

July 31, 2008

To: Senator Byron Dorgan, Senate Committee on Indian Affairs

From: Curtis L. Carroll, Associate Chief Judge, Standing Rock Sioux Tribe

Re: increased law enforcement presence on Standing Rock, effects, problems, concerns, and possible remedies

The increased presence of law enforcement on the Standing Rock Reservation appears to have had beneficial effects. People feel safer in their homes and in the communities. Almost all reservation residents are thankful that the federal government has initiated this effort at law enforcement. There is little statistical evidence on the actual crimes committed as opposed to the statistics on reports, arrests, prosecutions and convictions, but there is enough anecdotal support that the only reasonable conclusion is that while reports, arrests, prosecutions and convictions are up, crime itself is substantially down. It appears to be down for all offenses, including domestic violence and other assaults, burglaries, arsons, DUIs, drug crimes and drug related crimes, disorderly conduct, child abuse and child neglect, disorderly conduct, and the specific although common offense of being intoxicated on a public roadway. It is my own personal feeling that the commission of status offenses, such as underage consumption of alcohol is down somewhat less than other offenses are down, but that it too, is down.

That stated, there have been, and are, substantial problems which I will address here. First, the Court, the prosecutor, and the public defender had little advance notice that additional law enforcement was going to be assigned to Standing Rock. Although we had heard generally that something was in the works, we did not know specifically what. We were not consulted during advance planning, and we had less than two weeks certain knowledge that additional officers were going to be assigned, and when. Therefore we had already fully scheduled our dockets, and crowding more arraignments, preliminary hearings, motions and trials into an already full docket has been a challenge.

Second, both the extra officers and those arrested know that the officers are assigned here on a temporary basis. Therefore there may be difficulty in obtaining the officer's testimony when the matter comes to trial. The issue of a criminal defendant's right to confront and cross-examine witnesses has been discussed. Judge Zuger and I are both of the opinion that that Tribal Court has no business setting a lower due process standard than do the federal courts, and the right to confront and cross-examine is a fundamental aspect of due process. The Court and the BIA have cooperated by agreeing to schedule all of the trials that an officer is required to return for on the same day. We hope that this will work, but it has not been tested because the trial dates are mostly still pending.

Also, because the federal officers are here for only a short time, they are often negligent in their preparation of police reports. Today, at arraignments, the prosecutor felt compelled to plea bargain a DUI 3rd down to reckless driving because the arresting officer, one of the temporary officers, had filed no arrest report. After the defense had bound the tribe into a plea agreement, and the defendant entered a plea to reckless driving with the understanding that the DUI would then be dismissed with prejudice, the defendant acknowledged driving while intoxicated. Many of the other reports, although timely filed, are cursory or incomprehensible. This is sometimes a problem with the permanent officers as well, but it is exacerbated when the officers know that they won't be here for long, and have little incentive to do all that is required of them to assist in the prosecution of cases.

Similarly, the Court has little authority over the federal officers. We cannot, in fact, even require them to appear to testify, and some officers routinely fail to appear, and the Court can do nothing. Similarly, if the Court determines that a police officer, or any non Indian witness has perjured them themselves, or is disrupting the proceedings, the Court has precious little authority to deal with the problem, and such authority as does exist is thin and uncertain.

There is major concern that when this effort ends, and the officers leave that lawlessness will return, and that there will be specific problems with retaliation against those who have reported crimes to law enforcement.

We need to continue increased law enforcement at some level for some time.