Committee), established under the Tribal Law and Order Act of 2010, provides an additional channel for addressing the risk factors of substance abuse by collaborating with partner agencies and using the Department's research and programs to inform other federal substance abuse prevention and treatment efforts.

6. Victims of sexual crimes need treatment locations that are safe. However, there are potential risks that offenders could threaten the safety of these victims at Indian hospitals or clinics.

Question: What is the Department of Justice doing to keep such victims safe at the Indian hospitals and clinics?

DOJ does not have this information, and the question should be referred to the Department of Health and Human Services/Indian Health Service for a response.

7. The Committee has received prior testimony that drug abuse can lead to more violence committed against women and children in Indian Country. As part of the *Indian Health Care Improvement Act*, the Attorney General is required to coordinate with the Secretaries of the Interior and the Health and Human Services to establish a prescription drug monitoring program at Indian health facilities.

Question: What is the status of that monitoring program?

The Indian Health Care Improvement Act, 25 U.S.C. 1680q(b)(2), required the Attorney General to submit to the Senate Committee on Indian Affairs and the House Committee on Natural Resources a report that described the following:

- The capacity of Federal and tribal agencies to carry out data collection and analysis, and information exchanges as described in the Act;

- The training conducted for Indian health care providers, tribal leaders, law enforcement officers, and school officials regarding awareness and prevention of prescription drug abuse and strategies for improving agency resources for addressing prescription drug abuse in Indian communities;

- Infrastructure enhancements required to carry out the activities described in the Act; and

- Any statutory or administrative barriers to carrying out the activities required by the Act.

The Attorney General's report was submitted to Congress in October 2011; the report fully describes federal agency coordination around the issue of Prescription Drug Management Programs. The report can be found at

http://www.justice.gov/tribal/docs/ihia-pdmp-rpt-to-congress.pdf

8. The *Tribal Law and Order Act* authorized the establishment of a bipartisan Commission to study criminal justice in Indian Country. The Department of Justice is authorized to provide assistance to the Commission, including the provision of unexpended funding to carry out its functions and duties.

Question: What assistance has the Department of Justice provided to the Commission to date? Please be specific.

The Department of Justice has supported the work of this important Commission in several ways:

- Assisted in the establishment of the Commission, ensuring affidavits were completed and the needs of the Commission were communicated to Department of Justice and Department of the Interior officials.
- Provided $1 million for costs associated with the development of the report.
- Detailed one Assistant U.S. Attorney to serve full time as the Executive Director of the Commission.
- Detailed one Senior Executive Service-level Program Specialist part-time to oversee the administration of the Commission.
- Designated the Office of Tribal Justice (OTJ) as the Departmental point of contact for the Commission. OTJ is available to the Commission to assist with queries directed to the Department or Departmental components.

9. The Adam Walsh Act required tribes to establish sexual offender registries by July 2011, or the authority to establish such registration requirements would fall to the states.

Question: How many tribes are governed by the Adam Walsh Act registry requirements?

At the passage of the Adam Walsh Act, July 2006, 212 federally recognized tribes were eligible to "opt in" to be registration and notification jurisdictions. Originally, 198 opted to implement Title I of the Adam Walsh Act, the Sex Offender Registration and Notification Act (SORNA). Since July 2007, 14 additional tribes have decided to "opt out" of implementation, electing to delegate the responsibility to the state wherein their territory is located. This left 184. Since the July 2011 deadline; 12 tribes did not substantially implement, did not request additional reasonable time to implement, and did not "opt out." After an extensive "delegation" procedure, these 12 tribes had their sex offender registration and notification duties delegated to the state in which they are located. As of April 24, 2012, the total number of SORNA implementing tribes is 172.

10. Question: Of the eligible tribes, how many elected to establish a registry?

As noted in the previous response, 172 tribes have elected to substantially implement all the SORNA requirements. Establishing their own registry and public website is just one way tribes can implement SORNA. SORNA also permits tribes to enter into Memoranda of Understanding with counties and states or enter consortia with other tribes for all or part of their implementation duties. Some tribes have set up registries and public websites and many are working toward that goal, while others have entered into agreements to have their offenders registered and posted by other jurisdictions. As of March 30, 2012, 81 tribes have public sex offender websites connected to the National Sex Offender Public Website.

11. Question: Of the tribes that elected to establish a registry, how many have achieved compliance or substantial compliance with the Adam Walsh Act requirements?

As of April 24, 2012, 27 tribes have been found to have substantially implemented SORNA. In addition, 86 have submitted substantial implementation packages that are in different stages of review. Another 57 have requested additional time to implement, and continue to work on implementation. Two tribes have indicated that they are planning to "opt out" but, to date, have not provided resolutions to that effect, despite extensive outreach. Two tribes do not have land at the present time. These tribes are not able to implement SORNA at the moment, so they will be exempted from the requirement without the need for delegation.