

**TRIBAL LAW AND ORDER ACT ONE YEAR LATER:
HAVE WE IMPROVED PUBLIC SAFETY AND
JUSTICE THROUGHOUT INDIAN COUNTRY?**

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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**TRIBAL LAW AND ORDER ACT ONE YEAR
LATER: HAVE WE IMPROVED PUBLIC
SAFETY AND JUSTICE THROUGHOUT
INDIAN COUNTRY?**

THURSDAY, SEPTEMBER 22, 2011

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

The Committee met, pursuant to notice, at 2:20 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 United States Senate Committee on Indian Affairs will come to order.

Aloha and welcome to the Committee's oversight hearing on the Tribal Law and Order Act One Year Later: Have We Improved Public Safety and Justice Throughout Indian Country?

Today, our Native communities face severe and disproportionate threats to their public safety. Nationwide Indian reservations suffer from a violent crime rate of more than two-and-a-half times the national average. And with some reservations facing a violent crime rate as high as 20 times the national average. And women in our communities are especially vulnerable to violence. More than one in three Native women will be raped in their lifetime and two in five will fall victim to domestic or partner violence.

These grave statistics are the result of a complicated jurisdictional maze that often allows severe crimes to go unpunished in Native communities. Native justice systems are also extremely underfunded and lack adequate data, training and coordination with State and Federal agencies to deal with the problem.

Signed into law on July, 29, 2010, the Tribal Law and Order Act, TLOA, was intended to address the law and order crisis in Native communities. It has now been over a year since passage and many of the deadlines to implement provisions of the TLOA have passed.

Today, we will hear from three panels of distinguished witnesses to examine progress in implementation of this critical legislation. The witnesses include Federal officials who have been charged with implementing the law, the Chair of the recently established Indian Law and Order Commission, Tribal leaders, Justice officials, and representatives from Native organizations.

We are here to listen and to consider how we can continue to improve Native justice systems beyond the TLOA. Our children and those generations who follow rely on the decisions made today to ensure the safety and success of the communities in the future.

The CHAIRMAN. And I would like to now ask other Members of the Committee for their opening statements.

Senator Tester?

**STATEMENT OF HON. JON TESTER,
U.S. SENATOR FROM MONTANA**

Senator TESTER. Thank you, Mr. Chairman.

I want to welcome the witnesses today on all the panels. I am glad we are following up on this issue. Too often, we pass legislation. We move on. We never look back. And this is too important an issue not to look back on and assess who we are doing.

Soon after I arrived in the U.S. Senate, I met with Tribal leaders across the Country to prioritize their needs. Their needs were so many that I said, wow, rank them. And they did. And of course, health care was the top. Public safety was number two on that particular day.

Businesses have told me that because of a lack of law enforcement, customers never come through the door and it is hard for them to find good employees. Hospital directors have told me they can't find docs. They can't find nurses because their families don't want to live in communities that are dangerous.

Schools tell me they can't educate kids because they come from violent homes, as so many of the students do in Indian Country.

So I was proud to work with Chairman Dorgan in getting right to work on this bill. Our hearings revealed what Native Americans already knew. We haven't done a very good job protecting Indian Country and the disparities were incredibly disturbing. Indian communities are no where as safe as our American communities.

The Chairman talked about some of the statistics. American Indians are two and a half times more likely to experience violent crime. The incidence of crimes upon women is incredibly high. Detention facilities are overcrowded, understaffed. Declination on the ability to prosecute crimes in Indian Country were way too high. Some reservations didn't even have 24-hour coverage for police and they had one person to cover literally hundreds of square miles in Indian Country.

There are other examples, but the bottom line is we need to do better. That is why we passed the bill, to give you the support that is needed in Indian Country to really keep our families safe, our communities safe, our businesses with the ability to succeed.

The bill we passed requires agencies to share evidence and information better. It allows Tribal Courts to give stiffer penalties, as long as protect our Constitutional rights. It encourages different law enforcement agencies to share information and work together, and provides high-level domestic and sexual violence training. It authorizes programs designed to respond to infrastructure needs and substance abuse prevention.

But with more support comes expectations. We are a year out. I look forward to hearing the progress. I hope there has been progress. And quite frankly, just to let you know as a little tip

going in, saying we are working on it is not going to cut it. We have to have things where we have seen positive results as they impact Indian Country because it is just that important.

Look, we have unemployment rates in Indian Country that are through the roof. I think this is a big part of that. It is not the only solution to it, but it certainly is a big part of it. We are never, ever going to see economic growth, job creation, as long as communities are unsafe. I think it is my job. It is your job. And I look forward to hearing about the progress as we work together to make Indian Country all it can be.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Tester.

PREPARED STATEMENT OF HON. JON TESTER, U.S. SENATOR FROM MONTANA

Thank you Mr. Chairman and welcome witnesses. I'm glad we're following up on this critical issue. Too often in this body, we pass legislation, move on to the next issue, and never look back.

As soon as I arrived in the U.S. Senate, I asked Tribal leaders to prioritize their needs. After healthcare, public safety was the most important. Businesses told me that a lack of law enforcement was driving customers away and made it hard for them to find good employees. Hospital directors told me same—they can't get good doctors, because they and their families didn't want to live in dangerous communities. Schools told me they can't educate the kids who come from violent homes—and too many of their students do.

So, I was proud to join former Indian Affairs Committee Chairman, Senator Byron Dorgan, in getting right to work. Our hearings revealed what Indians already know: we've done a terrible job of protecting Indian communities from crime. The disparities were disturbing.

Indian communities were nowhere near as safe as most other American communities. American Indians were two and a half times more likely to experience a violent crime than non-Indians. 40 percent of Indian women will experience intimate partner violence; and 30 percent will be raped. Detention facilities were overcrowded and understaffed. U.S. Attorneys declined to prosecute over 60 percent of all crimes in Indian Country and 70 percent of serious crimes. On some reservations, they didn't even have 24-hour police coverage. On others, they had one person to cover hundreds of square miles.

There are other examples of failure, but the lesson is that we can, and must do better. Giving you folks the support you need is important, because we rely on you to keep our families and communities safe.

The bill we passed requires agencies to share evidence and information better. It allows Tribal courts to give stiffer penalties, as long as they protect constitutional rights. It encourages different law enforcement agencies to work together. It provides high-level domestic and sexual violence training. And it authorizes programs designed to respond to infrastructure needs and substance abuse prevention.

But with more support, come higher expectations. Now, more than one year later, I look forward to hearing about your progress. I don't just want to hear that "you're working on it". I want to hear about positive results.

The bottom line is that we can't expect anybody in Indian Country to succeed, unless we provide safe communities. That is my job and that is your job. I look forward to hearing about your progress today.

Senator Johnson?

**STATEMENT OF HON. TIM JOHNSON,
U.S. SENATOR FROM SOUTH DAKOTA**

Senator JOHNSON. Mr. Chairman, thank you for holding this hearing today. This issue is critically important to my home State of South Dakota.

I would like to thank all of our witnesses for joining us today. I would like to especially thank U.S. Attorney Brendan Johnson

from my home State of South Dakota for testifying here today. I have followed his career closely.

[Laughter.]

Senator JOHNSON. And look forward to his testimony, as well as all the other witnesses.

Throughout this hearing today, we will hear about the higher than average crime statistics affecting Indian Country. Crime in Indian Country in South Dakota is no exception. We have serious issues in South Dakota.

I was proud to have supported the Tribal Law and Order bill. It is my hope that this legislation has and will provide the tools to correct some of these problems.

I look forward to the testimony today to see how implementation of this law is progressing.

Thank you again, Mr. Chairman, for holding this hearing today.

The CHAIRMAN. Thank you very much, Senator Johnson.

With that, I welcome the witnesses. I appreciate that you all have traveled so far to get here today and I look forward to hearing your testimony on this very important matter.

So I ask that you limit your oral testimony to five minutes. Your full written testimony will be included in the record.

Also, the record for this hearing will remain open for two weeks from today, so we welcome written comments from any interested parties. So thank you very much.

Our first panel of witnesses today is Mr. Tom Perrelli, Associate Attorney General for the Department of Justice; Mr. Larry Echo Hawk, the Assistant Secretary of Indian Affairs for the Department of Interior; Mr. Brendan Johnson, U.S. Attorney for the District of South Dakota; Ms. Pamela Hyde, who is Administrator for the Substance Abuse and Mental Health Services Administration at the U.S. Department of Health and Human Services; and Dr. Rose Weahkee, Director of Behavioral Health in the Office of Clinical and Preventive Services for Indian Services in Rockville, Maryland.

I want to welcome all of you again.

And Mr. Perrelli, will you please proceed with your testimony?

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

Mr. PERRELLI. Thank you, Chairman Akaka and Members of the Committee. I appreciate the opportunity to appear before the Committee again and to report on the Justice Department's implementation of the Tribal Law and Order Act of 2010.

This landmark law takes important steps toward improving the delivery and administration of criminal justice services in Indian Country, which is a top priority of the Attorney General. Even before the Tribal Law and Order Act passed, the Department began implementing key aspects of the proposed statute and going beyond the statute, we sought to deepen our engagement with Tribal nations.

The Department is committed to fulfilling its trust responsibilities to Tribal nations, both by improving its own performance and by working with and investing in Tribal communities because we believe those communities are often best able to address the public safety challenges that they face.

I am honored to be here from the Department of Justice with Brendan Johnson, the United States Attorney for the District of South Dakota and the Chair of the Native American Issues Subcommittee of the Attorney General's Advisory Committee. Brendan has shown extraordinary commitment to working with Tribal nations and improving public safety and he has been a tremendous leader for the Department.

Since enactment of TLOA, we have worked hard to implement both its spirit and its letter. Because it covers so much ground, I will only hit a few of the highlights here in my oral testimony, but there is more in my written testimony.

Under TLOA Section 212, FBI investigators and Federal prosecutors are now more effectively than ever coordinating with Tribal law enforcement officials on decisions not to pursue or to pursue criminal investigations or prosecutions in Indian Country. We will be submitting our first annual set of disposition reports as required by Congress early next year.

Under Section 213 of the TLOA, we have already appointed eight Tribal prosecutors as Special Assistant United States Attorneys to assist in prosecuting Federal offenses committed in Indian Country and there are 10 other SAUSA's in the pipeline for later this year.

We have at least one Assistant United States Attorney that will serve as a Tribal liaison in every district with Indian Country. We have established the Office of Tribal Justice as a permanent component of the Department and we have appointed a Native American Issues Coordinator to assist the United States Attorneys, all of which are requirements of the Tribal Law and Order Act.

Under Section 221 of the Act, we have prepared regulations for assuming concurrent jurisdiction over crimes committed on certain Public Law 280 reservations. Those regulations are at OMB currently and we expect to have them out and begin receiving applications from Tribal nations in the coming months.

Under Section 234, the Department's Bureau of Prisons has established a four-year pilot program for accepting offenders convicted in Tribal court under TLOA's enhanced sentencing provisions. And there are a series of reports and memoranda of understanding, including ones with SAMHSA on alcohol and substance abuse; our work with Interior on Tribal detention facilities; the work of our COPS office, all deadlines in the statute, all of which have been met in the last several months.

Earlier this year, pursuant to Section 251 of the statute, our Bureau of Justice Statistics submitted to Congress a compendium of Indian Country crime data, and I think anyone reading that compendium would say that it tells us both that there are tremendous public safety problems in Indian Country and that we are a long way of having fully researched them to fully understand their scope.

Finally, separate from, but as an extension to the Tribal Law and Order Act, we have worked with Tribal leaders to propose legislation to address the issue that Tribal leaders have repeatedly identified to us as one of, if not the most significant issue that they face, the scourge of domestic violence.

That legislation, which we have talked about with this Committee before, follows the path that Congress blazed in the TLOA

by offering Tribal law enforcement and prosecutors additional authority, if they implement procedural safeguards set forth by Congress and the Constitution and it fills critical gaps in the criminal justice response to domestic violence in Indian Country. We are hopeful that Congress gives us serious legislation as the natural next step following the Tribal Law and Order Act.

I want to thank the Committee again for its work in this area and for constantly keeping the spotlight on these issues. We want to ensure, and the Department is fully committed to ensuring the Native Americans can live in safer communities in the months, years, and decades ahead.

Thank you again. I look forward to your questions.
[The prepared statement of Mr. Perrelli follows:]

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

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

I appreciate this opportunity to appear before the Committee on behalf of the Department of Justice to offer the Department's report on implementation of the Tribal Law and Order Act of 2010, Title II of Public Law 111-211 (TLOA). This landmark law includes important steps toward improving the delivery and administration of criminal-justice services in Indian country, which is a top priority for the Attorney General. The Department has worked hard to implement both the spirit and the letter of the law.

The Tribal Law and Order Act of 2010 covers an extraordinary range of important policies, organized into six subtitles: Federal accountability and coordination (Subtitle A, sections 211 to 214); State accountability and coordination (Subtitle B, sections 221 to 222); empowering Tribal law-enforcement agencies and Tribal governments (Subtitle C, sections 231 to 236); Tribal justice systems (Subtitle D, sections 241 to 247); Indian country crime data collection and information sharing (Subtitle E, sections 251 to 252); and domestic violence and sexual assault prosecution and prevention (Subtitle F, sections 261 to 266). In my testimony this afternoon, I will address the sections of the Act that have most directly involved the Department of Justice.

TLOA section 212, in Subtitle A, deals with disposition reports. Specifically, it requires Federal investigators and prosecutors to coordinate with Tribal justice officials concerning decisions not to pursue investigations or prosecutions of alleged violations of Federal criminal law in Indian country, and to compile and report annually to Congress data concerning such decisions.

Throughout 2011, the first calendar year following enactment of the TLOA, the Department of Justice has been gathering data for its first set of disposition reports to Congress. Both the Executive Office for United States Attorneys (EOUSA) and the Federal Bureau of Investigation (FBI) have been working to improve the quality of the data they maintain on investigation and prosecution decisions regarding alleged crimes in Indian country. We expect to deliver the initial disposition reports in early 2012, to cover data from January to December 2011.

Moreover, the type of Federal-Tribal coordination and communication that TLOA section 212 requires has been a focus of the Department's for the last few years. In January 2010, the Deputy Attorney General issued a memorandum directing that every U.S. Attorney's Office with Indian country in its district, in coordination with our law-enforcement partners, engage at least annually in consultation with the Tribes in that district to develop operational plans for addressing public safety in Indian country and to work closely with law enforcement to prioritize combating violence against women in Indian country. Typically, these operational plans provide that U.S. Attorney's Offices, upon declining to prosecute an alleged crime, must coordinate with Tribal justice officials about the status of the investigation and the use of potentially relevant evidence. This engagement has helped foster better communication about ongoing cases and matters in Indian country.

Increased consultation has been central to Attorney General Holder's approach to working with Tribal nations. In October 2009, the Attorney General convened the Department's Tribal Nations Listening Session on Public Safety and Law Enforcement in St. Paul, Minnesota. Nearly 300 Tribal leaders representing approximately 100 Tribes attended the session. In addition to the three top leaders of the Depart-

ment and representatives from nearly all the Department's components, representatives from the Departments of the Interior, Health and Human Services, Housing and Urban Development, Education, and Homeland Security also participated. In 2010, the Attorney General established the Tribal Nations Leadership Council, composed of Tribal leaders selected by the Tribes themselves and charged with advising the Attorney General on issues critical to Tribal governments and communities, including public safety. The Department also has engaged in dozens of consultations with Tribal leaders on specific issues affecting public safety.

TLOA section 213 deals with two key sets of players in prosecuting Indian-country crimes: Special Assistant U.S. Attorneys and Tribal Liaisons. Subsection 213(a) codifies the Attorney General's authority to appoint Tribal prosecutors and other qualified attorneys as Special Assistant U.S. Attorneys (SAUSAs) to assist in prosecuting Federal offenses committed in Indian country. While such appointments had been made occasionally in the past, U.S. Attorneys are now proactively recruiting Tribal prosecutors for these assignments. Currently, there are eight Tribal prosecutors serving as Special Assistant U.S. Attorneys. And at least ten more Tribal prosecutors have been selected by U.S. Attorneys, in consultation with Tribes, to serve as SAUSAs; these individuals are presently undergoing background checks, and it is expected that they will be appointed to serve as SAUSAs by the end of the calendar year.

Subsection 213(b) requires the U.S. Attorney for each district that includes Indian country to appoint at least one Assistant U.S. Attorney to serve as a Tribal Liaison in the district. While the appointment of Tribal Liaisons has been a long-standing practice for many U.S. Attorneys, now every United States Attorney's Office whose district includes Indian country or a federally recognized Tribe has at least one Tribal Liaison, and some districts have more than one.

TLOA section 214 focuses on two key administrative entities in the Department: the Office of Tribal Justice (OTJ) and the Native American Issues Coordinator. Subsection 214(a) requires the Attorney General to establish the Office of Tribal Justice as a component of the Department. OTJ was created in 1995 by then-Attorney General Janet Reno and has operated continuously since then, but was not made permanent until 2010. Even before enactment of the TLOA, the Attorney General had begun the process of making OTJ permanent. And on November 17, 2010, less than four months after TLOA's enactment, the Department published in the *Federal Register* a final rule fully implementing subsection 214(a). The Office of Tribal Justice is now on the Department's organizational chart and is one of a half-dozen Department components that report directly to both the Deputy Attorney General and the Associate Attorney General. OTJ serves as the principal point of contact in the Department for federally recognized Tribes, promotes internal uniformity of Department policies and litigation positions relating to Indian country, and coordinates with other Federal agencies and with State and local governments on their initiatives in Indian country.

Subsection 214(b) codifies the position of Native American Issues Coordinator in the Executive Office for United States Attorneys. The Coordinator assists both the United States Attorney's Offices whose districts include Indian country and the Attorney General's Advisory Committee's Native American Issues Subcommittee, which is currently chaired by the U.S. Attorney for the District of South Dakota, Brendan Johnson.

Turning to Subtitle B, on State accountability and coordination, TLOA section 221 provides that, at the request of an Indian Tribe whose Indian country is subject to mandatory State criminal jurisdiction under Public Law 280 (18 U.S.C. 1162(a)), the United States may accept concurrent jurisdiction to prosecute violations of the General Crimes Act (also known as the Indian Country Crimes Act), 18 U.S.C. 1152, and the Major Crimes Act (also known as the Indian Major Crimes Act), 18 U.S.C. 1153. Here, too, the Department has made great strides in TLOA's first year. After participating in six consultation sessions with Tribal leaders, the Department published proposed procedures for such requests in the *Federal Register* on May 23, 2011 (76 Fed. Reg. 29675), with a public comment period through July 7, 2011. A draft final rule establishing those procedures is currently under interagency review at the Office of Management and Budget.

The next three TLOA sections that I will discuss are all found in Subtitle C, which deals with empowering Tribal law-enforcement agencies and Tribal governments. Section 233 requires the Attorney General to permit qualified Tribal law-enforcement officials access to Federal criminal information databases, such as the FBI's National Crime Information Center (NCIC) databases, so that these Tribal officials can both enter and obtain information. In addition, the Attorney General is required to ensure that qualified Tribal law-enforcement officials are permitted such access to other national criminal databases. Currently, qualified Tribal

lawenforcement officials are permitted access to NCIC, as well as law-enforcement informationsharing resources such as the National Law Enforcement Data Exchange (N-DEX), the DOJsupported Regional Information Sharing Systems (RISS), and Law Enforcement Online's Tribal Public Safety Network (T-Net), to name a few. We know that some Tribal lawenforcement agencies face technical and other challenges in using the databases, and the Department has been actively assisting Tribal law-enforcement agencies to trouble-shoot and overcome challenges to access that may lie outside the Department.

Section 234(c) requires the Director of the Department's Bureau of Prisons to establish a pilot program for accepting offenders convicted in Tribal court under the TLOA's enhanced sentencing provisions. In November 2010, the Bureau of Prisons launched the four-year pilot program that allows any federally recognized Tribe to request that the Bureau incarcerate a person convicted of a violent crime and sentenced to two or more years of imprisonment. Under TLOA section 234(c), the Bureau is authorized to house up to 100 Tribal offenders at a time, nationwide. However, as of today, no Tribe has made such a request.

TLOA section 235 establishes the Indian Law and Order Commission, with members appointed by the President, the Majority and Minority Leaders of the Senate, and the Speaker and Minority Leader of the House of Representatives. Pursuant to section 235, the Attorney General provided recommendations to the White House for the Presidential appointees. Because of certain restrictions in the Continuing Resolutions enacted last year and earlier this year that restricted our ability to start new activities, the Departments of Justice and the Interior were prohibited until this spring from providing funding to the Commission as specified in the TLOA. As a result, the Commission was not able to begin its work as quickly as the Department or the Commissioners would have liked. But under the most recent appropriations acts, the Departments of Justice and the Interior have now moved forward with the Commission not only on funding matters, but also on issues of office space, administrative assistance, and personnel. The Commission held its first in-person meeting in New Mexico on April 6 and its first field hearing earlier this month on September 7 on the Tulalip Indian Reservation in Washington. The Department looks forward to continuing to work closely with the Commission in the months ahead.

Subtitle D of the Tribal Law and Order Act deals with Tribal justice systems. TLOA section 241 adds the Department of Justice to the list of Federal agencies responsible for coordinating resources and programs to prevent and treat Indian alcohol and substance abuse. Under section 241(a)(1)(A) and after extensive consultation with Tribal leaders, Indian organizations, and professionals in the treatment of alcohol and substance abuse, in July 2011, the Departments of Justice, the Interior, and Health and Human Services entered into a Memorandum of Agreement. Under that agreement, the agencies will collectively determine the scope of the alcohol and substance-abuse problems faced by American Indians and Alaska Natives, identify the resources each agency can bring to bear on the problem, and set minimum standards for applying those resources. Also under TLOA section 241, the Justice Department's Office of Justice Programs joins the Bureau of Indian Affairs, the Indian Health Service, and the Substance Abuse and Mental Health Services Administration as a Federal agency partner to assist, in coordination with Indian Tribes, in developing and implementing Tribal Action Plans to combat alcohol and substance abuse on a Tribe-by-Tribe basis.

Sections 241(g), 244(b)(3), and 211(b)(5), collectively, require the Attorney General, in coordination with the Secretary of the Interior, acting through the Bureau of Indian Affairs, and in consultation with Tribal leaders, Tribal courts, Tribal lawenforcement officers, and Tribal corrections officials, to submit to Congress a long-term plan to address incarceration, as well as juvenile detention and treatment, in Indian country, including alternatives to incarceration and juvenile detention. After extensive Tribal consultation, the Departments of Justice and the Interior, with other Federal partners, developed the plan entitled, "Tribal Law and Order Act (TLOA) Long-Term Plan to Build and Enhance Tribal Justice Systems." This Tribal Justice Plan provides short-, medium-, and long-term action steps and recommendations to address incarceration, as well as juvenile detention and treatment, and alternatives to incarceration in Indian country, as well as the reentry of Tribal members from Federal, State, and Tribal jails and prisons to Tribal communities. Central themes of the Tribal Justice Plan include the need to prioritize alternatives to incarceration, to implement the Plan in consultation with Tribal leaders, and to support further coordination of Federal, State, and Tribal resources. The Departments of Justice and the Interior are working with other Federal agencies and with Tribal leaders, Tribal justice practitioners, and community residents to implement these action steps and recommendations.

TLOA section 243 reauthorizes and amends the Tribal Resources Grant Program within the Justice Department's Community Oriented Policing Services (COPS) Office. This program provides long-term funding to hire and retain Tribal law-enforcement officers, and it removes matching requirements. Section 243 also requires the Department to report to Congress on the extent and effectiveness of the COPS program in Indian country, which the COPS Office did in December 2010, with a report entitled, "COPS Office Report to Congress as required by the Tribal Law and Order Act of 2010." The report described and analyzed (1) the problem of intermittent funding; (2) the integration of COPS personnel with existing law-enforcement authorities; and (3) how the practice of community policing and the broken-windows theory can most effectively be applied in remote Tribal locations.

TLOA's Subtitle E concerns Indian country crime-data collection and information sharing. Section 251(b) requires the Department's Bureau of Justice Statistics (BJS), together with the FBI and the Department of the Interior's Bureau of Indian Affairs Office of Justice Services, to work with Indian Tribes and Tribal law-enforcement agencies to establish and implement Tribal data-collection systems that will enable BJS to effectively collect and analyze statistical information about crime in Indian country. Section 251(b) then requires the Director of BJS to submit to Congress an annual report describing the data collected and analyzed relating to crimes in Indian country.

In June 2011, BJS issued a compendium of crime data for Indian country entitled, "Tribal Crime Data Collection Activities, 2011." The following are among the compendium's key findings:

- Tribally operated law-enforcement agencies in 2008 employed nearly 4,600 full-time personnel, including about 3,000 sworn officers. Eleven of the 25 largest Tribal law-enforcement agencies served jurisdictions covering more than 1,000 square miles.
- In 2007, ninety-three State-court prosecutors' offices in mandatory or optional Public Law 280 States prosecuted felonies committed in Indian country under Public Law 280. Most of these offices prosecuted at least one offense involving drugs (63 percent), domestic violence (60 percent), or aggravated assault (58 percent). Seventy percent of these State prosecutors' offices served judicial districts with fewer than 100,000 residents.
- From 2008 to 2009, the average daily jail population in Indian country increased by 12 percent, as the average length of stay increased from 5.1 days to 5.6 days. The percentage of occupied bed space increased from 64 percent to 74 percent.
- In 2008, juveniles constituted a relatively small fraction of the suspects referred to Federal prosecutors (315 out of 178,570 suspects) or of the offenders admitted to Federal prisons (156 out of 71,663 offenders). Tribal youth constituted nearly half of all juveniles (70 out of 152) handled by the Federal courts in 2008. About 72 percent of these Tribal youth were investigated for violent offenses, including sexual abuse (35 percent), assault (20 percent), and murder (17 percent). Ninety-one percent of Federal district-court cases involving Tribal youth resulted in a conviction. Admissions to Federal prison among Tribal youth declined 10 percent per year from 1999 to 2008, while non-Tribal youth admissions declined 12 percent per year.

The final subtitle of the Tribal Law and Order Act is directed to domestic-violence and sexual-assault prosecution and prevention. In accordance with Section 265, the FBI's Office of Victim Assistance is partnering with the Indian Health Service to expand and support Sexual Assault Nurse Examiner (SANE) and Sexual Assault Response Team programs in Indian country. The Department of Justice recognizes that simply funding services for victims of sexual assault does not adequately address the multidisciplinary and multijurisdictional challenges that complicate responses to victims of sexual assault in Indian country. Consequently, in 2011 the Office for Victims of Crime (OVC) implemented the American Indian/Alaska Native Sexual Assault Nurse Examiner-Sexual Assault Response Team Initiative, to enhance Native American communities' capacity to provide high-quality multidisciplinary, coordinated services and support for both adult and child victims of sexual assault. To date, OVC has evaluated potential demonstration sites, has funded a technical-assistance service provider and two Federal coordinating positions—one in FBI, the other in IHS—and has established a Federal advisory committee to ensure that the Initiative develops effective, culturally relevant services and programs that can serve as models for other Native American communities.

As noted above, public safety in Indian country is a top priority of this Department of Justice, especially with respect to violence against women. In July 2011,

the Department proposed legislation that would significantly improve the safety of Native women and allow Federal and Tribal law enforcement agencies to hold more perpetrators of domestic violence accountable for their crimes. The proposed legislation would address three legal gaps by (1) recognizing certain Tribes' authority to exercise concurrent jurisdiction over crimes of domestic violence, regardless of whether the defendant is Indian or non-Indian; (2) clarifying that Tribal courts have full civil jurisdiction to issue and enforce protection orders involving any persons, Indian or non-Indian; and (3) providing more robust Federal sentences for certain acts of domestic violence in Indian country.

Furthermore, in June 2010, the Attorney General launched a Violence Against Women Federal and Tribal Prosecution Task Force composed of Federal and Tribal prosecutors. The Task Force was created to facilitate dialogue and coordinate efforts between the Department and Tribal governments regarding the prosecution of violent crimes against women in Indian country, and to develop best-practices recommendations for both Federal and Tribal prosecutors.

In July 2010, the Executive Office for United States Attorneys launched the National Indian Country Training Initiative to ensure that Department prosecutors, as well as State and Tribal criminal-justice personnel, receive the training and support needed to address the particular challenges relevant to Indian-country prosecutions. The training effort is led by the Department's new National Indian Country Training Coordinator.

Thanks in large part to the Chairman, Vice Chair, and members of this Committee, the Department has added significant new resources to address public safety in Indian country. Twenty-eight new Assistant U.S. Attorneys dedicated to prosecuting crime in Indian country have been added in nearly two dozen districts, and nine new FBI positions have been added to work on Indian-country investigations. And FBI's Office for Victim Assistance added 11 Indian Country Victim Specialists and one Forensic Child Interview Specialist for Indian Country, all of whom play an invaluable role in Indian-country investigations, particularly in cases of domestic violence and child abuse.

Chairman Akaka, Vice Chair Barrasso, members of the Committee, we at the Department of Justice fully recognize that public safety in Indian country still is not what it should be, and that we bear a deep responsibility for ensuring that Native Americans can live in safer communities in the months, years, and decades ahead. But significant progress has been made in the less than fourteen months since Congress passed the Tribal Law and Order Act of 2010, and we at the U.S. Department of Justice look forward to working with the Congress to continue improving our efforts to fulfill our trust responsibility to Tribal nations.

On behalf of the Department, I personally want to thank you for everything you have done to combat violent crime and to foster public safety in Tribal communities across our Nation. I look forward to continuing to work with you on these vitally important issues.

I will be happy to attempt to answer any questions you may have.

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

Mr. Larry Echo Hawk, please proceed to your testimony.

**STATEMENT OF LARRY ECHO HAWK, ASSISTANT SECRETARY,
INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR**

Mr. ECHO HAWK. Good afternoon Senator Akaka and Committee members, public safety is a top priority for President Obama and Secretary of Interior Ken Salazar. And I would also like to note that in our work in consulting with Tribal leaders in all regions of the Country with the Tribal Interior Budget Council, we have identified criminal law enforcement and Tribal courts as the top two priorities when it comes to crafting our budgets in Interior.

And it was just over a year ago, on July 29th of 2010 that President Obama signed the Tribal Law and Order Act. The goal of the Act was to improve law and order and justice in Indian Country. And I am pleased to be here before this Committee to say that we are moving in the right direction in attaining that goal.

I am also here today to provide this Committee with an update on what the Bureau of Indian Affairs has done over the past year

to implement the directives of the Tribal Law and Order Act. I have asked two of my key senior officials to be with me today, and they are seated right behind me. That is Darren Cruzan, who is our Director of the Office of Justice Services, and Jack Rever, who is the Director of our Office for Facility Management and Construction.

The Tribal Law and Order Act tasked the Bureau of Indian Affairs with a number of responsibilities and I would like to spotlight in my opening remarks four of those responsibilities.

First, in Section 211 of the Act, the Bureau of Indian Affairs was directed to develop a list of unmet staffing needs: law enforcement, corrections, and Tribal court programs. Our first action was to assemble an unmet needs report team. We also established a web-based reporting tool to gather information from public safety departments in Indian Country. This web-based collection system will allow the Tribes to input their own data and we continue to work with Tribal leadership to complete this report.

Also, in Section 211(b) of the Tribal Law and Order Act, we were directed to develop a long-term plan for Tribal detention. The Bureau of Indian Affairs, in cooperation with the Department of Justice, completed webinar work group meetings to determine what Tribes view as the need and the direction for corrections to move forward. The Department of the Interior and the Department of Justice finalized that report and it was signed by both Departments and submitted to Congress just last month.

Then in Section 231(b) of the Tribal Law and Order Act, the BIA was directed to develop policies and procedures in order for BIA to enter into deputation agreements for the purpose of issuing BIA Special Law Enforcement Commissions. These policies and procedures were developed and enacted on January 25th of 2011.

And in Section 231(a)(4)(A), the BIA was required to, when requested by Tribes, to conduct background checks for Tribal law enforcement and corrections officials no later than 60 days after the date of the receipt of the request. The BIA developed a new background policy and is working to implement those background checks on a timely basis when requested through contracts or through direct service support.

And lastly, due to the enhanced sentencing provisions in the Tribal Law and Order Act, the BIA was required to develop guidelines for long-term incarceration in Tribal corrections centers. And in consultation with Tribal officials, our Office of Justice Services developed a long-term plan for incarceration in Tribal corrections centers and those guidelines were enacted in a timely manner on January 25th of 2011.

That concludes my statement, and myself and my senior officials would be happy to respond to any questions the Committee may have.

[The prepared statement of Mr. Echo Hawk follows:]

PREPARED STATEMENT OF LARRY ECHO HAWK, ASSISTANT SECRETARY, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Chairman Akaka, Vice-Chairman Barrasso, and members of the Committee, thank you for the opportunity to provide testimony before this Committee on the Tribal Law and Order Act (TLOA), Pub. L. No. 111-211 (2010). President Obama signed TLOA into law just over a year ago on July 29, 2010. The goal of TLOA is

to improve and address law and order and justice in Indian Country. Thus, I am pleased to be here before this Committee to provide an update on what the Bureau of Indian Affairs (BIA) has done over the past year since TLOA was enacted.

In June of 2009, just over two years ago, before this Committee, I stated that this Administration acknowledged and was committed to honoring our longstanding government-to-government relationship with the Tribal Nations in this country. I also stated that, it was upon this foundation, that the Department of the Interior (Department) and American Indian Tribes and Alaska Natives must come together, through meaningful consultation, to develop plans to fight crime in Indian Country. That is why this Administration strongly supported, and continues to support, TLOA, and commits to fulfilling the goals of TLOA as we move forward.

Several components comprise the United States Government's efforts to provide public safety and fight crime in Indian Country. These components range from putting law enforcement officers on the streets, arresting, detaining, and, in certain circumstances, adjudicating offenders, to the long-term incarceration of these offenders post adjudication. From my past experience as the Attorney General for the State of Idaho, I know that these components are necessary to meet those responsibilities. Indian Affairs provides a wide range of law enforcement services to Indian Country. These services include police services, criminal investigation, detention program management, Tribal courts, and officer training by the Indian Police Academy.

At my confirmation hearing over two years ago, I emphasized the importance of addressing public safety matters, and I had, and continue to have, support from Secretary Ken Salazar to make and keep this a top priority. As a top priority, I focused my attention on the structure of the Office of Justice Services (OJS) in the BIA. We conducted a nation-wide search for a new Director of OJS and we selected Darren Cruzan. Darren Cruzan is an enrolled member of the Miami Tribe of Oklahoma and comes to the OJS Director position from the Department of Defense, Pentagon Force Protection Agency.

Darren Cruzan started his appointment on September 27, 2010, and under his leadership he has pulled together an OJS senior leadership team of core individuals with a combined law enforcement field experience of 120 years to address the public safety issues in Indian Country. Darren Cruzan brings a wide range of experience to OJS. He has served as State patrolman in Missouri as well as a Tribal police officer with his Tribe and an officer with the BIA in Oklahoma. Mr. Cruzan has been a supervisory police officer, a police academy instructor, a criminal investigator, and an Indian Country law enforcement liaison to the Department. Mr. Cruzan is a graduate of the Federal Bureau of Investigation National Academy, and holds a Bachelor of Science degree in Criminal Justice Administration from Mountain State University in West Virginia.

As this summary of his qualifications and his selection to the OJS Director position evidences, we believe Mr. Cruzan is the right person to lead the OJS to assist myself and the Secretary for the Department of the Interior to improve and address law and order and justice in Indian Country, and to follow through with our commitment to fulfill the goals of TLOA as we move forward.

High Priority Performance Goals (HPPG)

One of the most basic needs throughout Indian Country is the need for additional officers on the street in Indian Country. On many reservations there is no 24-hour police coverage. Police officers often patrol and respond alone to both misdemeanor and felony calls. Our police officers are placed in great danger because back up is sometimes miles or hours away, if available at all.

On May 10, 2010, BIA-OJS began implementation of a Presidential Initiative known as the High Priority Performance Goal (HPPG) at four selected Indian reservations. Based upon an analysis report of high crime, four reservations were selected as the first four locations to implement the Initiative. Those locations include reservations for the Standing Rock Sioux Tribe in North Dakota, the Shoshone and Northern Arapahoe (Wind River) Tribes in Wyoming, Chippewa Cree (Rocky Boy) Tribe in Montana, and the Mescalero Apache Tribe in New Mexico.

I am pleased to report that our statistics demonstrate that, through the 3rd quarter of Fiscal Year 2011 at the HPPG locations, the goal of a five percent (-5 percent) reduction in criminal offenses was met and, in certain locations, exceeded. We are in the last four months of the Initiative, and while we anticipate continued reductions in violent crime, the overall percentage of reduction can fluctuate based upon the number of violent crimes reported during that period.

The goal of the HPPG Initiative is to achieve a reduction in criminal offenses (i.e., violent crime) by five percent within a 24-month period. To achieve the intended results at the selected locations, a comprehensive approach was developed and implemented. This comprehensive approach involved intelligence led policing, traditional

community policing techniques, crime reduction strategies, and interagency and intergovernmental partnerships. The lack of adequate law enforcement staffing at these locations resulted in a deficiency in addressing the violent crime rates on these reservations. Therefore, to succeed with this Initiative the number of law enforcement and corrections officers was increased to close the staffing gap with the national sworn staffing level averages and the actual staffing levels at the four selected HPPG reservations.

In order to achieve our goal of reducing criminal offenses by at least five percent within 24 months on these four Indian reservations, OJS implemented a comprehensive strategy involving community policing, tactical deployment, and critical interagency and intergovernmental partnerships. At the beginning, OJS conducted an assessment at each location designed to ascertain the service provider's perception of the type of services provided, the availability of services, current infrastructure of programs, and identify constraints that affect services and resources needed to improve services provided to the community. The assessment also gathered information regarding quality of life issues that affect the community and the programs providing services to the community.

Once the assessment was complete, each agency was tasked with identifying crime trends in their communities. At the beginning of the initiative, each agency analyzed current criminal activity data (previous 12 months) and historical crime data (previous 36 months). The purpose of the analysis process was to develop an accurate crime rate profile for each location. The analysis process began by examining the types of crime being committed, the locations where crimes are being committed, and the days of the week and times of day when the crimes were being committed most frequently.

We are now in the implementation phase, and OJS has, and continues, to educate law enforcement personnel on the effects of proactive policing by using a crime trend analysis. By using the analysis, the law enforcement programs developed a crime reduction plan with multi-faceted approaches to crime reduction through proper leadership/management principles, adequate staffing and resources, accurate analysis of current and historic criminal activity/trends, community assessments, intelligence-based law enforcement assignments and proactive operations, crime prevention programs, and most importantly, accountability at all levels of the operation.

OJS also worked in collaboration with the elected Tribal leadership at each reservation so the Tribes would have significant input into the strategies being implemented that directly affect their communities and Tribal members.

Office of Justice Services (OJS) activities post-TLOA

Upon TLOA's enactment, BIA-OJS was tasked with a number of responsibilities under the law. Section 211 of TLOA directed BIA-OJS to develop a list of unmet staffing needs of the law enforcement, corrections, and Tribal court programs. OJS's first action was to pull together an "Unmet Needs Report" team comprised of courts, corrections, and law enforcement professionals. OJS also established a web based reporting tool (survey) developed to gather information from public safety departments in Indian Country. This web-based collection system will allow the Tribes to input their own data, and we continue to work with the Tribal leadership to complete this report. The survey is currently online and the due date for data submission by Tribes is the end of September.

Section 211(b) of TLOA directed BIA-OJS to develop a long term plan for Tribal Detention. The OJS, in collaboration and cooperation with the Department and the Department of Justice (DOJ), completed Webinars and workgroup meetings to determine what Tribes view as the need and direction of Corrections moving forward, and to provide a broad base of information from Tribal corrections professionals across Indian Country. The Department and DOJ finalized the report and it was signed by the Department and DOJ, and submitted to Congress last month. Instead of traditional incarceration as the long-term goal, the report highlights rehabilitation and providing services.

Section 231(b) of TLOA directed BIA-OJS to develop policies and procedures in order to enter into Deputation Agreements for the purpose of issuing BIA Special Law Enforcement Commissions (SLECs). These policies and procedures were developed and enacted on January 25, 2011. During the development of the policies and procedures, OJS conducted numerous consultations with Tribes across the country, and thereafter provided draft policies and procedures for continued comment via an email address. The new policy has been posted in the *Federal Register* and training is now available and being provided to OJS senior managers on the requirements and procedures for implementation of the policies and procedures to enter into Deputation Agreements for the purpose of issuing BIA SLECs.

Although not a requirement under TLOA, but as a complement to the purposes of agreements between our law enforcement agencies, DOJ along with the OJS have created a Criminal Justice in Indian Country (CJIC) work group to review and update the training curriculum. The work group proposed a “train the trainer” course, which will be offered to Assistant United States Attorneys.

Section 231(a)(4)(A) required OJS, when requested by a Tribe, to conduct background checks for Tribal law enforcement and correctional officials no later than 60 days after the date of receipt of the request. OJS has developed a new background policy and we are working to implement background checks when requested through contracts and through direct service support. We anticipate that this proposed policy will ensure thorough background checks as well as ensuring qualified candidates fill our enforcement positions in Indian Country. This will assist OJS in meeting its goal of getting more law enforcement personnel on the streets in Indian Country.

Section 234(d) required OJS to develop guidelines for long-term incarceration in Tribal correctional centers. In consultation with Tribal officials, OJS has developed a long-term plan for incarceration in Tribal correctional centers. The guidelines were enacted January 25, 2011.

Conclusion

Thank you for holding this hearing on the Tribal Law and Order Act and for providing the Department the opportunity to discuss what we in the Department have done over the past year since TLOA’s enactment into law. The Department will continue to work closely with this Committee, you and your staff, Tribal leaders, and our Federal and State partners to address the law enforcement, corrections and inter-agency cooperation issues in Indian Country in order to fulfill the goals of TLOA as we move forward.

We are available to answer any question the Committee may have.

The CHAIRMAN. Thank you very much, Mr. Echo Hawk. Mr. Johnson, please proceed with your testimony.

STATEMENT OF BRENDAN V. JOHNSON, U.S. ATTORNEY, DISTRICT OF SOUTH DAKOTA, U.S. DEPARTMENT OF JUSTICE

Mr. JOHNSON. Thank you, Chairman Akaka, Members of the Committee. It is an honor to be here today in my capacity both as a United States Attorney for the District of South Dakota, as well as Chairman of Attorney General Eric Holder’s Native American Issues Subcommittee.

I am proud to report that over the past year, we have made significant progress in improving public safety and justice throughout Indian Country. Progress was put in motion by the passage of the important Tribal Law and Order Act, as well a very clear message from leadership at the Department of Justice that, one, public safety in Indian Country will be a top priority for every U.S. Attorney; and two, that every U.S. Attorney will consult with the Tribes in our Districts to formulate a new operational plan to improve public safety in Indian Country within eight months of assuming office.

The consultations that we have been conducting have made it clear that a serious problem and serious challenges exist. Last year, I met with a group of approximately 100 Native American teenagers in South Dakota. This group consisted of Native Americans who were both honor roll students, as well as students who had been exposed to drugs, alcohol and gangs. At one point, I asked them to put their heads down, close their eyes, and to raise their hand if they felt safe in their communities. I can tell you that hardly a hand was raised. It wasn’t just the honor roll students who didn’t feel safe. It was also some of the kids who had been exposed to gangs, who had been involved in the gangs.

So this is what from the U.S. Attorneys’ Office perspective we have been doing over the last year to try to turn this situation

around. One, as the Associate Attorney General mentioned, we have been involved in cross-designating Tribal prosecutors as Special Assistant U.S. Attorneys. Now, to provide some context on what that means.

For example, in South Dakota, Rosebud's Tribal Prosecutor is now also a Special Assistant United States Attorney. In the short time that he has held that cross-designation, he has appeared twice in Federal Court where he successfully prosecuted two non-Indians who committed offenses on the Rosebud Reservation.

Now, in addition, because he has this cross-designation, he has also been able to go to the National Advocacy Center in South Carolina and receive some of the top training available in the Country for prosecutors and bring those skills back to the other prosecutors that he works with on Rosebud.

I think one of the important lessons that we learned during these consultations as well is that we are not going to essentially be able to arrest our way to safer communities in Indian Country. At the request of Tribal leaders, U.S. Attorneys and Assistant U.S. Attorneys have been going into the schools. They have been talking about subjects like violence against women, drug abuse, gangs, sexting. And frankly, we have learned as much as we have taught.

We have also been trying to be aggressive when we hear from communities about emerging law enforcement concerns. For example, in South Dakota, one of the issues that we have is in the proliferation of the availability of prescription drugs on reservations. So in South Dakota, what we have been doing is we have attempted to address that concern not just by prosecuting offenders, but also by partnering up with both Tribal and Federal law enforcement officers to conduct community events on the reservations in South Dakota where unused prescription drugs can be dropped off without question and destroyed.

Another program that we have up and running in South Dakota that we are particularly proud of is our Community Prosecution Program on the Pine Ridge Reservation. We recently had Attorney General Holder, Secretary Echo Hawk, Mr. Perrelli, the Associate Attorney General, join us. We started in Rapid City and then we also went to Pine Ridge with 30 different U.S. Attorneys from around the Country. And we took a look at the challenges and the progress that we have been making in that community.

And what this program entails is one of our Assistant United States Attorneys spent three to four days each week with an office on Pine Ridge. His job is not simply to prosecute cases on Pine Ridge, but it is also to work with the community so that the community has someone to turn to when they have questions about cases or concerns about law enforcement. He also works to ensure that the lines of communication remain open between BIA, between the Tribal police, Federal law enforcement and prosecutors on the Federal and Tribal level.

I want to conclude by assuring you that public safety in Indian Country is an absolute priority for U.S. Attorneys, and not just because of the leadership at the Department of Justice has told us that it is a priority, but because these are communities that we believe in. These are communities that we spend a significant amount

of our time working with, and we are proud of the progress that we have made.

We have learned a great deal from the communities about what needs to be done in the future. We have a long ways to go, but we are hopeful about the work that we have done and will continue to do.

Thank you.

[The prepared statement of Mr. Johnson follows:]

PREPARED STATEMENT OF BRENDAN V. JOHNSON, U.S. ATTORNEY, DISTRICT OF
SOUTH DAKOTA, U.S. DEPARTMENT OF JUSTICE

Good Afternoon, Mr. Chairman, and Members of the Committee. It is an honor for me to be here today in my capacity as United States Attorney for South Dakota and Chairman of the Native American Issues Subcommittee of the Attorney General's Advisory Committee.

I want to open my remarks today by thanking the members of this Committee for your leadership in crafting the Tribal Law and Order Act. I am proud to join you in your efforts to provide Tribal members with the public safety and justice systems that they deserve. The U.S. Attorney community recognizes that the challenges facing Indian Country require continuing focus and commitment. It has been my experience that the enactment of the Tribal Law and Order Act, coupled with the Department's initiative to enhance public safety in Indian Country, has resulted in significant progress in public safety and justice throughout Tribal nations.

In January 2010, then-Deputy Attorney General David Ogden issued a memorandum to all U.S. Attorneys declaring that "public safety in Tribal communities is a top priority for the Department of Justice." He directed that (1) every U.S. Attorney's Office (USAO) with Indian Country in its district, in coordination with our law enforcement partners, engage at least annually in consultation with the Tribes in that district; and (2) every newly confirmed U.S. Attorney in these districts should develop or update the district's operational plan for Indian Country public safety within eight months of assuming office. This leadership from the Department of Justice set the stage for what has been a period of unprecedented dialogue between Tribal leaders and U.S. Attorneys regarding public safety.

My experience in South Dakota serves as one example of how this directive has been put into action and why the provisions of the Tribal Law and Order Act are so important. In February 2010, we held a state-wide Tribal Listening Conference that was attended by approximately two hundred Tribal leaders and law enforcement officers as well as Federal, State, and local law enforcement officers. We used this conference to listen to the public safety concerns of Tribal members, and we promised to continue that dialogue. We followed-up the conference by personally meeting with every Tribal chairman and Tribal council in South Dakota as well as with Tribal law enforcement and Tribal court officials. We have also held several public town hall meetings on reservations across the State over the past two years to ensure that we continue to receive guidance on public safety from the Tribal nations.

Accordingly, the operational plan we designed in South Dakota is not a product of haphazard experimentation but rather a thoughtful response to the ideas that Tribal members had to improve public safety in their communities. Some of the highlights of our new operational plan in South Dakota include (1) the presence of a federal prosecutor in an office on the Pine Ridge Reservation approximately four days a week; (2) Tribal Prosecutors cross-designated to serve as Special Assistant United States Attorneys (SAUSAs) who prosecute cases in Federal court; (3) Tribal youth leadership programs that have been attended by approximately 400 Native American youth in South Dakota; (4) a cooperative Information Technology ("IT") program that has sent USAO IT professionals to work with Tribal justice systems to provide technical advice and assistance; (5) facilitation of the creation of a South Dakota Tribal Prosecutors Association; (6) an Indian Country Advisory Group that advises me directly on law enforcement issues in Tribal nations; (7) Monthly Multi-Disciplinary Team ("MDT") meetings where USAO personnel and Tribal law enforcement discuss cases involving sexual abuse against children; (8) a Tribal Youth Diversion Program that allows qualifying Native American youth to be adjudicated in Tribal court instead of Federal court; (9) a joint program with the University of South Dakota Law School to help update Tribal codes; and (10) continued outreach to Tribes including our second Tribal Listening Conference scheduled for September 29, 2011 which will focus exclusively on violence against Native American women.

The progress in South Dakota has been matched by other U.S. Attorneys who have been working closely with their Tribal partners in their districts. For example, in June 2011, the North Dakota U.S. Attorney launched an Anti-Violence Strategy for Tribal Communities. This program included the assignment of an additional Assistant U.S. Attorney (AUSA) to handle Indian Country cases. Additionally, each of their four AUSAs working on Indian Country cases is assigned a specific reservation and required to visit that reservation several times a year to conduct MDT meetings, consult with Tribal leaders, provide law enforcement training, and coordinate cases with the BIA, FBI and Tribal prosecutors. The North Dakota U.S. Attorney reports that the open dialogue with Tribal members has significantly improved relations and he has pledged to continue his Tribal listening conferences as an annual event. The District of Arizona's operational plan focuses on frequent communication between the USAO and Tribal governments' law enforcement and other officials. The communication loop is intended to provide Tribal law enforcement all appropriate current information on the status of Federal matters in Indian Country, and access to investigative materials in those matters the USAO concludes it cannot charge. The policy mandates that within 30 days of receipt of a completed investigation, AUSAs must charge, decline or direct specific further investigative steps. If the AUSA declines the case, they must provide a copy of the declination letter explaining the reasons to the chief Tribal prosecutor, and make available appropriate evidence and case materials in the USAO's possession. Arizona's operations plan also focuses on maximizing investigative and prosecution resources through direct partnerships with Tribal agencies. In the past 15 months, Arizona USAO personnel have provided training to nearly 600 Tribal police officers in order to make them eligible to receive Special Law Enforcement Commissions (SLECs). With the SLEC, Tribal officers can enforce the provisions of the Major Crimes Act in Indian Country. The Arizona USAO also has developed a Tribal SAUSA program to appoint well-qualified Tribal prosecutors as Special Assistant United States Attorneys who will handle Federal offenses occurring in Indian Country. The program has designated 12 Tribal prosecutors from 8 different Tribes.

In New Mexico, the U.S. Attorney created a new Indian Country Crimes Section (ICCS) shortly after assuming office. The ICCS handles all manner of crime arising out of New Mexico's Indian Country, including the range of violent crime, particularly against women and children, as well as drug trafficking, white collar crime, and cultural resources cases. The development of this new section was based on (i) feedback from Tribal leaders who requested a section dedicated exclusively to Indian Country cases, and (ii) the U.S. Attorney's interest in having prosecutors who prosecute crimes in New Mexico's Indian Country become experts in this unique area of the law and also obtain a greater understanding of the communities they serve.

The New Mexico USAO also implemented a community prosecution strategy to better serve the public safety needs of New Mexico's Tribes. The model contemplates immersion in the community—getting to know the community's leaders, the police and social services providers and developing a sense of confidence and trust in the community. The goal is that, by fostering relationships of trust and developing confidence in the justice system, members of New Mexico's Native communities will more readily report crimes and participate in the investigation and prosecution of these offenses. It is particularly important that victims of domestic violence trust that the USAO will vigorously seek justice for them. The community prosecution concept has been implemented in all 22 pueblos and Tribes in New Mexico. Each AUSA in the ICCS is assigned to one or more pueblos or Tribes and is responsible for building relationships so that the USAO is better equipped to meet their public safety needs. The AUSAs are also responsible for providing training to the Tribal police departments for the pueblos and Tribes they serve.

The United States Attorney in Montana was instrumental in creating the new Montana Tribal Prosecutors Association. This program provides training for Tribal prosecutors. Currently Montana has one Tribal prosecutor who has been cross-designated as a SAUSA, and two additional Tribal prosecutors are undergoing background checks to be designated as SAUSAs. The U.S. Attorney also partnered with the FBI to launch the Fearless Justice Initiative in Indian Country. This program focuses on Tribal members who are victims of witness intimidation or obstruction and has produced positive results. In the short time since its inception, the USAO has already obtained two convictions. Additionally, the U.S. Attorney is focusing on curbing prescription drug abuse on reservations by working with Tribal and Federal law enforcement to reduce the availability of illegal prescription drugs and prosecute offenders who sell these drugs.

The United States Attorney in Alaska has made the sex trafficking of Alaska Native women a top priority. The USAO recently prosecuted several significant human trafficking cases, including four defendants who are alleged to have used Craig's

List to traffic twenty victims, causing many of them to engage in commercial sex acts. Several of the victims are Alaska Natives. In addition, the FBI and Anchorage Police Department recently conducted a joint presentation to several hundred attendees at a BIA Conference on the dangers of sex trafficking of Alaska Natives to raise awareness of this problem. The program was so wellreceived that it has been replicated in rural communities. The USAO recently received funding to hire a rural Federal prosecutor who is working with Alaska State Troopers to remove violent individuals from rural villages.

Recent efforts by the District of Minnesota further demonstrate how the Department of Justice's commitment to Indian Country is improving public safety in Tribal nations. The number of Indian Country cases filed in Minnesota over the past two years has increased by 98 percent when compared with the previous two year period. The Minnesota USAO has worked to strengthen relations with Tribes by having the U.S. Attorney personally host a quarterly Indian Country Public Safety meeting that brings together the heads of Tribal police departments, the FBI, DEA, and ATF to discuss public safety concerns. The office also maintains regular contact with Tribal prosecutors, law enforcement, and Tribal government on the reservations, including AUSAs who travel to the Red Lake Reservation most weeks. During the month of September 2011, the Minnesota USAO is conducting a Criminal Jurisdiction in Indian Country training in Red Lake, and is working with the State of Minnesota, the National Criminal Justice Association and the National Congress of American Indians to plan an Intergovernmental Coordination Meeting. The Minnesota USAO is also concerned about the epidemic of prescription drug abuse on reservations and recently worked with the DEA to promote a multi-county prescription drug take back initiative.

The District of Wyoming has also prioritized Tribal public safety, and specifically the issue of violence against Native American women. For example, during the month of September 2011, the USAO hosted an Empowering Native American Women conference that addressed issues, including how to recognize, avoid and report sexual assault and domestic violence. The following day, the USAO hosted a conference on Empowering Native American Youth that discussed avoiding and reporting "sexting," cyberbullying, dating violence and sexual assault. Approximately 600 junior and senior high school students from Wind River Reservation schools attended this event. The FBI in Wyoming now shares their office space in Lander, Wyoming with BIA Criminal Investigators and they share a rotating "on-call" system. This increased cooperation helps to ensure that fewer cases fall through jurisdictional gaps.

The United States Attorneys in Washington have provided law enforcement training sessions on reservations across the State that focus on issues selected by the Tribes. The United States Attorney in the Eastern District of Washington reports that the cooperative efforts between Tribal and Federal law enforcement officers have been very productive. He estimates that in the past ten months their declination rate has dropped by approximately two-thirds and that there is easier and more frequent communication between the two.

In the District of Idaho, the U.S. Attorney's Office meets bi-monthly with Tribal police to conduct case reviews and address law enforcement issues; it has conducted training on jurisdictional and law enforcement issues, developed and distributed an Indian Country Resource Manual to Tribal police departments and prosecutors and to other law enforcement agencies that frequently interact with law enforcement issues on or near Idaho's Indian reservations, and partnered with the Department of Education to conduct anti-bullying, harassment and hate crime training. In November, the Idaho USAO will present, with Coeur d'Alene Tribal personnel, on domestic violence issues in Indian Country at the Idaho Summit on Sexual Violence, sponsored by the Idaho Coalition Against Domestic and Sexual Violence.

The United States Attorney in Nebraska was recently appointed by Attorney General Eric Holder to Chair his Violence Against Women Tribal Prosecution Task Force in Indian Country. As Chairwoman of this Task Force, the Nebraska U.S. Attorney will work to reverse the high rate of violence against Native American women and children. The committee is producing a trial practice manual on the Federal prosecution of violence against women in Indian Country and working on developing "best practices" for prosecution strategies involving domestic violence, sexual assault and stalking. This effort has been driven largely by input gathered from the Department's 2009 Tribal Nations Listening Session on Public Safety and Law Enforcement, the Department's annual Tribal consultation on violence against women, and from written comments submitted by Tribal governments, groups and organizations to the Justice Department.

The Executive Office for United States Attorneys at the Department of Justice has in place a Native American Issues Coordinator who, in addition to the respon-

sibilities set forth in the Tribal Law and Order Act, also provides assistance and support to U.S. Attorneys' Offices on legal and policy issues and serves as a liaison to various law enforcement agencies. In addition to the Native American Issues Coordinator, the Executive Office for U.S. Attorneys also has a full time Native American Issues Training Coordinator who creates, delivers and manages training for Federal, State, and Tribal criminal justice and social service professionals at the Department's National Advocacy Center in Columbia, South Carolina, and on reservations and cities throughout the United States. Training topics have included cultural property law, Indian gaming, violent crime, financial crimes, child sexual abuse, and violence against women.

The special emphasis that U.S. Attorneys in Indian Country have placed on public safety in Tribal nations has led to successful prosecutions, some of which are described in a listing of some representative cases that will be submitted for the record.

Thank you for the opportunity to appear before you today about our work to improve the safety and security of all those who live in and around Indian Country.

REPRESENTATIVE SAMPLE OF RECENT INDIAN COUNTRY PROSECUTIONS BY U.S.
ATTORNEYS' OFFICES

District of South Dakota: On February 9, 2011, Frederick One Feather, a/k/a Snow One Feather, age 62, was convicted of two counts of Sexual Abuse of a Minor by Fear and one count of Abusive Sexual Contact as a result of a federal jury trial. On May 16, 2011, One Feather, who has a past federal conviction for rape and felon in possession of a firearm, was sentenced to two life sentences to be served concurrently plus 36 months on the sexual contact charge.

Eastern District of Michigan: On April 14, 2011, David Andrew Delacruz-Slavik, a Saginaw Chippewa Indian, was sentenced to 365 months in federal prison after pleading guilty to attempted murder and assault causing serious bodily injury to a child. During two and a half hours alone with the victim, his girlfriend's 23-month-old daughter, Delacruz-Slavik inflicted throttle marks consistent with strangulation on the child's neck, bruising to the chest and abdomen, head and brain injury, chest injury including a broken rib and bruised lung, blood in the pelvis, ruptured spleen and a broken nose.

District of South Dakota: On May 2, 2011, Suzanna Valandra-Neiss, 37, was sentenced, to 72 months of imprisonment for manslaughter. Valandra-Neiss and the victim were driving home after drinking at a bar when they began arguing. The victim stopped, got out of the vehicle, and began walking down the road. Valandra-Neiss, in anger and in the heat of passion, killed the victim by striking him with the vehicle.

District of New Mexico: on May 16, 2011, Patrick Baptiste, 51, an enrolled member of the Navajo Nation was sentenced to a 25-year term of imprisonment based on his second degree murder conviction for killing Kathleen Francisco, a 71-year-old Navajo woman, within the boundaries of the Navajo Indian Reservation. Baptiste and the victim were running errands in her pickup truck. Baptiste attacked the victim by repeatedly striking her in the face with a closed fist, knocking out her dentures and breaking her glasses. Baptiste then drove around with the victim who was making gurgling noises and struggling to breathe. He then pulled her out of the truck onto the ground by her hair, punched her with a closed fist, and kicked her at least 4 times. He then left her on the ground and drove off. Relatives discovered her body the next day.

District of North Dakota: On May 23, 2011, John F. Walette, 36, Belcourt, North Dakota, was sentenced to 30 years in federal prison after a jury found him guilty on a charge of aggravated sexual abuse of a child. The jury found that Walette had engaged in various sexual acts with a child under the age of 12 from an unknown time to about July 2008. Additional evidence presented at trial indicated that Walette also sexually abused other children while employed at a youth shelter facility in Belcourt.

District of Arizona: On June 13, 2011, Rayfael Hershall Truax, 24, of Hon Dah, was sentenced to more than 51 months in prison following a guilty plea to two counts of Assault with a Dangerous Weapon. Truax assaulted the victim, his girlfriend at the time, by striking her in the back of the head with a piece of firewood, rendering her unconscious. The victim suffered permanent and life threatening injuries as a result of the assault. Previously, Truax had assaulted that same girlfriend by hitting her in the head with a beer bottle, then beating her with a towel rack he pulled from the bathroom wall, causing serious injuries.

District of Montana: On August 10, 2011, Aldin Ray Two Moons, Sr., Lame Deer, Montana, was sentenced to 57 months imprisonment in connection with his guilty

plea to domestic assault by a habitual defender. Two Moons and the victim have a number of young children together, including twins who were two weeks old at the time he struck their mother in the face with his fists repeatedly while several of their other children were watching. Two moons had ten Tribal arrests for domestic abuse, four of which had resulted in convictions.

District of Arizona: On August 18, 2011, Paul Beebe, 28, and Jesse Sanford, 26, pleaded guilty to federal hate crime charges related to a racially motivated assault on a 22 year old developmentally disabled man of Navajo descent. A third defendant, William Hatch, 29, pleaded guilty in June 2011, to conspiracy to commit a federal hate crime. The defendants defaced the victim's body with white supremacist and anti-Native-American symbols and recorded the incident on a cell phone for later play.

District of Montana: On August 19, 2011, JoLaine Lee Flammond, was sentenced to 84 months in prison in connection with her guilty plea to possession with intent to distribute methamphetamine. Officers of the Blackfeet Safe Trails Task Force conducted an extensive investigation of numerous individuals trafficking large amounts of methamphetamine on the Blackfoot Reservation during 2009 and 2010. Another defendant, Rolan Hank "Hunky" Cobell, of Great Falls, MT, was sentenced on August 22, 2011, to 154 months imprisonment in connection with his guilty plea to distribution of methamphetamine.

District of New Mexico: On August 30, 2011, Michael Harrison, 29, a member of the Navajo Nation, was sentenced to a 78-month term of imprisonment to be followed by three years of supervised release for his conviction on an assault with intent to commit murder charge. In a guilty plea, Harrison admitted that he attempted to murder his common-law wife, also a member of the Navajo Nation, by slashing her throat.

District of Nebraska: September 12, 2011, Mark Henry, 21, of Niobrara, Nebraska, was sentenced to 37 months in prison for his conviction of motor vehicle homicide and driving under the influence resulting in serious bodily injury. Henry drove at a high rate of speed onto the Santee Sioux Indian Reservation with two other people; he lost control of the vehicle, flipping it several times. Henry and his passengers were thrown from the vehicle. One passenger died from his injuries while the second passenger sustained serious bodily injuries. Henry's blood alcohol content was determined to be .295.

District of Alaska: On September 15, 2011, Sabil Mujahid, 54, was sentenced to 480 months in prison for aggravated sexual abuse and abuse sexual contact against three Alaska Native victims who were inmates at the Anchorage Correctional Center with the defendant, who was incarcerated there as a prisoner. Mujahid was convicted by a federal jury on June 29, 2011, after an eight day trial. During sentencing, the judge described Mujahid's violent and abusive crimes as, "They're bluntly, as bad as I have ever seen [in my 27 years on the bench]."

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

Ms. Hyde, will you please proceed with your testimony?

**STATEMENT OF PAMELA S. HYDE, J.D., ADMINISTRATOR,
SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES
ADMINISTRATION, U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES**

Ms. HYDE. Chairman Akaka, Members of the Committee, thank you very much for inviting me today to testify at this important hearing on the implementation of the Tribal Law and Order Act.

We all know that substance abuse is one of the most severe public health and safety problems facing American Indians and Alaska Native individuals, families and communities and more must be done to diminish these devastating social, economic, physical, mental and spiritual connections.

We know that the connection between alcohol and other substance abuse to domestic violence and criminal justice matters is well documented and that police, courts and jails cannot do their mission without attention to the critical public health issues.

Today, I am pleased to share with you the myriad ways in which SAMHSA is working, along with its Federal partners and Tribes,

Tribal governments and organizations to implement the TLOA amendments.

First, it is important to note that SAMHSA's number one strategic initiative is the prevention of substance abuse and mental illness. And included in this initiative is a strong and consistent focus on the prevention of alcohol and drug abuse in Indian Country. We have a number of programs, both generally and specifically, to address substance abuse, the needs of youth, suicide and other issues.

SAMHSA has established, as required by the TLOA, the Office of Indian Alcohol and Substance Abuse, and I am pleased that its Acting Director, Dennis Romero, is at the hearing with me today, along with Angela Richardson, who has been assigned to work in that office as well.

To date, our office, along with DOI and DOJ and additional operating divisions within DHHS is working on an Indian Alcohol and Substance Abuse Interdepartmental Coordinating Committee established to serve as a point of contact for Indian Tribes and the Tribal coordinating committees with respect to the implementation of the Tribal Law and Order Act and in collaboration with the Department of Interior and Department of Justice, the three secretaries finalized a memorandum of agreement on July 29th 2011, as directed by the law.

The IASAI Committee, we always make an acronym for everything, serves as the interagency body composed of representatives from different Federal agencies whose responsibility it is to include addressing issues of alcohol and substance abuse in Indian Country, and the charter for that committee was also approved in July of 2011.

In addition to the agencies named in the law, we have Education, USDA, the Department of Labor, and we have reached out to HUD and the Veterans Administration as well.

The goals of the MOU are going to be achieved through the committee's efforts, and they are to increase awareness of what Federal agencies can do to help Tribal governments around substance abuse and mental illness issues and to reaffirm the Federal Government's recognition of the sovereign status of federally recognized Tribes, and also to promote the Federal Government's policy to provide greater access and quality services throughout Indian Country.

Reaching far and wide, the Office of Indian Alcohol and Substance Abuse staff and I went to a number of Tribal consultations and listening sessions before we finalized the work. We also conducted outreach to the National Indian Health Board, the National Congress of American Indians, the National Council of Urban Indian Health, and many other organizations.

As established in the TLOA, the governing body of any Indian Tribe may, at its discretion, adopt a resolution for the establishment of a Tribal action plan. We are in the time period right now for those resolutions to occur. That Tribal action plan, called a TAP, is to coordinate available resources and programs in an effort to combat alcohol and drug abuse among its members. The TAP guidelines in four models are in process and are almost complete.

As part of the implementation of the Tribal Law and Order Act and in line with SAMHSA's priority, our number one priority in the

President's fiscal year 2012 budget was a new formula-based grant program called Behavioral Health Tribal Prevention Grants. Unfortunately, I understand that that may not have been included in the Senate Appropriations Committee's markup yesterday, but it was proposed as a formula grant program that would be available to all 565 federally recognized Tribes in recognizing our obligation to help Tribes deal with physical and behavioral health issues, specifically substance abuse and suicide.

Additionally, one of the key changes we made in the block grants for our States is that they are encouraged and required, and we are providing training, on how the States can and should do Tribal consultations for the use of those dollars.

So I want to thank you again for this opportunity to testify and to share with you our efforts, and to assure you that we will continue with our Federal partners to reduce the impact of alcohol and drug abuse in Indian Country.

Thank you.

[The prepared statement of Ms. Hyde follows:]

PREPARED STATEMENT OF PAMELA S. HYDE, J.D., ADMINISTRATOR, SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Chairman Akaka, Ranking Member Barrasso and members of the Senate Indian Affairs Committee, thank you for inviting me to testify at this important hearing on the implementation of the Tribal Law and Order Act of 2010 (TLOA). I am pleased to testify along with my colleagues at the Indian Health Service (IHS), Department of Interior (DOI) and Department of Justice (DOJ). We all know that substance abuse is one of the most severe public health and safety problems facing American Indian and Alaska Native (AI/AN) individuals, families and communities and more must be done to diminish the devastating social, economic, physical, mental and spiritual consequences.

The TLOA amended the Indian Alcohol and Substance Abuse Treatment Act of 1986 (Pub. L. 99-570). The TLOA amendments called for the Substance Abuse and Mental Health Services Administration (SAMHSA) to establish an office tasked with improving coordination among the federal agencies and departments responsible for combating alcohol and substance abuse among the AI/AN population.¹ The TLOA also instructs the Department of Health and Human Services (DHHS) to collaborate with DOI and DOJ on determining the scope of the ongoing problem; identifying and assessing national, state, Tribal, and local alcohol and drug abuse programs and resources; and creating standards for programs. Today, I am pleased to share with you the myriad ways in which SAMHSA, along with its federal partners and in coordination and consultation with Tribal governments and organizations, is implementing the letter and spirit of the TLOA amendments codified in Title 25, Chapter 26 of the United States Code.

Office of Indian Alcohol and Substance Abuse

First, it is important to note that SAMHSA's number one strategic initiative is "Prevention of Substance Abuse and Mental Illness." Included in this initiative is a strong and consistent focus on prevention of alcohol and drug abuse among the AI/AN population. As required by TLOA, SAMHSA has established the Office of Indian Alcohol and Substance Abuse (OIASA) and I'm pleased that its Acting Director, Dennis Romero, is at the hearing with me today. In addition, SAMHSA has assigned an experienced program officer to the OIASA and is in the process of hiring a permanent Indian Youth Programs Officer.

OIASA has done an excellent job carrying out its responsibilities. To date, OIASA, along with DOI, DOJ, and additional DHHS Operating and Staff Divisions has ensured the establishment of the Indian Alcohol and Substance Abuse Interdepartmental Coordinating Committee (IASA Committee); served as a point of contact for

¹ While the TLOA refers to alcohol and substance abuse among the AI/AN population, alcohol is a powerful substance of abuse itself. Given this distinction, this testimony will discuss this issue in terms of the prevention and treatment of alcohol and drug abuse.

Indian Tribes and the Tribal Coordinating Committees with respect to the implementation of TLOA; and, in collaboration with DOI and DOJ, finalized the Indian Alcohol and Substance Abuse Memorandum of Agreement (MOA) by July 29, 2011 as directed by the TLOA.

IASA Committee

The IASA Committee serves as an interagency body composed of representatives from the Federal agencies whose responsibilities include addressing issues of alcohol and drug abuse in Indian Country and its Charter was approved in July 2011. The Director of OIASA serves as the Committee Chairperson while senior level representatives from IHS, DOJ's Bureau of Indian Affairs (BIA) and Bureau of Indian Education (BIE), and DOJ's Office of Justice Programs (OJP) and the Office of Tribal Justice (OTJ) serve as the Committee Co-chairs. In addition, the IASA Committee includes representatives from the Administration on Aging and Administration for Children and Families within DHHS, Department of Education, the Office of National Drug Control Policy, the Department of Agriculture, and the Department of Labor. The IASA Committee provides a forum for these agencies, bureaus, and offices to collaboratively assist AI/AN communities in achieving their goals in the prevention, intervention, and treatment of alcohol and drug abuse. The IASA Committee will: (1) help to identify opportunities and programs relevant to alcohol and drug abuse among Tribes and Native communities; (2) address issues of concern to Tribes and Native communities related to alcohol and drug abuse; (3) serve as a focal point within the Federal government for coordination, collaboration and outreach on alcohol and drug abuse issues affecting the American Indian, Alaska Native population nationwide; and (4) serve as a liaison advisory body to the federal partners responsible for providing programs and services in Indian Country relative to alcohol and drug abuse.

The goals of the IASA Committee will be achieved through the IASA Committee's efforts to: (1) formalize a structure for Interdepartmental coordination and collaboration as it relates to AI/AN alcohol and drug abuse; (2) educate committee members and increase awareness of what federal agencies are currently doing to address all AI/AN alcohol and drug abuse issues; (3) reaffirm the Federal Government's recognition of the sovereign status of federally recognized Indian Tribes as domestic dependent nations and the adherence to the principles of government-to-government relations; (4) promote the Federal Government's policy to provide greater access to and quality services for AI/AN individuals throughout the Federal government and in Indian Country; and (5) promote the Tribal-Federal government-to-government relationships on a Federal Government-wide basis.

The IASA Committee is comprised of an Executive Steering Committee for which SAMHSA's Director of the OIASA serves as the Chair. In addition to the Executive Steering Committee, the IASA Committee includes five workgroups: (1) MOA; (2) Tribal Action Plan (TAP); (3) Inventory/Resource Workgroup; (4) Newsletter Workgroup; and (5) Educational Services Workgroup. Each of the workgroups is chaired by one of SAMHSA's federal partners.

Indian Alcohol and Substance Abuse Point of Contact

Within SAMHSA, the OIASA has actively engaged our cross-Center Tribal Liaison Workgroup and convened conference call meetings with the SAMHSA Tribal Technical Advisory Committee which is composed of 14 elected/appointed Tribal leaders. OIASA has also worked with the White House Domestic Policy Council—Native American Affairs and, in order to improve the coordination and conduct other efforts necessary for the implementation of the requirements under TLOA, SAMHSA arranged for Acting Director Romero to serve a part-time detail to the Office of Justice Programs (OJP) for a limited engagement.

Reaching far and wide to the Tribal community, OIASA staff and I, as SAMHSA Administrator, have attended, presented and participated in Tribal consultations/listening sessions in partnership with DOI, DOJ and IHS staff and leadership. OIASA also conducted outreach to the National Indian Health Board (NIHB), National Congress of American Indians (NCAI), National Council of Urban Indian Health (NCUIH) as well as many other organizations. The OIASA staff and TLOA partners have provided presentations at conferences for AI/AN groups such as the InterTribal Court Justice Council, Affiliated Tribes of Northwest Indians, National American Indian Court Judges Association, Tribal Justice Safety Wellness Sessions and The Center for Native Youth.

SAMHSA also established and funds the Native American Center for Excellence (NACE) to address issues related to alcohol and drug abuse in AI/AN communities. The three principles that direct the approach, attitude, and activities of the NACE are: (1) bringing cultural attention, sensitivity, and regard to our interactions and

relationships with AI/AN communities, service providers, researchers, and Native people as we invite them to participate in technical assistance, trainings, and gatherings; (2) providing training, technical assistance, meetings, and tools that are accurate in cultural, scientific, technical, and statistical terms; and (3) developing and producing trainings, technical assistance, and services for AI/AN communities that are high quality and user-friendly in a timely, efficient, and cost-effective manner.

Finally, in an effort to improve the communication, dissemination of information, and to serve as a point of contact for Indian Tribes and the Tribal Coordinating Committees regarding alcohol and drug abuse issues across the Federal government, OIASA established and launched a new website page at <http://www.samhsa.gov/tloa/>.

MOA

An interdepartmental workgroup, convened as a precursor to the MOA Workgroup of the IASA Committee, oversaw the development, including the policy and legal review, of the MOA. This group also established and managed the overall coordination of comments from the various federal departments and other entities; shepherded the MOA through partner department clearance processes; secured final signatures; and coordinated the submission of the MOA to Congress, its dissemination to Indian Tribes, and its publication in the *Federal Register*, as required by law. The MOA was signed by Secretary Sebelius, Secretary Salazar, and Attorney General Holder on July 29, 2011.

Prior to finalization of the MOA, OIASA posted draft versions of the MOA and TAP documents on-line at NIHB, NCAI, NCUIH, and NACE websites for input from Tribal Leaders and in preparation for a formal consultation. As noted above, federal partners also held a formal consultation on the MOA on December 8, 2010.

Moving forward, the MOA Workgroup will provide leadership in the required annual review of the MOA.

TAP

As established in the TLOA, the governing body of any Indian Tribe may, at its discretion, adopt a resolution for the establishment of a TAP to coordinate available resources and programs in an effort to combat alcohol and drug abuse among its members. If a Tribe does not adopt such a resolution, HHS, DOJ, and DOI will identify and coordinate available resources and programs for the Tribe, as directed by TLOA. The TAP Workgroup of the IASA Committee will establish the operating framework of the TAP, develop an inventory of current evidence-based practices, coordinate Tribal requests for assistance in the development of a TAP, coordinate assistance and support to Tribes as deemed feasible, and collaborate with the Inventory Workgroup of the IASA Committee in developing appropriate responses to Tribal entities seeking assistance.

Behavioral Health—Tribal Prevention Grants

As part of the implementation of the TLOA, and in line with SAMHSA's priority of ensuring that all Tribes have access to funding for bringing alcohol and drug abuse and suicide prevention activities to scale, the President's FY 2012 Budget for SAMHSA proposes a new formula-based grant program titled Behavioral Health—Tribal Prevention Grants (BH-TPG). The BH-TPG program is intended to increase SAMHSA's ability to support Tribes and Tribal entities. The BH-TPG, to be funded from the Prevention and Public Health Fund, would represent a significant advance in the Nation's approach to the prevention of alcohol and drug abuse and suicide in Tribal communities, and is based on the recognition that behavioral health is a part of overall health. As a formula grant program, its reach will extend to all of the 565 Federally-recognized Tribes. Recognizing the Federal obligation to help Tribes deal with physical and behavioral health issues, SAMHSA will work in consultation with Tribes, working toward the establishment of a single coordinated mental health and substance abuse program for all Federally-recognized Tribes. SAMHSA also will consult and work closely with Tribes and Tribal leaders to develop a comprehensive, data-driven planning process to identify and address the most serious behavioral health issues in each Tribal community.

The BH-TPGs will enable Tribes to develop a comprehensive plan to address the most pressing prevention needs based on Tribal data as well as in consultation with SAMHSA. The TAP would address the prevention and treatment of substance abuse including related issues such as suicide. As noted above, this planning activity is one of the basic components of the TLOA. Tribes will continue to be eligible for these BH-TPG prevention funds beyond the three-year timeframe so long as they meet the requirements of renewal applications, provide the necessary annual reports, and show continued progress toward implementing their approved plans.

Uniform Block Grant Application

On July 26, SAMHSA announced a new application process for its Substance Abuse Prevention and Treatment Block Grant (SABG) and Community Mental Health Services Block Grant (MHBG) programs. The change is designed to provide States greater flexibility to allocate resources for substance abuse and mental illness prevention, treatment and recovery services in their communities. One of the key changes to the block grant application is the expectation that States will provide a description of their Tribal consultation activities. Specifically, the new application's planning sections note that States with Federally-recognized Tribal governments or Tribal lands within their borders will be expected to show evidence of Tribal consultation as part of their Block Grant planning processes. A webinar and other technical assistance for States to meet this expectation are being planned. It is important to note that Tribal governments shall not be required to waive sovereign immunity as a condition of receiving Block Grant funds or services.

Conclusion

Thank you again for this opportunity to share with you the extensive efforts SAMHSA and its federal partners are undertaking, in collaboration with the AI/AN community, in order to implement the TLOA and to reduce the impact of alcohol and drug abuse on AI/AN communities. I would be pleased to answer any questions that you may have.

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

Ms. Weahkee, would you please proceed with your testimony?

STATEMENT OF ROSE L. WEAHKEE, PH.D., DIRECTOR, DIVISION OF BEHAVIORAL HEALTH, OFFICE OF CLINICAL AND PREVENTIVE SERVICES, INDIAN HEALTH SERVICE

Ms. WEAHKEE. Mr. Chairman and Members of the Committee, good afternoon. Dr. Yvette Roubideaux was unable to be here today due to a meeting with the Office of Management and Budget. However, I am pleased to be here to testify on the Indian Health System's implementation of the Tribal Law and Order Act of 2010.

The IHS plays a unique role in the U.S. Department of Health and Human Services to meet the Federal trust responsibility to provide health care to American Indians and Alaska Natives. The IHS provides comprehensive health service delivery to 1.9 million federally recognized American Indians and Alaska Natives through a system of IHS, Tribal and urban-operated health programs.

Under the Indian Self-Determination and Education Assistance Act, many Tribes across the Country have assumed full authority for all health care delivery within their communities. Across Indian Country today, the high incidence of alcohol and substance abuse, mental health disorders, sexual assault, domestic violence and behavior-related chronic diseases is well documented. Each of these serious behavioral health issues has a profound impact on the health and well being of communities both on and off the reservation.

The Tribal Law and Order Act signifies an important step in strengthening behavioral health efforts in Indian Country by helping the Federal Government better address the unique public safety and justice issues and challenges that confront Tribal communities.

The Act also expands the number of Federal agencies who are required to coordinate efforts on alcohol and substance abuse issues. The new possibilities for behavioral health efforts brought about by the passage of this important legislation, along with the permanent reauthorization of the Indian Health Care Improvement Act, have

significant implications for improving the health and well being of Tribal communities.

The Act, as Ms. Hyde stated, breathes new life into Tribal action plans on substance abuse prevention and Federal agencies are coordinating our resources and programs to assist Tribes to achieve their goals in the prevention, intervention and treatment of alcohol and substance abuse.

The Act also requires the IHS Director to provide written approval or disapproval of subpoenas or other requests from Tribal or State courts for the testimony of IHS employees. The IHS has drafted a revised delegation of authority to include the requirements under the Act and is developing additional guidance for its IHS programs and employees.

The Act requires the IHS Director to develop sexual assault policies and protocols. The IHS has established a national sexual assault policy which is now the foundation for local policies at hospitals managed by the Indian Health Service.

The Act also requires the Comptroller General to study the capability of IHS facilities to collect, maintain and secure evidence of sexual assaults and domestic violence incidents and to develop recommendations for improving those capabilities. IHS has worked closely with the Government Accountability Office in the development of the study and looks forward to their recommendations and incorporating those recommendations into our future efforts.

Strategies to address public safety and justice issues include collaborations and partnerships with Tribes, Federal, State and local agencies. For example, the Indian Health Service and the Department of Justice Office of Victims of Crime entered into a partnership involving the Federal Bureau of Investigation and the Department of Interior to address the needs of sexual assault victims in Indian Country.

As part of this effort, there will be two full-time positions, one within the Federal Bureau of Investigation and one within Indian Health Service to address issues around sexual assault nurse examiner and sexual assault forensic examiner issues. And as part of this, I would like to announce that we have selected a new individual, Ms. Beverly Cotton, who has extensive experience and is a subject-matter expert on sexual assault nurse examiner issues, as well as in adult and pediatric sexual assault abuses cases.

In summary, the Tribal Law and Order Act of 2010 requires a significant amount of interagency coordination and collaboration and the leverage and the coordination of Federal efforts and resources will help to further prevention and reduction activities. No one individual, community or agency can do this alone. It will take all of us working together to make significant improvements.

This concludes my remarks and I will be happy to answer any questions that you may have.

Thank you.

[The prepared statement of Ms. Weahkee follows:]

PREPARED STATEMENT OF ROSE L. WEAHKEE, PH.D., DIRECTOR, DIVISION OF
BEHAVIORAL HEALTH, OFFICE OF CLINICAL AND PREVENTIVE SERVICES, INDIAN
HEALTH SERVICE

Mr. Chairman and Members of the Committee:

Good afternoon, I am Dr. Rose Weahkee, Indian Health Service (IHS) Director for the Division of Behavioral Health. I am pleased to have this opportunity to testify on the Indian health system's implementation of the Tribal Law and Order Act of 2010.

The IHS plays a unique role in the U.S. Department of Health and Human Services to meet the Federal trust responsibility to provide health care to American Indians and Alaska Natives (AI/AN). The IHS provides comprehensive health service delivery to 1.9 million Federally-recognized American Indians and Alaska Natives through a system of IHS, Tribal, and Urban operated facilities and programs based on treaties, judicial determinations, and Acts of Congress. The mission of the agency is to raise the physical, mental, social, and spiritual health of American Indians and Alaska Natives to the highest level, in partnership with the population we serve. The agency aims to assure that comprehensive, culturally acceptable personal and public health services are available and accessible to the service population. Our foundation is to promote healthy American Indian and Alaska Native people, communities, and cultures, and to honor the inherent sovereign rights of Tribes.

The IHS works in partnership with the communities it serves, and as such IHS hospital administration frequently includes Tribal representatives who closely participate, as key stakeholders, in the health care delivery system. Additionally, under the Indian Self-Determination and Education Assistance Act (ISDEAA), many Tribes across the country have assumed full authority for all health care delivery within their communities, including hospital operations. Currently, 84 percent of Alcohol and Substance Abuse programs and 54 percent of Mental Health programs are Tribally operated. Traditionally, behavioral health and medical programs, both IHS and Tribally operated, have been separately managed; however, it is now a major focus of the IHS to reintegrate these programs to provide more efficient and effective patient care.

Introduction

Across Indian Country today, the high incidence of alcohol and substance abuse, mental health disorders, suicide, violence, and behavior-related chronic diseases is well documented. Each of these serious behavioral health issues has a profound impact on the health of individuals, public health, and community well-being both on- and off-reservations. American Indians and Alaska Natives are at higher risk for certain mental health disorders than other racial/ethnic groups. For example, the Office of Minority Health, in the Department of Health and Human Services, reports that AI/ANs experience higher rates than all races in the following areas:

- Serious psychological distress;
- Feelings of sadness, hopelessness, and worthlessness;
- Feelings of nervousness or restlessness; and
- Suicide.

Alcoholism, addiction, and alcohol and substance abuse are among the most severe public health and safety problems facing AI/AN individuals, families, and communities, resulting in devastating social, economic, physical, mental, and spiritual consequences. American Indians and Alaska Natives suffer disproportionately from substance abuse disorder compared with other racial groups in the United States. In a 2010 report from the National Survey on Drug Use and Health (NSDUH), the rates of past month binge alcohol use and illicit drug use were higher among AI/AN adults compared to national averages (30.6 vs. 24.5 percent and 11.2 vs. 7.9 percent, respectively) and the percentage of AI/AN adults who needed treatment for an alcohol or illicit drug use problem in the past year was nearly double the national average for adults (18.0 vs. 9.6 percent).¹

Alcohol abuse and alcohol dependence contribute to high rates of mortality from liver disease, unintentional injury, and suicide. AI/AN communities suffer from some of the highest rates of Fetal Alcohol Spectrum Disorders (FASD) in the nation, and the damaging effects of alcohol use to an unborn baby during pregnancy are permanent. Methamphetamine and other drug abuse are increasingly significant problems among AI/AN people and have a devastating impact on families and com-

¹Substance Abuse and Mental Health Services Administration, Office of Applied Studies (June 24, 2010). *The NSDUH Report: Substance Use among American Indian or Alaska Native Adults*, Rockville, MD.

munities. For instance, there are marked disparities in behavioral health morbidity and resulting mortality between the AI/AN population and the nation as a whole. The following are examples:

- The age-adjusted² alcohol related death rate for AI/ANs is 43.3 per 100,000 (2003–2005) and is over six times the U.S. all races rate of 7.0 per 100,000 (2004).³
- The age-adjusted drug related death rate for AI/ANs is 15.0 per 100,000 (2002–2004) and is 1.5 times greater than the U.S. all races rate of 9.9 per 100,000 (2003).⁴

Domestic violence and intimate partner violence continues to be a serious and pervasive problem. Domestic violence often begins with intimate partner rape and can end in homicide. The statistics on domestic violence and sexual assault against AI/AN women are alarming. According to the Centers for Disease Control and Prevention, 39 percent of AI/AN women have experienced intimate partner violence—the highest percentage in the U.S.⁵ In addition, one out of every three AI/AN women will be sexually assaulted in her lifetime,⁶ and AI/AN women are more than five times as likely to die from domestic violence-related injuries than women of any other race.⁷

The numbers do not fully capture the tremendous physical and psychological toll that sexual assault and domestic violence take on individuals and society. Besides the obvious costs of medical care and evidence collection, there is increasing evidence that interpersonal violence is associated with many common health problems, including obesity, hypertension, chronic pain, headaches, gastrointestinal problems, complications of pregnancy, post traumatic stress disorder (PTSD), alcohol use disorders, depression, and anxiety.⁸ All of these health problems can impact an individual's family life and ability to work. The economic impact of the loss of work and productivity is enormous.

Tribal Law and Order Act of 2010

The President signed the Tribal Law and Order Act of 2010 (TLOA) on July 29, 2010. The Act signifies an important step in strengthening behavioral health efforts in Indian Country by helping the Federal government better address the unique public safety challenges that confront Tribal communities. The Act is one of many steps needed to address the public safety and justice challenges faced by AI/ANs. The TLOA has several health specific provisions which will be addressed in further detail below.

The TLOA also expands the number of Federal agencies who are required to coordinate efforts on alcohol and substance abuse issues in Indian Country. Agencies included in coordinated efforts are the Department of Justice (DOJ) and the Substance Abuse and Mental Health Services Administration (SAMHSA), along with the Department of Interior (DOI), the Bureau of Indian Affairs (BIA), and the IHS. The Act promises improved Federal interagency coordination on substance abuse policy by the establishment of an Office of Indian Alcohol and Substance Abuse within SAMHSA. All these elements of the TLOA offer important policy support for health, wellness, and public safety in AI/AN communities and a recognition of the multiple factors that influence behavioral health concerns. The new possibilities for behavioral health efforts brought about by the passage of important legislation like the TLOA, along with the permanent reauthorization of the Indian Health Care Improvement Act, have significant implications for increasing resources to improve the

²Age-adjusted rate per 100,000 population. Rates have been adjusted to compensate for misreporting of AI/AN race on state death certificates.

³Unpublished data. OPHS/Division of Program Statistics (2003–2005 AI/AN age-adjusted rates based on 2000 census with bridged—race categories.)

⁴U.S. Department of Health and Human Services. Indian Health Service. Trends in Indian Health, 2002–2003 Edition. Washington: Government Printing Office, Released October 2009. ISSN 1095–2896. p. 195.

⁵Centers for Disease Control and Prevention (2008). Adverse health conditions and health risk behaviors associated with intimate partner violence—United States, 2005. *MMWR*, 57(05), 113–117. Retrieved March 2, 2010, from <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5705a1.htm>.

⁶Sacred Circle and the National Congress of American Indians Task Force on Violence Against Women in Indian Country (2006, September). Restoration of Safety for Native Women. *Restoration of Native Sovereignty*, 5.

⁷Department of Justice, Bureau of Justice Statistics National Crime Database.

⁸Centers for Disease Control and Prevention (2008). Adverse health conditions and health risk behaviors associated with intimate partner violence—United States, 2005. *MMWR*, 57(05), 113–117. Retrieved March 2, 2010, from <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5705a1.htm>.

health and well-being of AI/ANs. In addition, the TLOA will provide important information which can be used in the development and implementation of the National Drug Control Strategy and in the Office of National Drug Control Policy's work when coordinating drug control activities and related funding across the Federal Government.

Memorandum of Agreement

Section 241 of the TLOA amends the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986, expanding the number of Federal agencies who are required to coordinate their efforts on alcohol and substance abuse issues in Indian Country. Specifically, TLOA directs the Secretaries of the Department of Health and Human Services (DHHS) and the Department of the Interior, together with the Attorney General, to develop and enter into a Memorandum of Agreement. The Memorandum of Agreement was signed on July 29, 2011 and among other things: (1) determines the scope of the alcohol and substance abuse problems faced by Tribes; (2) identifies and delineates the resources each entity can bring to bear on the problem; (3) sets standards for applying those resources to the problems; and (4) coordinates existing agency programs with those established under the 1986 Act.

This provision also breathes new life into Tribal Action Plans (TAP) on substance abuse prevention, first authorized in 1986. The TLOA mandates that DHHS' IHS and SAMHSA, DOI's BIA and Bureau of Indian Education (BIE), and DOJ coordinate resources and programs to assist Indian Tribes to achieve their goals in the prevention, intervention, and treatment of alcohol and substance abuse. It was determined that there is a need to align, leverage, and coordinate Federal efforts and resources at multiple levels within each agency to effectuate comprehensive alcohol and substance abuse services and programs for AI/AN individuals, families, and communities. With this knowledge, the agencies have developed a TAP Work Group to establish the operating framework and guidelines of the TAP.

Testimony and Production of Documents by Federal Employees

Section 263 of the TLOA requires the IHS Director to provide written approval or disapproval of subpoenas or other requests from Tribal or State courts for the testimony of IHS employees or for the production of documents by IHS employees under the Director's supervision. The IHS has drafted a revised delegation of authority to permit IHS Area Directors to authorize testimony by Federal employees in criminal and civil cases at the local level. The draft delegation of authority notes that: (1) subpoenas and requests may be approved if the request is consistent with DHHS' policy to remain impartial; and (2) subpoenas or requests for documents or testimony in violent crime cases which would include sexual assault and domestic violence must be approved or disapproved within 30 days after receipt or the subpoenas and requests will be deemed approved. The draft delegation of authority pertains to factual information obtained by Federal employees in carrying out their official duties. It does not apply to requests for expert testimony from Federal employees.

IHS Sexual Assault Policy

Section 265 of the TLOA adds a new section to the Indian Law Enforcement Reform Act requiring the IHS Director to develop sexual assault policies and protocol based on a similar protocol established by the DOJ. In response, IHS established a national sexual assault policy, which is the foundation for local policies at hospitals managed by the IHS as they develop their own standard operating procedures and protocols on sexual assault medical forensic examinations. The policy establishes a uniform standard of care for sexual assault victims seeking clinical services. The policy ensures that the needs of the victim are addressed, care is culturally sensitive, patient-centered, and community response is coordinated. The policy also includes evidence collection guidance which aligns with criminal justice system response and subpoena regulations. The IHS consulted with Tribal leaders and Urban Indian health directors and reviewed comments for incorporation in future revisions of this policy.

Study of IHS Sexual Assault and Domestic Violence Response Capabilities

Section 266 of the TLOA requires the Comptroller General to conduct a study of the capability of IHS facilities, including facilities operated pursuant to contracts or compacts under the Indian Self-Determination and Education Assistance Act, to collect, maintain, and secure evidence of sexual assaults and domestic violence incidents and develop recommendations for improving those capabilities. This section also requires a Report to Congress to assess current readiness and propose recommendations for improving response capabilities. IHS has cooperated with the GAO in the development and completion of this study.

IHS Partnerships

IHS has devoted considerable effort to develop and share effective programs throughout the Indian health system. Strategies to address public safety and justice issues include collaborations and partnerships with consumers and their families, Tribes and Tribal organizations, Urban Indian health programs, Federal, State, and local agencies, as well as public and private organizations. We believe the development of programs that are collaborative, community driven, and nationally supported offers the most promising potential for long term success and sustainment. Our partnership and consultation with Tribes ensure that we are working together in improving the health of AI/AN communities. Examples include the Indian Health, HHS, Bureau of Justice Assistance and the Alliance of States with Prescription Monitoring Programs partnership to create a prescription drug data export solution capable of exchanging data with State Prescription Monitoring Programs; the IHS-VA Consolidated Mail Outpatient Pharmacy program that improves medication use adherence and safety; Combined drug abuse, prescription drug abuse and alcohol abuse partnership trainings.

Summary

In summary, the Tribal Law and Order Act of 2010 requires a significant amount of interagency coordination and collaboration. The leverage and coordination of Federal efforts and resources will help to further the prevention and reduction activities at the national, Tribal, State, and local levels. No one individual, community, or agency can do this alone. It will take all of us to prevent and reduce alcoholism, addiction, alcohol and substance abuse, domestic violence, and sexual assault across AI/AN communities, reservations, and urban areas.

With the full weight of Tribal leadership, Federal agencies, individuals, and families working together, effective long-term strategic approaches to address behavioral health in Indian Country can be established and implemented. To adequately address the problem of public safety and justice, IHS is proactively focusing on behavioral health treatment and rehabilitation through partnerships and initiatives directed at minimizing the causes of such abuse (i.e., domestic violence, sexual assault, child sexual abuse, etc.). The IHS and its Tribal and Federal partners are committed to maximizing available resources to provide appropriate prevention and treatment services, as well as safe environments for AI/AN communities.

This concludes my remarks and I will be happy to answer any questions that you may have. Thank you.

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

I am pleased that my colleague, Senator Thune, from South Dakota is joining us today.

Senator Thune, welcome to the Indian Affairs Committee. I want to ask you whether you have any remarks you would like to make at this time.

STATEMENT OF HON. JOHN THUNE, U.S. SENATOR FROM SOUTH DAKOTA

Senator THUNE. Mr. Chairman, whenever it is appropriate, I have a couple of questions I would like to ask the panelists.

The CHAIRMAN. You are very welcome when we get to that. Thank you.

I know that my colleagues are limited in how long they will be able to stay for today's hearing, so I am going to ask each one of the witnesses on the first panel one question, and then defer to my colleagues to ask their questions. If time permits, I will have a second round. I know this topic is very, very important.

Mr. Perrelli, how many Tribes in Public Law 280 jurisdictions have requested that the Federal Government exercise concurrent jurisdiction over reservation crimes? And what is the state of the final rule to implement this important provision?

Mr. PERRELLI. Thank you, Senator. The review will be published in the Federal Register. So no Tribes have yet requested pursuant

to the regulation. We have had a number of Tribes, probably less than 10, approach us with different levels of detail of their requests, indicating that they may seek a request that we take concurrent jurisdiction.

So I think we expect to see a relatively small number initially, and then over time, it is possible that number would grow. But we would expect to be receiving these applications in the fall and then making decisions on them probably in the early part of next year.

The CHAIRMAN. Mr. Echo Hawk, fixing the *Carcieri* decision is a top priority for the Administration. Do you see any implications for law enforcement due to this decision?

Mr. ECHO HAWK. The *Carcieri* clean fix legislation is a top priority of the Administration and strongly supported by Secretary Salazar, and for good reason because it has implications in a lot of different areas that reach into Indian Country.

With regard to what we are talking about today, criminal law enforcement, as a law professor and former prosecutor and defender, I can tell you that it is very complex, the jurisdictional rules that apply under normal circumstances. And *Carcieri*, unfortunately, adds another layer of uncertainty in the way that the law applies, creating what has been described as a jurisdictional maze that people have to navigate through.

This would, of course, be of particular concern to any Tribes that were taking land into trust after 1934 that arguably may not have been under Federal jurisdiction at that time. So it creates problems, particularly I think for landless Tribes that may have been recognized recently, that are desiring to now have some territorial jurisdiction over a portion of what was once their homeland.

But in addition to the jurisdictional problems, we probably have, and I can get you accurate information on this, maybe 1,000 or more pending applications for land-into-trust, and very few of those, by the way, relate to gaming, just a handful. And these other applications deal with opportunities that Tribes have to develop their economies, to build medical facilities, housing and criminal law enforcement facilities. And without having the ability to take those lands into trust and develop their community infrastructure as a result of *Carcieri*, that is a significant problem.

Thank you.

The CHAIRMAN. Thank you.

Mr. Johnson, you mentioned issues with sex trafficking in your testimony. In our recent hearing on Native women, we heard from other witnesses that this is a serious and growing problem in Native communities. What else can be done at the Federal level to combat sex trafficking in these communities? What data currently exists about these cases?

Mr. JOHNSON. In terms of data, I can tell you that Alaska, for example, recently had a very successful prosecution of a sex trafficking case. We have had a sex trafficking case in South Dakota that we recently concluded, but that did not involve women on the reservation.

We know, Senator, very clearly that this issue exists and we know that it has a terrible effect on communities where this occurs. So we have been trying to be very aggressive with both Tribal law enforcement, as well as Federal law enforcement in terms of train-

ing so that folks recognize signs and evidence of human trafficking and that when we have a report, that we follow up. But also that we look at a case that might appear on the face of it to be a prostitution case on the reservation.

Well, what we in law enforcement need to do is make sure that we are following that up, so what may appear to be a prostitution case could be a much larger human trafficking operation.

And so I think a big part of this is education. It is training for both law enforcement, as well as the community. Because frankly, we often hear about this first from community members. So that is really our focus, I think, is on training and education.

The CHAIRMAN. Thank you.

Mr. JOHNSON. Thank you, Senator.

The CHAIRMAN. Ms. Hyde, can you explain how SAMHSA and the other agencies at DOJ and DOI will determine the scope of alcohol and substance abuse problems faced by Tribes as they operate in the new MOU?

Ms. HYDE. Thank you, Mr. Chairman. There are a couple of ways that we are going to go about that. Each one of the agencies have several pieces of information themselves. We are going to try to compile that information that we have across the agencies.

And then we are also going through the Tribal action plans to determine what each Tribe indicates are the scope of the problem.

So as you well know, there are issues about data or lack of data or how data is collected or used to identify that. We have a number of grant programs, as do our partners, that tell us what some of those problems are within Indian Country. We are trying to compile that through the interagency committee and make that available.

We really want to try to make this Tribally specific, however. This is the whole point, I think, of this law and of our efforts is to recognize that each Tribe has within it its own understanding of what the scope is and what the needs are. And we want to be respectful of that and we want to support each Tribe in identifying their own needs, and not trying to generalize that across all of Indian Country. And yet we know there are some common issues and common scope that we are trying to make resources available not in just one agency, but across all of these agencies touching the Tribes.

So the Tribal action plans will be very important in that process as well.

The CHAIRMAN. Thank you.

Ms. Weahkee, in implementing the new sexual assault protocol at IHS, how do you plan to ensure accountability and quality control locally at all your facilities, to ensure you are meeting the needs of the sexual assault victims?

Ms. WEAHKEE. This issue also came up as part of the Government Accountability Office study looking at the capability of IHS and Tribal facilities. And so as part of that feedback and input, it became evident and important to note that we really needed to develop an implementation and monitoring plan. And so that is something that we are working on to ensure that our IHS facilities are implementing the protocol successfully and also looking at the wit-

ness testimony and assessing that employees are testifying in court.

So that is a part of our future plans and something that our new sexual assault nurse examiner national coordinator will be working on, is developing that implementation and monitoring plan.

The CHAIRMAN. Thank you very much.

Let me call on Senator Johnson for any of his questions. Then I will call on Senator Thune and Senator Tester.

Senator JOHNSON. Mr. Perrelli, as you stated, the Bureau of Prisons has implemented a four-year pilot program to work with Tribal courts to incarcerate persons convicted of violent crime. You indicated that no Tribe has made such a request. Is there a reason why no Tribe has participated?

Mr. PERRELLI. I think the pilot project at BOP is really intended for hard-core offenders where the Tribal court has exercised the extended jurisdiction that is available under the Tribal Law and Order Act.

As yet, across the Country, you see Tribes amending their Tribal code and putting together funding and other things they will need to exercise that enhanced sentencing authority, but it hasn't been occurring very much. We would expect that as Tribes begin using that authority, they have their codes up to date, and they have put in place all of the procedural pieces, that we will start to see the flow of prisoners into the BOP.

Senator JOHNSON. Mr. Perrelli, two Tribes in my State of South Dakota are diminished reservations, resulting in random areas of Tribally owned lands and locally owned land. How is the Department of Justice facilitating the intergovernmental relationship between Tribes, local and State law enforcement and court systems?

Mr. PERRELLI. This is a problem in a number of different places, South Dakota, Oklahoma, also in California, but not exclusively there, where you have Tribal land interspersed with other land. There are many places across the Country where Tribal law enforcement and State or local police departments have effective working relationships and we have been encouraging cross-deputation agreements so that there is no debate or dispute about when a Tribal officer may pursue off the reservation, off Tribal land, or a county official may pursue on reservation land.

So we have been encouraging that across the Country. We just recently had a meeting with Tribes in California where this is a significant issue to talk with them about the challenges they are seeing. And our COPS Office is funding a pilot project with a cross-deputation agreement in California to see if we can come up with best practices that we could then go out and work with the State and local law enforcement community and the Tribal law enforcement community to hopefully implement in a broader range of places.

Senator JOHNSON. Mr. Johnson, I am very interesting in hearing about the Tribal Youth Leadership Program. As you know, in South Dakota many of our reservations lack after-school programs and other after diversionary activities. How are these program going?

Mr. JOHNSON. Well, thank you, Senator. We recently in South Dakota conducted four Native American youth listening sessions.

We had over 400 Native American teenagers who attended these sessions. And their concern is exactly what you have raised: concerns about jobs, about safe basketball courts, safe baseball fields where they could go and play, after school programs, cultural programs.

And there remains real concerns about what there is for Native American youth to do, especially when many of these youths have to travel distances to get to the center of town. So that remains a concern.

I can tell you what our office is doing is trying to get into the schools, listening to the youth. We have had a national Native American youth session out in New Mexico. So there is a real effort to listen to the Native American youth, to take their concerns, particularly as it relates to law enforcement.

But when it comes to after school programs and those issues that you mentioned, really the best that I can do for the kids who attend these listening sessions is to tell them I will make sure to pass that along to our Congressional delegation because it is a huge issue.

Senator JOHNSON. During your consultation with Tribal leaders, what is the feedback on implementation of the Tribal Law and Order Act, Mr. Johnson?

Mr. JOHNSON. I think right now the number one issue that some of our Tribes in South Dakota are having when it comes to the Tribal Law and Order Act is funding the licensed attorneys who are necessary to have the increased sentencing jurisdiction. Several of the Tribes in South Dakota have licensed attorneys who are prosecutors. Far fewer have licensed attorneys who are also public defenders.

So I think that several Tribes are getting close to using that sentencing jurisdiction, but there are still funding issues.

Senator JOHNSON. My time has expired.

Mr. JOHNSON. Thank you.

The CHAIRMAN. Thank you very much, Senator Johnson.

Senator THUNE?

Senator THUNE. Thank you, Mr. Chairman. I do appreciate very much your allowing me to participate today in the hearing, and I want to thank our witnesses for being here and for sharing their thoughts.

I think we were all delighted after working on it for about three years that the Tribal Law and Order Act finally passed last year. The conditions on many of our Nation's reservations, including in our home State of South Dakota, are not acceptable. And the enactment of the Tribal Law and Order Act isn't going to be a silver bullet in solving all those problems, but I do believe it was an important step in the right direction in improving public safety and justice.

And so I am very interested in your reaction, obviously, and getting an assessment a year later about how some of these things are working.

Mr. ECHO HAWK. if I might direct this question to you. I want to commend Deputy Director Darren Cruzan for all the hard work at the Office of Justice Services and the things that have been done in the area of law enforcement and correction officer hiring, be-

cause one of the issues that we have been identifying is getting people trained through the process, getting them out on the reservations.

And I think the common sense idea of holding job fairs has been very well received by the nine Tribes in South Dakota. It seems to be speeding up the hiring process. But my understanding is that there is still a bottleneck in hiring when it comes to the applicant getting to the background check stage. And so I am wondering if you could explain that background check process from the time the applicant is given the paperwork for the background check, until that individual is fully hired.

Mr. ECHO HAWK. Mr. Chairman and Senator Thune, I am of course not the expert when it comes down to actually describing the details of the procedure. But one of the tasks given to us was to make sure that we are performing the background checks in a timely manner.

And since the Tribal Law and Order Act was passed, we have adopted new policies and procedures, and we are doing background checks. I am told that we have done since the Act came into law about 35 of those we were able to do in a timely manner. But in terms of actually the specific processes, I think I would have to defer to someone else like Darren Cruzan to respond to your question.

Senator THUNE. Maybe if we could get that for the record, but it seems to me that some of the delays could be eliminated if there was some basic pre-screening that was done, maybe at the job fair sometime prior to the conditional offer of a job. And so I am wondering maybe if some of those ideas have been considered. And so if you might furnish that for the record, too.

Mr. ECHO HAWK. Senator, in response, we will continue to look for opportunities to speed up the process, but I think the numbers show that we have improved greatly the hiring. I have some figures, like in 2007 we had an increase of seven in personnel. I am talking about corrections and law enforcement officers. In 2008, four, so seven and four. But since 2009, we increased by 39 and then in 2010 by 52; and then thus far in 2011, 31.

So we are moving forward. And law enforcement offices on the ground, out there in the streets and in the communities, are very important and we have had a 20 percent increase. And of course, I have to express appreciation to the Congress for providing the appropriations for us to move forward in this area of hiring. But even with the money, when I first came in we were struggling with getting people selected, through the background process, and trained. But we have made some very significant advances in that regard and we will continue to look for ways to improve.

Senator THUNE. Good. Sounds like you are heading in the right direction anyway.

The Tribal Law and Order Act included a provision increasing the maximum hiring age from 37 to 47. Has that been implemented?

Mr. ECHO HAWK. As far as I know, yes. And that is something that we identified was needed because of the recent history prior to 2009 where we were struggling to get people in there.

Senator THUNE. I am going to direct this to Mr. Perrelli quickly here, if I might. The Tribal Law and Order Act also included a provision that would allow magistrates to hold trials and other court proceedings in Tribal courtrooms, as opposed to Federal courts. Has that been implemented?

Mr. PERRELLI. Well, I think, and that is principally in the Judiciary bailiwick. We have been encouraging courts across the Country to do this, whether it is in Tribal courts or to move magistrates closer to reservations. We have reservations in this Country that are the size of States, with less than 10 police offices patrolling at any one time. If two of them have to go testify in Federal court 200 miles from the reservation, that is an enormous impact on their ability to protect public safety.

So I will try and find out the answer to you about how many instances or when that has happened, but I think it is important for us to, where we can, bring the courthouse closer to the reservation in many communities across the Country.

Senator THUNE. And that was the intent of that provision, so thank you.

I see my time is expired. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Thune.

Senator Tester?

Senator TESTER. Thank you, Mr. Chairman.

And by the way, thank you all for testifying. I appreciate your testimony.

This question is for Larry. You can kick it over to Tom if you want. We do a lot of things here in Washington, D.C. and you are expected to implement them. And Tribes on the ground, many of them are a long ways away from here.

What kind of outreach did you do to let folks know on the ground what was available to them? Or did you do any outreach to let them know what was available to address any issues that they might have?

Mr. ECHO HAWK. Specifically with regard to the provisions of the Tribal Law and Order Act we have responsibility for?

Senator TESTER. Correct.

Mr. ECHO HAWK. We conducted six specific consultation sessions, so we had that face-to-face interchange with Tribal leaders and other interested people. And then beyond that, we held focus groups, webinars, opportunities for additional comment. So we have had good communication flow.

Senator TESTER. And I assume these consultations weren't just with one Tribe. You didn't have six consultations with six Tribes. They were with leaders from many different Tribes, each consultation?

Mr. ECHO HAWK. Senator Tester, these were regional sessions located in different cities where a lot of Tribal leaders attended.

Senator TESTER. That is great.

Tom, could we talk about declinations for a second? I mean the information that was given to us last year was pretty amazing, actually, and no amazing in a good way. Could you give me an idea if you have made any inroads into that 60 percent, 70 percent declination issue?

Mr. PERRELLI. And Senator, I think we are improving. Our first report on this is going to come at the beginning of next year, but let me break it into two parts.

First, there is what I would call just a core communication aspect of this, which is our agents and prosecutors communicating with Tribal law enforcement and Tribal prosecutors, as well as community members, about what is going on in particular cases. That was a directive that came from our Deputy Attorney General, that we needed to improve in that regard and we have been doing that all across the Country. It is a specific element of every U.S. Attorney's operational plan.

And I would say the U.S. Attorney in Montana is leading this effort and he has a very simple operational plan, which is on a regular basis, his prosecutors sit down with the prosecutors of law enforcement of each Tribe and go through every case so that everyone knows either what is going on or makes sure things don't fall through the cracks.

On the numbers, we are hopeful that the numbers that you will see at the beginning of the year are going to show real improvement. As we have said before, there are lots of reasons for a decline. It could be there was just no crime. It could be there was no jurisdiction. It could be someone else prosecuted. But all that being said, we know that the numbers are too high and we know that we need to do a better job of tracking them and explaining them.

Senator TESTER. Yes, it also could be that as we heard last year, that the evidence gathered was insufficient. Has there been anything done to address that?

Mr. PERRELLI. Among other things, we are obviously working with training Tribal police officers and moving more resources closer to the reservation so we can get that evidence earlier, but also working with State crime labs and developing partnerships with them so that some more crime analysis can be done in the field.

Senator TESTER. Okay, well, we will be looking forward to those reports that are coming out after the first of the year.

Mr. Johnson, you probably have the toughest question I am going to ask today, but you said you are here to report that you have made progress. You talked about consultations. You talked about cross-designation. And you also said we can't arrest our way out of this, which by the way I agree with.

Can you give me some specific examples of how you have made progress as far as the Tribal Law and Order Act and how it applies? Tom said there are studies that are going to come out at the end of the year.

The bottom line is: Are communities being made safer? And what are you using for metrics to judge that? Okay, go ahead.

Mr. JOHNSON. It is a very fair question, Senator. I look at the example of Rosebud Sioux Tribe. Where were we a year ago and where are we today?

A year ago, I sat down with the Tribal prosecutor. They had one-and-a-half licensed attorneys who were prosecuting cases there. Today, they have seven. I think if you were to talk with their Attorney General, who would probably be in the best position to tell you about the changes in the last year, he would describe, for ex-

ample, our office once a month we have our Assistant U.S. Attorneys, two of them, and two of the best prosecutors in our office, who go to Rosebud; who sit down with Tribal prosecutors, the Tribal police department, BIA, FBI, and we go through each one of these cases individually.

And I think one of the biggest differences, and this was a major theme of the Tribal Law and Order Act, is there needs to be collaboration. We can't have the Federal side over here and the Tribal side over here. We need to be working together on these cases and really addressing them.

A lot of these cases in Tribal court need to be addressed before the simple assault becomes the aggravated assault, and I think that is one of the hallmarks that we have seen in the last year is greater collaboration.

Senator TESTER. Okay. Well, thank you very much.

Thank you, Mr. Chairman.

I also want to thank Pamela for her testimony.

Rose, thank you very much for coming to Montana and testifying on youth suicide in Indian Country. I very much appreciate that.

And we may enter some questions for the record for you guys. Thank you very, very much.

The CHAIRMAN. Thank you very much, Senator Tester.

Let me just ask my colleague if you have any further second-round questions.

If not, then I will move on. In the interest of time, I will be sending my remaining questions to the panel. Thank you very much.

I would like to invite the second panel to the table, Mr. Troy Eid, Chair of the Indian Law and Order Commission from Denver, Colorado.

Good to have you as the second panel. And Mr. Eid, will you please proceed with your testimony?

STATEMENT OF TROY A. EID, CHAIRMAN, INDIAN LAW AND ORDER COMMISSION

Mr. EID. Thank you, Mr. Chairman, Committee Members. I guess I am the panel of one and I am honored to be here.

My name is Troy Eid. I am the Chairman of the Indian Law and Order Commission. My day job is I am a law partner at the firm of Greenberg Traurig in Denver. When I am not practicing law, I am an Adjunct Law Professor and teach Indian law at both the University of Colorado and the University of Denver. I am Chair of the Training Committee of the Navajo Nation Bar Association, which does the training for Tribal court judges and Tribal advocates and attorneys on a reservation that is bigger than the State of West Virginia.

I am here to represent our Commission. This Commission as you know was established by the Tribal Law and Order Act. There are nine of us. We are all volunteers. We appreciate greatly the bipartisan support of this Committee, and I want to thank you personally and I want to thank the staff. They have been fantastic to us.

I also want to thank the Department of Justice, the Department of the Interior, the panel that was just here. They have provided to resources. Because of the budget situation, it took until this last month for us to be funded. We paid our own way for most of the

time and we were honored to do so, given the statutory requirement.

I would tell you that we lost a year. We were supposed to have two years to report to the President and to the Congress but we don't have a year to get our work done. We just started our field hearings the week before last at Tulalip in Washington State.

So we will be sending you a letter, Mr. Chairman, respectfully asking for a one-year extension, which would not cost the taxpayers anything, so we could continue our work, and we appreciate your consideration of that.

The Tribal Law and Order Act did, as you know, three basic things, and I want to try to give you a report in the three areas.

The first was it tried to increase and enhance Federal accountability and transparency. Secondly, the Tribal Law and Order Act focused on helping Tribes have more freedom and flexibility for their own justice systems, designing them, running those systems. And third, the role of the Act was to increase cooperation among State, Federal and Tribal officials, areas like crime reporting; the ability to have interoperability of systems; law enforcement training and so on.

Very briefly, Mr. Chairman, in the three categories. Number one, Federal accountability. I think that is where we are seeing the most progress because of the Act. And in this regard, I believe very strongly that the Tribal Law and Order Act has increased the trend that was happening particularly within the Executive Branch to focus on making this more of a priority which is, of course, what we should do, what we must do.

And I would simply say that everywhere I go in Indian Country, and I have traveled most weeks of the year since 2004 without a break to Indian Country, I hear and I see the change. I know that it is happening and it is great to see.

But, Sir, having said that, we are just now beginning to get this job done and accomplished. There are way too many places where it is not happening. Case declinations, which I would be delighted to talk about, are a great example. What is a case declination? What is a case?

When, as happened a few weeks ago in my home State of Colorado, the Bureau of Indian Affairs, which often does a good job, but in this case did not, when they sit on a case for three years. And the U.S. Attorney's Office gets five case files: arson with a confession; sexual assault. And they show up on the desk of a U.S. Attorney after five years. The U.S. Attorney never saw it before. Is that a case declination? Because who is going to take that to court? Who is going to be able to go to a Federal judge with that stale evidence and be able to say we are going to meet the ethical and legal standards for prosecution?

So how do you define that? Does the U.S. Attorney suffer because he or she does not record that case declination statistic appropriately? Was that ever a case to decline? Those issues are very important. And I have to commend U.S. Attorney Johnson because he has reached out to us and we are going to sit down in November and go through declination criteria, see what we can do to make it fair across the FBI, the BIA, the Justice Department; try to make sure the public knows what this is about.

Second category, which was the strengthening of Tribal justice systems, more freedom. It is great to have enhanced sentencing authority. Hardly anybody is doing it. You may see it from time to time, but frankly, there are probably 20 Tribes in this Country that are really set up right now to do that. For the vast majority of Tribes, they are going in a very different direction.

At Navajo Nation, we have 144 total jail beds. We have 235,000 Tribal members. How much more incarceration are we going to do? And that is the reality of what we face in the field. Without the money and the resources, the prospects for more incarceration are very limited. So great to have the freedom. Great to respect defendants' constitutional rights also. It must be done, but very limited in terms of impact except for specific areas where it can be implemented, which is great, like the Tulalip Nation that we visited last week.

And then finally, just to close, Mr. Chairman, cooperation. Wonderful to see more of it between the Federal Government and Tribes, just what should happen. But what I would say to the Committee respectfully is that Tribal Law and Order Act did nothing to help with relations between the States and Tribes, nothing. And you see this in Washington State this last week. The Washington Supreme Court ruled there is no hot pursuit. When a non-Indian is DUI and drives off the reservation, that Tribal cop can't even detain that person off-reservation under a mutual aid agreement to allow for that county sheriff to show up and get that person behind bars. And drunk driving knows no jurisdictional boundaries.

You see this time and time again. We must find ways to incentivize cooperation between States and Tribes.

So with that, I will be happy to take questions. Thank you, Sir.
[The prepared statement of Mr. Eid follows:]

PREPARED STATEMENT OF TROY A. EID, CHAIRMAN, INDIAN LAW AND ORDER
COMMISSION

Thanks for the opportunity to testify on how the Tribal Law and Order Act of 2010 ("the Act" or "TLOA") is affecting Indian Country. My name is Troy Eid and I chair the Indian Law and Order Commission ("the Commission"). This is the independent national advisory commission Congress created when passing the Tribal Law and Order Act in July of last year. The President and Congress appointed the nine Commissioners, who are all volunteers, last winter. The Commission received funding from the U.S. Departments of Justice and Interior late this summer to carry out our statutory responsibilities. Our role is not just to assess how the Tribal Law and Order Act is being implemented, but to recommend additional ways to strengthen justice and public safety for people living and working on and near Native American communities and lands throughout the United States.

Introduction

By way of brief introduction, the Senate Majority Leader, Senator Harry Reid of Nevada, appointed me to the Commission, and the other Commissioners elected me Chair. I returned to private law practice in January 2009 after serving as the United States Attorney for the District of Colorado, appointed by President George W. Bush. I'm a partner in the Denver office of the law firm of Greenberg Traurig LLP, where I co-chair our American Indian Law Practice Group, which represents both Indian Tribes and companies doing business with them. I'm also an Adjunct Professor at both the University of Colorado School of Law in Boulder and at the University of Denver College of Law, where I teach civil and criminal justice and jurisdiction in Indian Country as well as energy, natural resource, and environmental law. My other volunteer activities include the Navajo Nation Bar Association ("NNBA"), where I chair the NNBA Training Committee. This includes preparing Tribal court judges, attorneys and lay advocates to sit for the semi-annual Navajo

Nation bar examination in order to gain admission to practice law before the Navajo Supreme Court and district courts.

The Commission does not have offices. We operate virtually—by teleconference, email and the web at www.indianlawandordercommission.com—and on the road by convening field hearings in Indian Country, as we did earlier this month at the Tulalip Tribes of Washington, north of Seattle. The U.S. Department of Justice has graciously loaned us two distinguished career federal employees, recruited by the Commission, to discharge our statutory duties. Assistant United States Attorney Jeff J. Davis, a member of the Turtle Mountain Band of Chippewa Tribe, recently joined the Commission as our Executive Director. He is a veteran Indian Country prosecutor and Tribal liaison with the United States Attorney's Office for the Western District of Michigan in Grand Rapids. Eileen Garry, the Deputy Director of the Justice Department's Bureau of Justice Assistance, is also graciously serving as the Deputy Executive Director of the Commission. We're grateful to the Justice Department for the support of these two extraordinarily talented and hard-working public servants. The Tribal Law and Order Act likewise provides that the U.S. Department of the Interior is to detail one or more loaned officials to the Commission, and we look forward to having that conversation with my friend Assistant Secretary Larry Echohawk and his team.

Finally, I want to acknowledge the tremendous bipartisan support that the Commission has received from this Committee. The professional staff has encouraged our work at every stage, providing ongoing advice and counsel and enabling us to navigate unfamiliar waters while maintaining the Commission's independence as envisioned by the Act. We are exceedingly grateful.

Keeping in mind our gratitude for the support that the Commission has received, we face a very short deadline for our final report to the President and Congress. Due to funding and budget restrictions, we were not able to organize until last month. This means we have just one year to accomplish our mission, instead of the two years envisioned by the Tribal Law and Order Act. We respectfully ask this Committee to consider extending the life of the Commission, at no additional cost to taxpayers, another year to meet the goals of all involved. We will send a letter to you at the earliest opportunity to set forth our request more formally, and thank you for your consideration.

Is TLOA Working?

Now to the business at hand: Has the Tribal Law and Order Act improved public safety and justice throughout Indian Country?

The answer is yes, but we're just getting started.

The Act's passage last year took many people by surprise, not only among the usual Beltway skeptics here in Washington, DC but across Indian Country, where a generation of leaders had been disappointed by previous reform efforts. Given these very low expectations, the enactment of the Tribal Law and Order Act was something of a watershed.

I don't say this lightly. On the contrary, I know from my own experience over the past 25 years that making meaningful changes to law and policy concerning Indian Country can be extremely difficult. We're dealing with the intersection of all three sources of sovereign power recognized by the U.S. Constitution: The Federal Government, the several states, and Indian Tribes and nations that pre-date the Constitution itself but have been shaped and reshaped radically over the years by the other sovereigns. The relationships among the three sovereigns never remain static for very long. Even within each sovereign, different constituencies may result in competing or contradictory priorities.

Against that backdrop, TLOA's enactment was no small achievement. The Act attempts to do many things. Yet having been involved with it as a volunteer since 2007 when the then-Chairman of this Committee, Senator Byron L. Dorgan, and his staff first invited me to get involved in what became TLOA, I believe its basic purpose is threefold. First, TLOA was intended to make federal departments and agencies more accountable for serving Tribal lands. Second, the Act was designed to provide greater freedom for Indian Tribes and nations to design and run their own justice systems. This includes Tribal court systems generally, along with those communities that are subject to full or partial state criminal jurisdiction under Public Law 280. Third, TLOA sought to enhance cooperation among Tribal, federal and state officials in key areas such as law enforcement training, interoperability, and access to criminal justice information. Let me briefly address these three areas and look to the future.

Federal Transparency and Accountability

TLOA's first major purpose was to bolster the Federal Government's accountability to Indian Tribes and nations that, since the passage of the Major Crimes Act in 1885, have largely depended on federal police, prosecutors and judges for protection from the most serious crimes. It is in this area, among the three major purposes of the Act that I've just listed, where the Federal Government appears to be making the most progress. Nearly everywhere I travel in Indian Country—and I do so most weeks of the year, and have since 2004—Tribal and federal officials say they're getting more encouragement from Washington to make Indian Country issues a priority. Extending this awareness to state and local officials in neighboring jurisdictions is perhaps the most urgent priority, as I'll discuss a little later. The Tribal Law and Order Act, and the many follow-up activities it requires of the Executive Branch, is contributing to this larger trend among federal and Tribal officials. This positive energy, and the perception of forward motion from Washington in at least acknowledging problems that were often previously dismissed as intractable, is refreshing.

Yet we must also be realistic about how difficult it will be to achieve lasting reform in this area. The issue of publicly reporting so-called "case declinations" by federal prosecutors in Indian Country cases, as the Tribal Law and Order Act requires, is just one example. Achieving meaningful accountability and transparency in this area is harder than it looks. The underlying statutory responsibilities are split between two cabinet departments. The Department of Justice through the Federal Bureau of Investigation and the United States Attorney's Offices and the Bureau of Indian Affairs (BIA) Office of Justice Services, which provides law enforcement on many reservations, are both responsible for serving Indian Country.

Simply put, the Justice Department's assessment of whether a given case should be publicly reported as "declined" for prosecution may differ markedly from that of the BIA which is administratively housed in the Department of the Interior. Despite the manifest good intentions of Darren Cruzan, who directs the Office of Justice Services, the BIA often lacks enough patrol officers and investigators to build criminal cases that are sufficiently strong to survive the rigors of federal court. BIA officers and investigators are not always properly trained and are frequently detailed or transferred from one community to another. Overall staffing levels for patrol and investigations, which TLOA did nothing to address, remain woefully inadequate on many, if not most, Indian reservations that are subject to primary BIA jurisdiction and the federal Courts of Indian Offenses.

Consequently, case intake and reporting can be inconsistent, and even the most serious felony investigations often languish. Last summer, the BIA Police Department on the Ute Mountain Ute Reservation in my home state of Colorado delivered investigative files for five previously unknown criminal cases to the U.S. Attorney's Office in Durango. The files in all five BIA felony investigations, ranging from arson to sexual assault, were more than three years old and had never been previously disclosed to the Justice Department. They just "fell through the cracks," as one Assistant U.S. Attorney told me last week as so often happens in Indian Country.

In such instances, the U.S. Attorney might understandably conclude that the admissible evidence obtained during these BIA investigations is either so minimal or stale that it does not establish a reasonable likelihood of the defendant's conviction at trial. That is the legal and ethically required standard that guides U.S. Attorneys in determining whether to proceed through the federal judicial process. In terms of case declination reporting, is there really a prosecutable "case" to decline?

This example attests to how challenging it can be to bring greater accountability and transparency to federal agencies serving Indian Country as TLOA requires. Department of Justice leaders are grappling with these issues, and they should be commended for doing so. Let me especially thank Brendan Johnson, the United States Attorney for the District of South Dakota and Chair of the Native American Issues Subcommittee of the Attorney General's Advisory Committee. U.S. Attorney Johnson has reached out to the Commission and invited us to engage with his colleagues in a dialogue on the case-declination issue.

The stakes are high. To victims of violent crime in Indian Country, who depend on federal officials to perform what would otherwise be purely local policing and prosecution decisions, seemingly arcane issues such as case-declination reporting and accurate Tribal crime data collection and reporting systems have profound real-world consequences. Crime statistics help drive federal criminal justice resources throughout Indian Country. Just last week, a senior BIA official assured me that the official crime statistics on the Ute Mountain Ute Reservation do not seem to justify additional federal resources there. Underreporting of criminal justice information at Ute Mountain and many other reservations remains a chronic problem, along

with the BIA's frequent inability to keep accurate and readily accessible records for those offenses that are actually reported.

This is changing in some parts of Indian Country, but slowly. TLOA requires the Bureau of Justice Statistics (BJS) of the U.S. Department of Justice to establish and implement a Tribal data collection system and to support Tribal participation in national records and information systems. In June, BJS issued its first required report summarizing the Department's efforts to improve Tribal law enforcement reporting to the FBI's Uniform Crime Reporting (UCR) Program. Bear in mind that accurate crime reporting in Indian Country has been the exception to the rule. 2009 was the first year when BIA submissions to the UCR were actually broken down according to Indian Tribe and reported in the FBI's Crime in the United States report. I participated last year in one of several training sessions that BJS held for Tribal leaders, in conjunction with the FBI and the BIA Office of Justice Services, on the use of UCR systems. Such training is vital, especially for Tribes that are not meeting FBI data quality guidelines or are not submitting complete crime data to the BIA. In this and many other ways, the Departments of Justice and the Interior are working to make Tribal criminal justice data more accurate, complete and accessible, and more effectively integrated with state and federal records and reporting systems. Some of these initiatives probably would have moved forward even without the Tribal Law and Order Act. But the Act is focusing and accelerating these efforts far beyond what would have otherwise occurred.

More Flexibility for Tribal Courts

A second major purpose of TLOA was to strengthen Tribal justice systems, especially through enhanced sentencing such as longer terms of incarceration for the most serious criminal offenses under Tribal law. On balance, these provisions appear to be working, but only for the relatively small number of Indian Tribes and nations that are in a position to take advantage of them in the foreseeable future.

The Act amended the Indian Civil Rights Act of 1968 to give Tribal courts the sentencing option to impose terms of incarceration for up to three years, a fine of up to \$15,000, or both for conviction of a single Tribal offense. This compared with the previous maximum penalty of a year in jail and/or a \$5,000 fine. The statutory language attempted to strike a balance between respect for criminal defendants' federal Constitutional rights and the sovereignty of Tribal courts to enforce their own laws. In time, the federal courts may review and recalibrate that balance based on the efforts by those comparatively few Tribes that might be expected to assert what amounts to felony sentencing jurisdiction over Indian offenders.

The ground truth in most of Indian Country is that only a minority of Tribal courts currently imposes jail sentences of even up to one year. The Tribal Law and Order Act required the Departments of Justice and the Interior to develop a long-term plan to build and enhance Tribal justice systems. The most striking feature of the August 2011 report produced as a result of that statutory mandate is the number of Tribal courts that are pursuing alternative sentencing options, such as wellness courts and restitution programs, as opposed to longer terms of incarceration. Many of these programs hold the potential of reducing recidivism and saving public money. This is extremely important within the context of corrections where, according to a 2009 estimate by the National Institute for Corrections, for every one dollar spent on building detention facilities, between nine and 15 dollars is spent on continued operations and maintenance.

Because TLOA did not change any aspect of the U.S. Supreme Court's 1978 *Oliphant* decision, Tribal courts still cannot assert any criminal jurisdiction over non-Indians. With respect to Indians, TLOA permits Tribal courts to impose these enhanced sentences of incarceration through licensed judges who are not necessarily lawyers. However, Tribes must provide licensed attorneys, at Tribal expense, to all indigent Indian defendants facing jail sentences of more than one year, the traditional threshold for felony jurisdiction at common law.

Inter-Government Cooperation

A third key purpose of the Tribal Law and Order Act was to enhance cooperation among Tribal, state and federal officials in order to create a more seamless and effective criminal justice system. On the positive side, U.S. Attorneys and the BIA Indian Police Academy both report that TLOA has resulted in a greater emphasis on Indian Country law enforcement training. This includes ensuring that more Tribal, state and local law enforcement officers are commissioned as federal officers—federally deputized—to fight Indian Country crime. Based on past experience, there is every reason to believe that encouraging U.S. Attorney's Offices and the BIA to provide expanded federal deputation training and commissioning, in full partnership

with the Indian nations they serve, can increase law enforcement cooperation, strengthen prosecution, and save lives.

I say this from direct personal experience as a United States Attorney. Between February 2007 and December 2008—and as described in the report of this Committee that accompanied the Tribal Law and Order Act—the U.S. Attorney's Office in Colorado partnered with the Southern Ute Indian Tribe's Justice Department and its visionary former director, Janelle Doughty. Together with our respective offices and the BIA Indian Police Academy, we developed a model curriculum and training program to teach and test Tribal, state and local law enforcement officers on-site in Southwestern Colorado. Our goal was for these officers to be federally commissioned by the Bureau of Indian Affairs to enforce federal laws in Indian Country, thereby strengthening boots-on-the-ground law enforcement and fostering inter-jurisdictional collaboration. The curriculum focused on Indian Country jurisdiction, the federal judicial process, investigative techniques, officer criminal and civil liability, and other challenges routinely encountered by Tribal, state and local law enforcement officers working in the field.

We started by training officers in Southwestern Colorado, but with assistance from the National Congress of American Indians, the program eventually went national. In less than two years, our pilot program expanded into 14 training sessions across the country attended by more than 400 law enforcement officers representing 35 Indian Tribes and 17 states. Testifying before this Committee, Director Doughty described how a Tribal officer had responded to a domestic violence case on the Southern Ute Indian Reservation. The officer had been deputized through our pilot program and earned his Special Law Enforcement Commission (SLEC) card. He used his federal arrest power to apprehend a non-Indian who had repeatedly terrorized a Tribal member. As a direct result, the U.S. Attorney's Office prosecuted that case. The perpetrator went to prison.

These and many other successes attest to what can be done when the federal and Tribal law enforcement officer and prosecutors work more closely together and have the tools they need to serve the public regardless of land status or the race or ethnicity of victims and defendants. Yet TLOA is doing little to improve law enforcement cooperation between Indian Tribes and nations, on the one hand, and state and local officials on the other.

Earlier this month, for instance, the Washington Supreme Court ruled that Tribal police officers in that state lack "fresh-pursuit" authority. This means that Tribal officers in that Public Law 280 jurisdiction are prohibited from arresting criminal suspects who flee the reservation, even for the limited purpose of detaining them under a mutual aid agreement until the proper jurisdiction can arrive at the scene. In the actual case, *State of Washington v. Eriksen*, No. 80653-5 (Sept. 1, 2011), the suspect's blood alcohol content (BAC) exceeded the legal limit in both jurisdictions. Yet the effect of the Court's decision is to prevent Tribal officers from engaging in fresh-pursuit even when it means apprehending suspected drunk drivers who are no less dangerous on- or off-reservation.

As a former state cabinet official, I'm profoundly respectful of state and local law enforcement prerogatives. Yet we simply must do more—much more—to encourage Tribes and states to work more closely together. Just a few days ago, a Tribal police officer in PL-280 jurisdiction contacted the Commission to report the following:

One of our officers pulled over a driver, on the reservation, for DUI. The driver was a non-Indian. The State Patrol was unable to respond. The County Sheriff's Office was then requested. They refused to come out. Their watch commander then ordered us to let the suspect go—on the reservation. I took a breath sample in the field prior to the person being released. He blew a .133 BAC. He also had two children in the car with him. Instead of having him drive off as we were ordered to do by the County, one of our officers took the keys from him and gave him a ride so that he wouldn't kill himself, the kids or someone else.

For too many communities, scenarios like this are the rule, not the exception. The same goes for domestic violence cases. The Commission has already received hours of public testimony from state and Tribal court judges about the lack of reciprocal enforcement of restraining orders in domestic violence cases. We cannot rest until we find more effective ways to promote and reward Tribal-state cooperation on criminal justice issues.

Looking Forward

Legislation is always the art of the *possible*—the specific improvements that can be achieved in the near future. The passage of TLOA was indeed a milestone. But many of the greatest challenges to securing equal justice for Native Americans living and working on Indian lands are structural. They're rooted in a system of fed-

eral institutions, laws and practices that pre-date the modern era of Tribal sovereignty and self-determination, and which TLOA does little or nothing to change.

That's why TLOA created the Indian Law and Order Commission: to look beyond the status quo and recommend long-term structural improvements in Indian Country criminal justice.

We all know that there have been times when reports by blue-ribbon panels do little but gather dust. Yet national commissions have sometimes been vitally important to the development of law and public policy concerning Native Americans and Tribal homelands. For instance, a nine-member national commission in 1928 published a landmark report, *The Problem of Indian Administration*. Commissioners visited 95 Indian reservations, documented deplorable conditions and failed federal policies, and advocated systemic changes ranging from education to Tribal self-governance. The "Meriam Report," named for chief investigator Lewis Meriam, prompted President Franklin D. Roosevelt and the Congress to enact the Indian Reorganization Act of 1934. This signaled a critical policy shift, despite many later setbacks, from the longstanding national policy of forced assimilation and the unrelenting assault on Native American people, culture and institutions by federal and state governments.

In our own time—and with the continued support of this Committee, the Congress, and this Administration—the Indian Law and Order Commission has the potential to "think big," strengthening justice in Indian Country.

Juvenile justice is a case in point. At least one-half of all juveniles held in federal criminal detention are Native American. This is due in large part to two federal laws: The Major Crimes Act of 1885, covering felonies involving Indians on reservations, and the Juvenile Delinquency Act of 1938, which transfers jurisdiction over most felonies involving Tribal youth from Indian nations to the Federal Government.

In contrast to the vast majority of state and local governments in the United States, which have separate justice systems and programs for youth offenders, there is no separate juvenile justice system at the federal level. Tragically, Native American youth often enter the federal criminal justice system by operation of these outmoded federal statutes—based solely on their ethnicity and where they live—and often do not have access to diversion, drug court, and other rehabilitative programs. They're transferred from Tribal justice systems to federal criminal custody based on purely local offenses—even when Tribal courts assert jurisdiction and have rehabilitative programs available for them.

Once confined to the federal criminal justice system, Native American juveniles face harsher punishments for the same or very similar offenses. There is no parole in the federal system and no "good time" credits, which means comparatively longer sentences. On average, federal sentences for juveniles are about twice as long as those imposed by state courts. And because there is no separate juvenile justice system at the federal level, Native American youth are disproportionately sentenced as adult offenders. Less than 2 percent of all juveniles processed in state courts are sentenced as adults, compared to an amazing one-third of all juveniles in the federal courts.

In addition to the ongoing national tragedy involving Native American juvenile offenders, there are many other significant challenges to making Indian country safer. They include:

1. Overly complicated jurisdictional rules that undermine criminal investigations, preventing far too many prosecutions from going forward and, in the memorable phrase of an April 2007 by Amnesty International, can create a "maze of injustice."
2. A chronic resource deficit in which Indian Tribes have access on average to less than one-half of the law enforcement resources available to comparable off-reservation communities, and which extends to the entire criminal justice system.
3. A lack of respect for the importance of Tribal sovereignty in our federal Constitutional system and how it can reinforce the fundamental American value of *localism*—the expectation that governmental decisions, including those involving public safety, are best made closer to citizens by officials who are directly accountable to them.

To gain insight into these and other systemic challenges, the Indian Law and Order Commission is visiting communities throughout Indian Country to develop recommendations for continuing reform and continuous improvement. In addition to support from the Department of Justice and the Interior as required by the Tribal Law and Order Act, the University of California at Los Angeles has voluntarily

stepped forward with a generous gift of research support to assist our efforts. The breadth and depth of experience of the Commission's members is its greatest asset:

- Former U.S. Representatives Stephanie Herseth-Sandlin (SD) and Earl Pomeroy (ND), who were instrumental in writing and enacting TLOA.
- Jefferson Keel, Lieutenant Governor of the Chickasaw Nation and President of the National Congress of American Indians
- Chief Judge Theresa Pouley (Colville) of the Tulalip Tribal Court
- UCLA Law Professor Carole Goldberg, Indian law scholar and a Justice of the Hualapai Tribal Appellate Court
- Affie Ellis (Navajo), public policy expert and a former Assistant Attorney General for Wyoming
- Attorney Tom Gede, the former head of the Conference of Western Attorneys General
- Ted Quasula (Hualapai), the General Manager of Grand Canyon Skywalk Development Corporation and the former leader of the BIA Office of Justice Services

Time does not permit me to address the many other issues affecting criminal justice in Indian Country, such as the retrocession process for Tribes in PL-280 jurisdictions; the implementation of the Adam Walsh Act's Sex Offender Notification and Registration System, and other challenges. I welcome your questions and thank you again for your support and the opportunity to testify today.

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

Mr. Eid, do you believe the *Carcieri* decision further complicates Federal criminal jurisdiction?

Mr. EID. Mr. Chairman, thank you. Yes, absolutely. It needs to be fixed. And one reason why it needs to be fixed, Sir, is that any ambiguity about whether a conviction took place in a jurisdiction, was it under Federal jurisdiction or not, that is a post-conviction problem. Someone could challenge that in terms of habeas corpus later on and clog up the court system.

So for that reason, and because it is a cloud right now prospectively for Tribes trying to acquire land and put it into trust, I would respectfully suggest it needs to be acted on and passed. That is a personal opinion, by the way.

The CHAIRMAN. Mr. Eid, what role do you think will the Commission play in recommending alternatives to incarceration to BIA and DOJ?

Mr. EID. Thank you, Mr. Chairman. I think we have got to give Tribes more flexibility to deal with what they are actually facing. Typically, they are not locking people up for longer periods of time. It costs too much money. It is also in many cases not consistent with the values they have.

We need to allow for more support for things like wellness courts, diversion programs based on restorative justice, whatever the Tribes are finding fights recidivism and protects the community. It is really up to them. And I appreciate the efforts that are being done to fund those programs, but it needs to be a conscious movement toward respecting those Indian nations.

We have this value of localism in America. We respect local government. We want to be able to know that somebody is being treated in our community and helped. And if they need to be punished, they need to be punished. And believe me, I understand that issue.

But we need to have more respect for what the Tribes are actually trying to do and accomplish. I appreciate the fact that some Tribes may want to lock people up longer, and it can certainly be

appropriate. It is great that the BOP, the Federal Bureau of Prisons has provided some spaces for people, but nobody is really going in that direction yet, with very few exceptions.

We need to go the other way where Tribes want to do it, and respect that their needs must be supported.

And may I say please, Sir, in closing, we have got to begin to enforce domestic violence restraining orders off-reservation. We have this huge problem and the Commission has heard lots of testimony on this, Sir. And the issue is that when somebody is a domestic violence perpetrator. They get a restraining order against them in the Tribal court. You take it to a State judge. The State judge may or may not enforce that. And frankly, the problem can be reciprocal, too, back the other way.

The Congress needs to really encourage this cooperation; find incentives to get States and Tribes to enforce these orders so that we can protect people. Domestic violence perpetrators don't care where the victim is. They are going to hunt that victim down. So we have to try to protect that person.

The CHAIRMAN. Mr. Eid, where else will the Commission hold field hearings? What issues do you expect to focus on?

Mr. EID. Well, I appreciate that very much, Sir. Sorry to interrupt.

We are going to be hearing public testimony all over the Country and look forward, Sir, to going to both Alaska and Hawaii and other parts of the Country throughout Indian Country, East Coast, West Coast and in between.

What I would tell you, Sir, is that juvenile justice is a huge issue for us. We are very concerned about the Federal system. As you may know, more than half of all the young people in the entire Federal criminal justice system for juveniles are Native American. And just one statistics, off-reservation the average rate for being sentenced as an adult in the State or Local court is between 1 percent and 2 percent. If you are a Native American person, you are in the Federal system, your odds are one-third of them are going to be sentenced as adults.

On average, we know from the empirical research that Native American young people serve at least twice as long sentences of incarceration than anybody else. I think it is an equal protection problem and I think we have to try to address that issue.

And it is not to blame any one person. We just have got to realize that the law has been frozen since about 1938 on juveniles and we need to come back and help them and treat them like everybody else in terms of other juveniles in this society.

The CHAIRMAN. Yes, my final question to you is, can you tell us about some of the issues you heard at your recent field hearing? What should be focus on in the coming months?

Mr. EID. Well, thank you, Mr. Chairman. What I would say is in addition to the issues that I have just mentioned, particularly with respect to young people and domestic violence, a lot of concern about not just inadequate funding, of course we all hear that, we all know that, but how the Federal Government funds Tribal programs through grants. The grants are too hard to use. And we have heard this, too, with support from the Justice Department as well. They brought this issue to us. The grants are too hard to use.

Oftentimes, only a small percentage of grants for criminal justice are even used by the Tribes because they can't meet all the red tape. They can't cut through it.

So we want to make sure that when the Congress says here is a program; we are going to fund it in this tough time; that the money actually goes to those who need it. And that will be looking at fiscal reform in terms of grants and other funding mechanisms. I know that is very arcane, Sir, but we really want to try to help make recommendations in that area.

The CHAIRMAN. Well, I thank you very much, Mr. Eid, for your testimony and also your responses. It will be helpful as we try to get a feeling from different groups as well, so that we can move in the right direction on this.

Thank you very much.

Mr. EID. Thank you, Mr. Chairman.

I would like to invite the third panel to the witness table. Serving on our third panel is the Honorable Ivan Posey, Council Member of the Joint Business Council of the Shoshone and Arapaho Tribes of Wind River Indian Reservation in Wyoming. I want to say, Mr. Posey, that our Vice Chair, Senator Barrasso, as you now, is not here but wanted to be here today, and had to return to Wyoming for the funeral services for former Senator Wallop. That is why he is not here.

I also want to welcome the Honorable Theresa Pouley, Chief Judge of the Tulalip Tribal Court in Washington; and Ms. Jacqueline Johnson-Pata, Executive Director of the National Congress of American Indians in Washington, D.C.

Welcome to all of you to this hearing.

Councilman Posey, will you please proceed with your testimony?

**STATEMENT OF HON. IVAN D. POSEY, COUNCIL MEMBER,
JOINT BUSINESS COUNCIL, SHOSHONE AND ARAPAHO
TRIBES, WIND RIVER INDIAN RESERVATION**

Mr. POSEY. Good afternoon, Senator. I would like to take this opportunity to thank for the opportunity to provide testimony to this important group. As you mentioned, our Senator also is a Vice Chairman of this group and all of our delegation if back in Wyoming for the funeral today for the late Senator Wallop.

I have testified several times before on public safety in Indian Country. Today, I am pleased to make comments on the Tribal Law and Order Act.

As you know, the Act was passed last July, and hasn't been fully implemented on our Indian reservation yet. I think it gives unprecedented authority to Tribal courts, law enforcement, and from what I heard and listened to today, I am very encouraged by the cooperation between the Federal agencies to address the many issues that make up a safe community on our reservations.

Let me start by mentioning some history about the Wind River Reservation. We are 2.2 million acres, and we are the only reservation in Wyoming. It is the home to the Eastern Shoshone and Northern Arapaho Tribe. In 2010, we were selected under the HPPG, which is the high priority performance initiative, a Presidential initiative to look at public safety on our reservation.

At the time, we had six law enforcement officers to cover a vast amount of area. Now, we have 22 officers, which has made a key difference. We appreciate the help of the local law enforcement for helping us to get there. We got more funding for our Tribal court system which allows it to function a little bit better, but we still have problems.

Violent crime was one of the reasons we were selected for this initiative, and I think there are some aspects of the Tribal Law and Order Act that would be very beneficial to us. One is what SAMHSA is doing and also what the Indian Health Service is doing in terms of addressing substance abuse and alcoholism in our Tribal communities.

Most violent crimes in our reservation are probably linked close to 100 percent alcohol related, whether it is domestic violence, a murder or whatever. Most of those are alcohol-related, so I am glad to see the coordination and cooperation of those agencies to helping the country to address the underlying portion of our problems.

One area that I am going to mention today is our need to have more focus on the juvenile justice system. We have a system now that exists that the original deterrent for younger kids if they get in trouble from truancy to more violent crimes, they get to be 18 years old and they end up going to Federal prison. As was mentioned earlier, they spend a lot of time in there and they come out hardened criminals.

Part of our court system now consists of three judges. Our Chief Judges holds a juris doctor from University of Wyoming. He is the only lawyer that we have. We have two Associate Judges and we welcome the ability to sentence for a longer period of time, as mentioned in the Act. I understand that will take a MOA with rural prisons to start that process, and I guess no Tribe, from what I hear today, has really been implemented or used that agreement yet.

It was mentioned earlier about the lack of follow up on some of the prosecution cases, and I think the ability for the U.S. Attorney to have a liaison with Indian Tribes would really help in that area. I think many times cases fall through the cracks. Some are not followed up, as the gentleman right before us mentioned. They may carry on for a long time, and there still needs to be more emphasis focused on white collar crime in Indian Country. It seems that there is more emphasis on violent crimes, which there should be, but there also needs to be more emphasis on some of the white collar crimes that take place in Indian Country every day.

The Law and Order Act I believe will have positive effects throughout Indian Country in addressing our ability to govern ourselves as sovereign nations and assisting our ability to create and enhance public safety from our youngest babies to our oldest elders. We are prepared to do our part of make our community safer and it will be good for our communities.

So with that, I will close. Thank you and God bless you.

[The prepared statement of Mr. Posey follows:]

PREPARED STATEMENT OF HON. IVAN D. POSEY, COUNCIL MEMBER, JOINT BUSINESS COUNCIL, SHOSHONE AND ARAPAHO TRIBES, WIND RIVER INDIAN RESERVATION

Good afternoon. My name is Ivan D. Posey and I currently serve on the Eastern Shoshone Business Council and the Eastern Shoshone and Northern Arapaho Business Council of the Wind River Indian Reservation. Our reservation is located in west central Wyoming and consists of 2.2 million acres. It is an honor to provide testimony on the Tribal Law and Order Act to this distinguished committee which includes our honorable Senator from Wyoming, John Barrasso. I understand Senator Barrasso will not be here today as he is attending a funeral in Wyoming for our late Senator, Malcolm Wallop.

As you are aware the Tribal Law and Order Act was signed into law by President Barack Obama on July 29, 2010. This act gave unprecedented authority and responsibilities to tribal courts and enhanced public safety in Indian Country. Although not fully implemented on the Wind River Indian Reservation, the act will definitely have positive effects in reference to public safety, sentencing and coordination of various agencies to address age old problems that have existed in Indian Country for way too long.

Let me start today by sharing with the committee some information regarding our tribal court system and law enforcement on the Wind River Indian Reservation. In 2010 the Wind River Indian Reservation was selected as one of four reservations to participate in the HPPG (High Performance Priority Goal), a Presidential Initiative to address high crime in Indian Country. Along with this initiative came additional funding for our Bureau of Indian Affairs Law Enforcement and our Tribal Court system. This additional funding allowed for several more officers, from six officers to twenty two currently, and more personnel in our tribal court system.

The main reason the Wind River Reservation was selected was because of our high crime rate. Like many reservations we were plagued by murders, drug trafficking, white collar and violent crime. Though the initiative is showing promise on our reservation, there are many other reservations throughout Indian Country that continue to experience the same issues regarding personnel staffing and inadequate funding.

The Wind River Indian Reservation and surrounding area has several law enforcement agencies and court systems that sometimes create jurisdictional questions and enforcement. Although relationships have improved over the years, there still exists the need to work cooperatively to address public safety in the Wind River.

We have seen over the years our federal law enforcement agencies cooperate and address the problems that exist on our reservation. One example is the multi agency effort to dismantle and arrest individuals involved in a major drug ring in 2005. This effort was a major example of federal, state and local law enforcement cooperation in making our community safer. In section 211 of the Tribal Law and Order Act it would authorize Bureau of Indian Affairs Law Enforcement officers to make warrantless arrests based on probable cause. Although there will be concerns in this approach it will be more effective than the current system which allows reasonable cause for arrests. This process usually takes valuable time. Other parts of this section includes communicating with tribal leaders and community on a regular basis. This has to happen for this Act to be effective.

Our tribal court system consists of a Chief Judge, Honorable John St. Clair, and two associate judges, Richard Ferris and Edward Miller. Judge St. Clair has been with the Shoshone and Arapaho court system for over 20 years and holds a Juris Doctorate from the University of Wyoming. The associate judges have several years combined in administering justice on the Wind River Reservation. Our Shoshone and Arapaho Law and Order Code requires individuals to pass the tribal bar exam to practice in our court.

Over the years there has been cooperation and coordination between our court system and the U.S. Attorney office. Until recently our court system has operated without a public defender and individuals have had to defend themselves or ask for services through legal aid. Although we now have a tribal public defender the caseload continues to increase. The continued effort of having the U.S. Attorney assist our tribal prosecutor in addressing violent and other serious crimes, and the prosecution of these crimes, will allow our court system some relief in an already overwhelmed system. Tribal liaisons within the U.S. Attorney offices are key to follow up and monitor cases in our court systems.

The Wind River Tribes welcomes the increase in tribal court sentencing as outlined in section 234. The act created a pilot program through the Bureau of Prisons which allows them to accept offenders convicted in tribal courts. Although the Bureau of Prisons met this requirement of the act late last year, it is my understanding no tribes have utilized this program.

In relation to section 235, we are also pleased that there has been a Indian Law and Order Commission established and chaired by Troy Eid, former U.S. Attorney for the State of Colorado. We look forward to future field hearings and contributing to this important effort.

Over the years Indian Country has seen increasing violent crimes against women and children. The Wind River Reservation has seen these numbers increase over the years as well. With the implementation of HPPG, violent crime has dropped on the Wind River Reservation although there continues to be murders and violent crimes. Of these violent crimes, alcohol is involved in close to 100% of these crimes. The efforts to create and enhance programs dealing with domestic violence and victim support systems will help our tribal community tremendously.

Section 241 reauthorizes the Indian Alcohol and Substance Abuse Prevention and Treatment Act. It would allow programs for developing shelters for youth and alternative sentencing such as drug court and a long term plan for detention facilities. There needs to be more focus on juvenile justice in Indian Country. From truancy to more serious crimes that affect a segment of our tribal youth, a effective system needs development to deter our young people from a path of serious crime and detention to a future of hope and promise.

Section 241 (a) The Substance Abuse and Mental Health Services Administration will establish and appoint a director of the Office of Indian Alcohol and Substance Abuse. This position will coordinate efforts for interagency coordination. I am pleased that progress has been made in this area, from establishing a interdepartmental workgroup and director to address this devastating problem in Indian Country.

The Tribal Law and Order Act will have positive effects in Indian Country, many aspects of the act are being implemented and some are moving forward. With the contribution of Tribes, with our first hand account of the many jurisdictional and cooperation efforts, some promising and some bad, this act will bring safety to our tribal communities. I am pleased that this act will address issues and concerns that have existed on the Wind River reservation for too long.

In addressing our ability to govern ourselves as sovereign nations, and assisting us in our ability to create or enhance public safety from our youngest babies to our oldest elders, we are prepared to do our part to implement this act for our nation.

Thank you for allowing my testimony.

Hou Wee Hou and Hao Ho

Thank you and GOD bless you.

The CHAIRMAN. Thank you. Thank you very much.
And now we will hear from the Honorable Theresa Pouley, your testimony, please.

**STATEMENT OF HON. THERESA M. POULEY, CHIEF JUDGE,
TULALIP TRIBAL COURT**

Ms. POULEY. Good afternoon, Mr. Chairman. Thank you so much for allowing me to be here today. I can't tell you how honored I am as a Tribal Court Judge to get to appear to tell you about how the Law and Order Act is working in Indian Country, at least in the Northwest.

I very often think about words of my ancestors when I reflect on those values. And in this case, Carlos Montezuma, who when he was talking about the state of oppression of Indian people in 1915 said, "If it wasn't for the sturdiness, for the strength, and for the moral value of our ancestors, would we even be here today?" That is one of the issues that I would like to address before the Committee today, the sturdiness of Indian people, how the Tribal courts view the enhanced sentencing provisions of the Law and Order Act.

Second, the physical strength, how does the law other than the Law and Order Act support Tribes; and third, the physical strength, how do we treat our kids.

The first is how does the enhanced sentencing provision actually impact Tribal court on a daily basis. I have to say that it is a difficult, at best, issue for Tribal courts and Tribal court judges. There is a great deal of planning that is involved in exercising the enhanced sentencing. And at the end of the day, Mr. Chairman, it is all about cost. Although the responsibility of public defense, although the responsibility of law-trained judges and law-trained prosecutors came with the Law and Order Act, the funds, Mr. Chairman, did not come with it.

Particularly in terms of cost of incarceration, although the Bureau of Prisons rightly under the Act has promulgated regulations

to allow us to use the Bureau of Prisons, it is only for major crime. Tulalip, like many Tribes in the Northwest, for most of our most serious offenders, uses exclusion tools to exclude them from the boundaries of our reservation. And if you violate that provision, you can then be cited with trespass. Now, we will be in the position of figuring out how to house those offenders on our own, because that is not covered by the Tribal Law and Order Act.

The costs of incarceration are going to be substantial. And in Indian Country, we have to balance that with education and with health and with services that are needed by our community. Tulalip Tribe's full service court system, we have 1,000 new cases a year; 10 staff members; two judges; two probation officers; and the one thing that hasn't changed since 1980, Mr. Chairman, is that the Bureau of Indian Affairs provides Tulalip \$30,000 to run that court system. It simply is not enough.

Tulalip will be taking advantage of the enhanced sentencing provisions, but in a careful and methodically planned way so that we don't use the scarce resources our community needs for housing prisoners.

The second thing I want to talk about is the physical strength of our ancestors, and that really is the law. I am absolutely grateful that the Law and Order Act recognized that Tribes can be given more authority and that comes with the responsibility. Unfortunately, the law sends cross-messages all the time. Just this month, the Washington State Supreme Court said that Tribal law enforcement officers cannot arrest drunk driving offenders who are driving drunk on the reservation if they happen to pull over on the side of the road that is the boundary of the reservation on non-reservation land. Chiefs of Police all over the State of Washington, from Tribal Chiefs of Police, are worried that it encourages persons to essentially flee to the border.

So if the decision in *Oliphant* said that you can't stop those persons or arrest them within the boundaries of your reservation wasn't bad enough, now *Eriksen* says and you should flee to the border. How can we really say that we have increased safety when we sent that mixed message? We need to send the message that Tribes have full authority within the boundaries of their reservation.

Last, the physical strength, which is the strength of our children. You heard the statistics from Chairman Eid. Half of the juveniles in the Federal system are Native. The part that we didn't hear is half of those kids were abused and neglected kids. We need to figure out how to beef up the provisions of the Indian Child Welfare Act to give notice to the Tribes so that they can look at all children the same, whether they are incarcerated or whether they are abused and neglected. Because, Mr. Chairman, they are the same.

We do this for the future of our children in the ways of our ancestors.

Thank you for allowing me to testify.

[The prepared statement of Ms. Pouley follows.]

PREPARED STATEMENT OF HON. THERESA M. POULEY, CHIEF JUDGE, TULALIP TRIBAL COURT

Mr. Chairman and members of the Committee, I appreciate the opportunity to provide testimony on the vital role that Tribal courts play in the effective administration of justice in Indian Country, to address the changes we have seen with the passage of the Tribal Law and Order Act and to discuss the measures that should be taken to build on this foundation. I speak from my experience as a long time Judge serving Tribes in the Northwest, the President of the Northwest Tribal Court Judges Association and a member of the Indian Law and Order Commission. Currently I serve as the Chief Judge of the Tulalip Tribal Court and Northwest Inter-Tribal Court System (NICS) and an Associate Justice of the Colville Court of Appeals. The Tribes I have had the honor to serve in Washington State range from urban to rural, and vary in size from small communities with a greatly diminished land base, to Tribes with expansive reservations. Although the governmental services and needs vary for these Tribes, I have found they all share a core commitment to fairness and justice for their communities. No government has a greater stake in effective criminal justice systems in Indian Country than the Tribes themselves.

I was honored to testify before this body in July 2008 to support the legislation that would become the Tribal Law and Order Act. In 2008, this body was considering measures that could be taken to address the alarming rates of violent crime occurring in Indian Country. At that time, the reports and studies that were being compiled and released confirmed what we in Indian Country already knew to be the tragic reality. I will not restate those statistics here, as they have been repeated frequently by many sources. Thankfully, there does not appear to be any further debate or dispute that Indian Country faces a crisis of violent crime. We are relieved and encouraged that the discussion has now turned to the more fundamental question of how we can reverse this trend and make Tribal lands safe for all of its citizens and visitors. I would also take this opportunity to thank the Congress and the President for the passage of the Tribal Law and Order Act, and the Administration for its remarkable steps to address this issue. The efforts to implement the Act are commendable, particularly the efforts of Attorney General Holder and the Department of Justice.

The Tulalip Tribes and Justice System Background

The Tulalip Tribes consists of a confederation of several Coast Salish Tribes and is a signatory to the 1855 Treaty of Point Elliott. Today, the Tulalip community is located on a 22,000 acre Reservation bordering the Puget Sound 40 miles north of Seattle. This area has experienced rapid population growth and development. Tulalip has 4,000 enrolled members, but the majority of Reservation residents are non-Indian. A history of allotments on the Reservation created a checkerboard of Indian and non-Indian land ownership that is common to most Reservations in Washington State. The Tribe has in recent years re-acquired a great deal of its Reservation land, and today the Tribe or Tribal members hold approximately 60 percent of the Reservation lands with the balance held in non-Indian ownership.

With great effort, the Tulalip Tribe retroceded criminal jurisdiction in 2001. Since then the Tribe has taken on the responsibility to build its own criminal justice system. In the last decade the Tulalip Tribal Justice system has made great strides, developing a full service police department and court system as well as a strong support system of prosecutors, probation officers and public defenders. In that time crime rates have dropped and the quality of life in the community has improved. During the same period of time, the Tribe underwent substantial economic development. The Tribes incorporated Quil Ceda Village to promote Reservation based business development including a casino, retail outlet mall, and most recently, a 400-room resort hotel. The success of this development has created thousands of new jobs, brought in millions of new visitors to the Reservation and provided much needed revenues to the Tribal Government.

Retrocession of the Tulalip Tribes' criminal jurisdiction from the State of Washington was critical to establishing a substantial increase in public safety on the Tulalip Reservation. In Washington State retrocession of criminal jurisdiction is provided by state statute. There is a draft bill in Washington that would allow individual Tribes to "opt in" to taking full jurisdiction within their boundaries and the Tulalip Tribes supports every Tribe's ability to decide the exercise of its own authority and jurisdiction.

Tribal Efforts

In 2008 I testified before this body that the Tulalip Tribe was eager to continue to develop its Tribal justice system and continue to provide the critical services needed by its population. We then supported passage of the Tribal Law and Order

Act and, in particular, asked Congress to authorize enhanced sentencing authority to the Tribes. The Act was signed in July 2010 and I would like to update the Committee on the efforts that are being taken at Tulalip in response to passage of the Act.

Since the Act passed I have had the opportunity to meet with many Tribal leaders and federal and state government officials interested in the development of Tribal justice systems. Congress should be encouraged that Tribes are patiently and methodically taking measured and reasoned steps toward exercising the additional sentencing authority granted by the TLOA. It is important that we not misinterpret the Tribes' lack of immediate implementation of this authority as a sign that the problems are not as bad as stated or that Tribes do not care to exercise this authority. We must understand that the TLOA, while offering only an incremental step to improving Tribal justice, presents Tribes with a substantial change in the way they operate their courts. This change presents risks and costs that the Tribes are measuring carefully before simply jumping forward.

The wisdom of the "opt in" provisions of the TLOA is evident as some Tribes may judge the changes in TLOA coming at too high a cost to their sovereignty and independence. It is perceived that some of the requirements in TLOA, presumably adopted to protect defendants' due process, will push Tribal courts to be more like federal courts, and this is not typically a welcomed push. At Tulalip we have had to carefully study ways to implement the provisions of TLOA while still retaining our Tribal identity and balancing extended punishment philosophies with the holistic programs and methods that have been successful over the years. This has not been easy and it has required careful planning and cooperation of all the key players in our justice system.

When Tribes take a realistic look at the provisions of TLOA, it is clear that exercising enhanced sentencing authority will require additional financial obligations. While the Act offers Tribes a method to exercise enhanced sentencing authority, it came with no new sources of funding and failed to address the substantial economic challenges Tribes are already facing in providing fundamental public services to their communities such as police and courts. Tribes that wish to build their own justice system are generally left to fund that system with only Tribal resources. Like the federal and state systems, Tribal resources are limited, and Tribes must make balanced decisions on where and how they will invest those resources. The Committee should be encouraged by the time invested by Tribes to ensure that the decisions they make are right today and right for the future of the Tribe.

Enhanced Sentencing Authority Requirements

The Tribal Law and Order Act still leaves the Tribes reliant upon federal prosecution of many crimes, and the U.S. Attorney will still decline to prosecute some major offenses. In situations where the U. S. Attorney's Office chooses not to prosecute, expanded authority gives Tribal courts the capacity to more appropriately sentence violent offenders. As I acknowledged in 2008 although crimes requiring long-term jail sentences are not a common occurrence at Tulalip, in those situations where the court is faced with prosecuting serious violent crimes, it is important for the Tribal Court to have appropriate sentencing authority. At Tulalip, our focus is on alternatives to incarceration aimed at promoting positive personal changes, healing and preventing recidivism. There are, however, times when the Tribal Court is faced with violent offenders in which longer incarceration periods are necessary and vitally important. Because we are mindful that expanded sentencing authority comes with increased infrastructure demands and incarceration expenses we are carefully reviewing and amending our Tribal code to apply the expanded authority to only the most serious of offenses.

The expense of incarceration may be the highest hurdle for Tribal courts to clear before expanded sentencing will be imposed. The GAO Report on Indian Country Criminal Justice, published in February 2011, confirmed that detention space and the cost of detention are major issues for all surveyed Tribes. Unless the incarceration costs are assumed or reimbursed by the Federal Government, few Tribes will be able to bear that expense. Regionally, non-Tribal governments spend over 70 percent of their general fund resources on law and justice expenses, and jails are the largest line item in that budget. Few Tribes will be willing or able to divert those types of resources from funding sources desperately needed for housing, education, and healthcare. While the federal Bureau of Prisons pilot project to house Tribal inmates is notable, it is unlikely to offer a viable long-term solution for all Tribes to address this significant expense.

At Tulalip, we are also mindful that cases in which a defendant may face up to three years in custody will carry the expectation that a defendant will receive even more robust prosecution and defense services. This will increase the costs of running

the court, as the trials will be longer, requiring more time of the judges and court staff. Defense costs will also likely increase as the need for experts and other special trial preparation increases. Although the commitment to protecting defendant rights is a shared value throughout Indian Country, the ability to provide sufficient funding to justice systems varies greatly from Tribe to Tribe. Many Indian Tribes have extremely limited governmental budgets and sufficient Tribal funds are not always available for many essential government functions. If serious public safety issues on many reservations are going to be addressed, the Federal Government must fulfill its trust obligation by providing funding, or funding mechanisms to provide for public defenders in Indian Country.

Tulalip has found creative ways to support outstanding public defense services for the accused. It has done so by creating a partnership with the University of Washington Law School and establishing a trial practice clinic at Tulalip Tribal Court. Through this partnership, the University of Washington Tribal Defense Clinic provides the first line of public defense services that are managed by two highly experienced and highly regarded former state public defenders. They, in turn, supervise law students at all phases of the criminal case. In cases where there are conflicts, the Court has a panel of counsel to assign to defendants who meet the financial criteria for a public defender. Success in meeting demands such as public defense will require support from the Federal Government and creative planning such as has been done at Tulalip.

I believe Indian Country is well positioned to exercise the expanded sentencing authority extended by the Tribal Law and Order Act. Some communities will be able to act quickly to amend their practices and laws as needed to implement the Act; others will take years. During that time, significant consultation with and assistance from the Federal Government will be needed.

Jurisdiction and Authority

Although the Tulalip Tribes supported the changes brought by the Tribal Law and Order Act, those changes are realistically only a good first step to solving the major impediments to the development of vital and fully functioning Tribal justice systems. When we recognize the alarming level of violent crime in Indian Country, we must not forget that the majority of perpetrators of violent crime against Indians are non-Indian. Tribes have been stripped of jurisdiction over non-Indian offenders. Tribes seek the assistance of federal law enforcement to address these crimes, but given the few federal law enforcement officers assigned to Indian Country, many of these crimes go unpunished.

The 2010 declination report from DOJ confirmed what those of us in Indian Country have reported for years; the Federal Government is prosecuting only a very small fraction of major crimes and crimes that are committed by non-Indians that are committed in Indian Country. There are many reasons for this disturbing fact, some more innocent than others, but one fact appears to be true and is most relevant to the discussion today. The Federal Government is not an appropriate or effective tool for local law enforcement. The very structure of the federal system makes it better suited to address issues of national security and nation-wide crime. The lack of local resources and lack of understanding and connection to Tribal culture, conditions and concerns render the federal system ill suited to effectuate truly meaningful and long-term public safety results. True change can only be achieved when Tribal governments and Tribal justice systems are given the ability to address the safety of their own communities.

Currently Tribes have the ability to detain non-Indian perpetrators for a brief time and turn them over to state or federal authorities for prosecution. The Tribe may also exclude the offender from its territory, but the Tribe cannot prosecute non-Indians for crimes. We support the proposed VAWA amendments that will recognize Tribal authority over non-Indian perpetrators of domestic and sexual violence against Indian women occurring within the physical jurisdiction of the Tribe. Additionally we are pleased that VAWA amendments address the Tribe's civil jurisdiction over non-Indians who violate protection orders. We appreciate the Department of Justice's willingness to consult with Tribes on this issue and we greatly appreciate Associate Attorney General Perrelli's testimony in support of the amendments. But that is not enough. The Supreme Court's decision in *Oliphant v Suquamish Indian Tribe*, 435 U.S. 191 (1978) left open the possibility that Congress could change the presumptive rule that Tribal governments possess no criminal jurisdiction over non-Indians. The VAWA 2000 amendments, however, did not do so as they addressed only Tribal civil jurisdiction and did not discuss Tribal criminal jurisdiction. While Congress didn't address it then, it is time to do so now.

While *Oliphant* is one of the most notable court decisions impacting Tribal jurisdiction and authority, there are innumerable additional Supreme Court, federal and

state court decisions that have thrown the question of Tribal authority into a constant state of confusion. In Washington State, for instance, there have been a number of Supreme Court decisions relating to Indian Country which send conflicting messages. Even if the reasoning of the decisions correctly interprets the law, the unpredictable nature of the decisions is disruptive and dangerous.

In September of 2011 the Washington Supreme Court issued its third decision in the case of *State v. Eriksen*. In the first two decisions in 2009 and 2010 the court affirmed the authority of Tribal police to pursue a non-Indian DUI suspect driving on a Reservation road off the Reservation and to stop and detain the suspect until state authorities can arrive on the scene. This decision followed an earlier opinion that authorized Tribal police to stop and detain non-Indian criminal suspects on Reservation and turn them over to the state authorities for prosecution. In September of 2011, after a change of Supreme Court justices, the *Eriksen* decision was reconsidered and this time reversed. With this decision, Tribal police are powerless to stop criminal suspects that successfully flee beyond the Reservation boundaries.

The *Eriksen* majority noted that Tribal officers that successfully complete comprehensive state training, in addition to required federal or Tribal training, may be cross-deputized and therefore gain state law enforcement authority to pursue non-Indian perpetrators off-Reservation. Unfortunately, this solution ignores Tribal officers' inherent authority under Tribal law and discounts their already considerable qualifications. It also creates a dangerous situation. The message to non-Indian offenders is that Tribal police have no authority to arrest and if you commit a crime on Reservation you should race to the border to escape prosecution. Even in cases where the Tribal police have been cross-deputized, this ruling creates an unacceptable risk. Perpetrators are unlikely to know, or consider, whether officers are cross-deputized. In their mind the risk of prosecution now far outweighs the risk of fleeing. Today it is the best defense to run from all Tribal police. This creates a dangerous situation for the perpetrator, the police and the community.

The *Eriksen* case is only one example of the type of confusion that exists regarding Tribal jurisdiction and authority and the type of danger that this confusion creates in our communities. The time has come for a comprehensive legislative statement that resolves this confusion and affirms the complete and inherent authority of Tribes to regulate and police the public safety threats that occur within the Reservation boundaries.

Juvenile Justice

The number of American Indian and Alaska Native youth involved in the criminal Justice system remains largely unaddressed and unresolved under the Tribal Law and Order Act. The June 2011 Bureau of Justice Statistics report entitled "Summary: Tribal Youth in the Federal Justice System" presents a tragic picture of the overrepresentation of Tribal youth in the federal justice system. The report notes that Tribal youth comprised nearly half of juveniles handled by the federal courts in 2008. It also notes that in 2008, Tribal youth served an average of 26 months under federal jurisdiction, which is more than double the Tribal justice system maximum sentence at that time. Even more tragic is the fact that the vast majority of Tribal youth committing crimes were previously abused and neglected children.

In Washington State, the Center for Court research provided statistics to the Commission on Children in Foster Care which dramatically demonstrated that the more extensive the involvement of youth in the child welfare system, the more likely they will become juvenile offenders. The report noted that over one-half of all Native youth involved in the child welfare system will end up with a new offender referral and of those, Native American youth are more likely than any other race (79 percent) to commit another offense within 24 months.

The intersection of juvenile criminal behavior and child welfare involvement cannot be ignored. The notice provisions of the Indian Child Welfare Act must be enforced and strengthened. As recommended by the National Indian Child Welfare Association, Tribes need a stronger voice and larger presence in state and federal delinquency proceedings. The same practices that are employed in child welfare cases can and should be used to create better solutions for Indian children in delinquency proceedings.

Funding

In 2008, I testified that Tribal courts were the most effective administrators of justice in Indian Country and that Tulalip Tribal Court demonstrated that effective funding results in substantial public safety gains; a principle the Federal Government agreed with by the passage of the Tribal Law and Order Act. In the last two years the DOJ has stepped up efforts to more effectively meet its prosecutorial duties; it has commissioned numerous studies and reports that have provided very

useful data; and Attorney General Holder, his immediate deputies and many DOJ staff have dedicated innumerable hours to consultation with the Tribes. All of these measures are greatly appreciated by the Tribes. Unfortunately, in the last three years, while the Act gives Tribal courts the responsibilities and requirements of its state and federal counterparts, one thing has not changed—there has been no increase in base funding for Tribal courts.

It is impossible to discuss the subject of the development of Tribal justice systems without the subject of inadequate funding and lack of resources taking a central role in the analysis of all problems and solutions. The GAO confirmed in its February 2011 report that all Tribes rely on federal funding for justice systems, but for the majority federal funding is a fraction of their total budget. The GAO found that the lack of resources forces Tribes to make critical trade-offs in services. Lack of funding prevents Tribal courts from maintaining adequate staffing and prevents them from recruiting and maintaining quality and experienced staff. Given the economic and budgetary realities of all governments (federal, state, and Tribal), it is unrealistic and unreasonable to simply assert that there needs to be more funding. Although more money would be welcome in Indian Country, we must instead explore more creative and productive methods of distributing the funding that exists and to open doors for the Tribes to find and generate new revenue streams so that they can deliver vital services to their own communities.

Although the Federal Government has fallen short in addressing the critical public safety problems in Indian Country, Tulalip and other Indian Tribes fortunate enough in recent years to raise revenues through gaming and new business enterprises have taken on the primary role of law enforcement on the Reservation. Since shouldering this responsibility, Tulalip and other Northwest Tribes have seen crime rates begin to drop, and the quality of life on the Reservation improve. Taking a lead role in criminal justice has gone hand in hand with steady gains in economic development and employment opportunities on the Reservation. Tulalip recognizes, however, that these gains are fragile, because Tribes lack reliable revenue sources that traditionally fund government justice systems.

One change that could afford a near immediate infusion of Tribal court funding without requiring additional appropriations has already been championed to the Senate. It seems like a simple idea, but one that has yet to be adopted by any legislators or policy-makers; Tribal courts should be considered in the same light as all federal, state and local courts for funding resources. Some state court systems are beginning to recognize that Tribal courts can be and should be important partners in the administration of justice in this country. Instead of appearing as strange and foreign bodies, Tribal courts are being recognized for their often innovative and effective operations. Even so, Tribal courts are often excluded from federal and state planning and budgeting. Tribal justice systems should be included in funding streams provided to their federal and state court counterparts. Judge Raquel Montoya-Lewis and Judge Patricia Martin, President of the National Council of Juvenile and Family Court Judges, testified jointly before the Senate Finance Committee that Tribal courts should be eligible for federal court improvement funds available to other court systems. Funding of all court systems must be equal to assure equal results.

I encourage the Committee to identify measures to support and fund strong Tribal law enforcement and court operations. More direct funding to Tribal courts is drastically needed. In addition to federal funding, Congress has a role to play in authorizing an expansion of Tribal government authority to raise revenues for Tribal justice systems—justice systems that benefit both Indians and non-Indians who reside in and around Reservation communities. Because Tribal justice systems are the most effective means of addressing the public safety problems on Reservations, federal funds used to support Tribal justice systems are funds well spent. Tulalip has demonstrated that if sufficient resources are dedicated to Tribal justice systems, real gains can be made in addressing the serious public safety problems in Indian Country. We urge the Committee to authorize increased federal funding to what works best—building quality Tribal justice systems.

Tribal Justice systems and Tribal solutions are the best and most effective method to deal with public safety issues in Indian Country. Passage of the Tribal Law and Order Act and the Administration's superb efforts to see effective implementation of the Act are long-overdue, but greatly welcomed major steps toward this goal. But we must not be satisfied with our current achievements. There is a much longer road to journey before we can truly find success. We encourage this Committee to make the hard decisions and make the right recommendations that will take us down that road. We look forward to the opportunity to work with you on changes to strengthen the effectiveness of our justice systems.

The CHAIRMAN. Thank you very much, Judge Pouley.
Ms. JOHNSON-PATA. will you please proceed with your testimony?

**STATEMENT OF JACQUELINE JOHNSON-PATA, EXECUTIVE
DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS**

Ms. JOHNSON-PATA. Thank you, Chairman. Thank you for the opportunity to testify today on behalf of the National Congress of American Indians. As you know, we have testified many times before, particularly about the Tribal Law and Order Act and the need for that, and we join with the others from the previous panels and this panel in congratulating Congress once again for passing this, and also the Administration for the implementation thus far.

We are pleased and satisfied with the implementation and the outreach from the Federal agencies, but of course we would be remiss if we didn't talk about some of our recommendations to improve. NCAI, as others sitting here on this panel, won't be satisfied until the crime rates drop significantly in Indian Country and our communities become more safe.

I want to first start with the first area of our recommendations, and I have many more recommendations in my written testimony. I am only going to focus on a couple of them.

The first one is something that has already been talked about, which is the need for resources. And so not only do we have this need for resources that you hear about, but resources that were needed even at the beginning of the implementation of the Tribal Law and Order Act that we knew were going to be here and the critical funding. But on top of that, we are in a situation where we are concerned about the Budget Control Act of 2011, which would then take those already meager discretionary funds and have further cuts for Indian Country.

And so I want to let you know I think Tribes across the Country stand united to reminding Congress of our Federal responsibility, our Federal trust obligation and responsibility to fund these programs, and particularly these programs that are critical to protecting our land, our resources, which include the safety of our citizenry. And so as we look at these cuts under the Budget Control Act, let us be reminded of that.

Second, the violence against women issue, and I want to again thank this Committee for the work that you have done, not only having the oversight hearing that you had in July, but also the proposed legislation with statutory changes that you have put forward. And, of course, we strongly support those efforts and hope that the Committee will continue this work to collaborate closely with the Senate Judiciary Committee and to be able to ensure that those legislative proposals actually get placed in the upcoming violence against women reauthorization.

And also, as you know, this past summer the Department of Justice released their legislative proposal to ensure that Native women receive the same protections and equal access to justice as other women in America. And we, of course, support DOJ's proposal and strongly request your support to include those or similar language in the violence against women reauthorization.

And the third thing that I wanted to talk about is the land confusion issue, which is really the *Carciery v. Salazar*, and I appreciate the questions that you asked previous panelists about this issue.

So the decision of the Supreme Court created significant confusion and we have seen rising litigation over the status of reservation lands in Indian Country. And while *Carciery* only addressed the land-into-trust issue, there are further negative consequences if the IRA Act is not clarified. And that is the legal foundation for most Tribal constitutions and the jurisdictions that it serves. So then it would bring into question Native organizations providing services. It brings in the status of land and those provisions of those services.

And so I believe as we look at it, we are concerned that it is only a matter of time before somebody uses negatively the effect of safety on our reservations to litigate or to find a way to get out of some of the jurisdictions of Tribes, particularly around the reinforcement of the Violence Against Women Act. And of course, we know that that would then harm the greater number of victims, which is our children and our women in Indian Country.

And so in summing up, I want to in the three areas of funding, of course violence against women amendments, and the land uncertainty are three big things. But in conclusion, I just wanted to make one more comment. And that really is the declination rates that Senator Tester asked some questions about.

And of course, that was the driving force behind the TLOA was to be able to address those declination rates and to be able to really reduce those. And so we are urging the Committee to continue your oversight role, to be able to make sure that that report comes timely, and that we are able to have that information so it can help us further address the critical needs of improving the protection of our citizens within Indian Country and to be able to have those enforced representations that are necessary by our Federal partners.

So thank you very much for this opportunity to testify.

[The prepared statement of Ms. Johnson-Pata follows:]

PREPARED STATEMENT OF JACQUELINE JOHNSON-PATA, EXECUTIVE DIRECTOR,
NATIONAL CONGRESS OF AMERICAN INDIANS

Honorable Chairman and distinguished members of the Committee, thank you for the opportunity to testify today. Leading up to the passage of the Tribal Law & Order Act (TLOA), NCAI provided testimony multiple times on an array of public safety issues relevant to Tribal nations. We commend Congress for passing this historic legislation last year, and we applaud the Administration's implementation efforts thus far. However, we are acutely aware that these steps are just the first of many that must be taken to remedy the broken system of justice found on most Tribal lands. It is imperative that we sustain this momentum, not only on TLOA implementation, but on other Indian Country public safety initiatives as well. Today, I will briefly highlight progress made since enactment of the Tribal Law & Order Act, and—most importantly—I will discuss the hard work that is yet to be done.

Before I do that, I want to first thank the members of the Senate Committee on Indian Affairs for their efforts in developing the Act. In the tradition of this committee, it was a bi-partisan effort that involved a great deal of outreach and consultation with Tribal leaders. In particular, I would like to thank Senator Barrasso and the former chairman Senator Dorgan for their efforts in shepherding the bill. Chairman Akaka, I want to thank you for following up and ensuring that the statute is implemented. Implementation and oversight are critical to improving reservation law enforcement.

So far, the results of the TLOA have exceeded our expectations in at least one very significant way. The passage of the Act has placed focus and attention on law enforcement problems that had flown under the radar for many years. It has made people think about ways to improve the system. The implementation schedule in the Act has been very helpful because it holds agencies accountable for creating change. Today we are looking at the Federal Government's implementation efforts, but the TLOA is also having a significant impact among Tribal governments. Tribes are given more choices under the Act, and it is creating an opportunity for Tribal councils to work through their law enforcement codes and develop their own solutions.

Although NCAI is pleased with the implementation so far, we will not be satisfied until reservation crime rates have dropped significantly and every person in Indian country lives in a safe community. So I would like to begin there—the next steps we need to take to continue to improve reservation law enforcement.

Work To Be Done

Despite all of the progress that has resulted from passage of the Tribal Law & Order Act and the Obama Administration's commitment to public safety in Indian Country, there is still a lot of work to be done before Tribal nations can achieve a level of safety comparable to non-Native communities in the United States. I respectfully urge the Committee to pay special attention to the following three areas.

Funding

The intended ends of the TLOA cannot be achieved unless Tribes have the means to implement them. This requires adequate federal funding for critical Tribal justice programs that will support the overarching TLOA vision of comprehensive law enforcement reform. Native Americans—like all Americans—deserve to live free of fear in their communities, where their basic rights are protected and they can trust the justice system that serves them.

We are particularly concerned about the Budget Control Act of 2011 which requires Congress to reduce the deficit under an uncertain process, or cut discretionary spending from FY 2012 through FY 2021, with across the board cuts of 14 to 15 percent. Most of the funding that fulfills the federal trust responsibility for reservation law enforcement is categorized as domestic discretionary spending. We are tremendously concerned that impending federal budget cuts will devastate reservation law enforcement.

Tribes stand united in reminding Congress that the Federal Government's trust obligation to sustain funding for Tribal programs in the federal budget is absolute. This obligation is the result of treaties negotiated and agreements made between Tribes and the United States in exchange for land and resources. It must be honored and protected within each act of Congress, including those acts pursuant to the Budget Control Act of 2011.

Not only must current budgets be maintained, reservation law enforcement and justice systems that have been underfunded and understaffed for decades must be given a boost. Increased and targeted funding in the following program areas will help combat the violent crime epidemic on Indian lands and strengthen Tribal justice systems for future generations.

The Senate Committee on Commerce, Justice, and Science recently included language in its appropriations bill for a 7 percent Tribal set-aside from all discretionary Office of Justice Programs (OJP) programs to address Indian country public safety and Tribal criminal justice needs. This 7 percent set-aside would provide a more flexible grant structure to Tribes, which would complement the Department of Justice's Coordinated Tribal Assistance Solicitation (CTAS). CTAS attempts to streamline the application process for Tribes, enabling them to submit a single application and select multiple purpose areas (ranging from juvenile justice to violence against women), as opposed to previous years in which they would have been required to submit multiple grant applications. However, this streamlined application model will not achieve its intended success unless and until it is accompanied by a streamlined funding mechanism. NCAI strongly supports the creation of a 7 percent Tribal set-aside of OJP programs and urges Congress to do the same.

NCAI supports an increase in the number of FBI agents assigned to Indian Country. Funding for additional FBI agent positions, whose sole job would be to focus on investigating crimes on Indian reservations, would go a long way toward addressing both the perception and the reality of lawlessness that exist in some Tribal communities. The BIA and DOJ Native American Issues Subcommittee have already indicated that adding more agents is a priority. This personnel enhancement would enable the FBI to be more proactive in its approach to addressing crime on reservations.

We also urge Congress to continue to fund the Community Oriented Policing Services (COPS) Program to fund Tribal law enforcement expenses, as well as the COPS Hiring Program used for the hiring and rehiring of Tribal law enforcement officers. These programs are being threatened with significant cuts in the upcoming appropriations cycle which would be devastating to Tribes. These and other federal programs, including those within the Department of Interior's Bureau of Indian Affairs, are critical to the administration of justice on Tribal lands.

In this difficult fiscal climate, as Congress weighs various options to reduce the federal deficit, NCAI urges Congress to pay attention to its most basic responsibilities, and among the most fundamental are the responsibilities to provide for public safety on federal Indian reservations. The authority to fund programs that fulfill this responsibility is founded in the Constitution. Funding for Indian Country public safety programs is just one of the many sources of domestic discretionary spending dedicated to Tribes that should be held harmless during the budget process.

Violence Against Women Act Reauthorization

I would like to commend the Committee for your efforts to draw attention to the plight of Native women fleeing violence—first, by hosting an oversight hearing on these issues on July 14, 2011, and next, by releasing a discussion draft of proposed statutory changes aimed at protecting Native women in August. NCAI strongly supports these efforts and hopes that the Committee will work collaboratively with the Senate Judiciary Committee to ensure that the legislative proposals found within the SCIA's discussion draft are included as a part of the upcoming Violence Against Women Act Reauthorization.

No one denies that violence against Native women in the U.S. has reached epidemic proportions: 34 percent of Native women will be raped in their lifetimes and 39 percent will be the victim of domestic violence.¹ According to a 2010 GAO Study, U.S. Attorneys decline to prosecute 67 percent of sexual abuse and related matters that occur in Indian country.² The TLOA takes steps to improve the safety of Indian women, but there are still several issues that it leaves unaddressed, namely the lack of Tribal authority to prosecute non-Indians committing heinous crimes on the reservation.

The lack of Tribal jurisdiction over non-Indian offenders on Indian lands may be the key reason for the creation and perpetuation of disproportionate violence against American Indian and Alaska Native women. The 1978 U.S. Supreme Court decision in *Oliphant v. Suquamish Tribe* stripped Indian Tribes of their inherent criminal jurisdiction over non-Indians unless such jurisdiction is specifically authorized by Congress. As such, Indian women—4 out of 5 of whom describe their offenders as white—often have no criminal recourse against non-Indian offenders. These non-Indian perpetrators are well aware of the lack of Tribal jurisdiction over them, the vulnerability of Indian women, and the unlikelihood of being prosecuted by the Federal Government (or state government in P.L. 280 states) for their actions. This jurisdictional gap feeds the epidemic of violence against Indian women and is at odds with the United States' recognition of Tribal sovereignty and the policy of Tribal self-determination. Further, it is in stark contrast to the purposes of the Violence Against Women Act that have guided our nation since its enactment over fifteen years ago.

This past summer, the Department of Justice released a legislative proposal that not only seeks to address the jurisdictional problem described above, but goes beyond that to ensure Native women receive the same protection and equal access to justice as other women in America. The DOJ's proposal addresses three major gaps in the current system that too often leave Native women vulnerable to violent crimes of domestic violence and sexual assault. First, it recognizes the inherent authority of Tribes to prosecute any person who commits domestic violence or dating violence against a Tribal member in Indian country; second, it clarifies that Tribal courts have full civil jurisdiction to issue and enforce protection orders against Indians and non-Indians alike; and third, it amends federal law so as to enable federal prosecutors to more effectively combat three types of assault that are frequently committed against Native women in Indian country: assault by strangling or suffocating, assault resulting in substantial bodily injury; and assault by striking, beating, or wounding. NCAI's membership recently passed a resolution that supports inclusion of legislative proposals to enhance the safety of Native women in the upcoming VAWA reauthorization and we strongly support DOJ's proposed language.

¹ Tribal Law and Order Act of 2010, Pub. L. No. 111-211, § 202(a)(5) (2010).

² U.S. GOVERNMENT ACCOUNTABILITY OFFICE, U.S. Department of Justice Declinations of Indian Country Criminal Matters, REPORT NO. GAO-11-167R, at 3 (2010).

Under the current scheme, non-Indian perpetrators in Indian country are often shielded from accountability at the expense of the safety of Indian women. The power to reverse this disastrous trend and restore safety in Tribal communities lies with Congress. The DOJ's proposal is the product of true government-to-government consultation and collaboration with Tribes, and if included in the Violence Against Women Act Reauthorization and enacted into law, it would go a long way toward protecting the safety and security of Native women and their access to justice under the law. That is why I respectfully request your active support to ensure inclusion of the DOJ's proposal or similar language in the upcoming VAWA reauthorization legislation.

Land Status Confusion (Carcieri)

Finally, we would like to direct the Committee's continued attention to the problems created by the Supreme Court's decision in *Carcieri v. Salazar*, which is creating significant confusion and litigation over the status of reservation lands.

The Indian Reorganization Act (IRA) was created by Congress in 1934 to reorganize Tribal governments and restore land bases for Indian Tribes that had been greatly harmed by prior federal policies. The passage of the IRA marked a dramatic change in federal Indian policy. Congress shifted from assimilation and allotment policies in favor of legislation to revitalize Tribal governments and restore Tribal lands. In a decision that runs contrary to these purposes, the Supreme Court held the term "now" in the phrase "now under Federal jurisdiction" in the definition of "Indian" limits the Secretary's authority to provide benefits of the IRA to only those Indian Tribes "under federal jurisdiction" on June 18, 1934, the date the IRA was enacted.

The *Carcieri* decision does not address what it means to be "under federal jurisdiction" in 1934, and is already creating costly and protracted litigation on an esoteric and historic legal question that serves no public purpose. Some of this litigation is aimed at Indian Tribes who were on treaty reservations in 1934. Over the last 75 years under the authority of the IRA, entire Indian reservations have been restored, and significant amounts of land have been returned to Tribal governments. The *Carcieri* decision is creating litigation and uncertainty on long settled actions taken by the Department pursuant to the IRA, as well as on the Secretary's ability to make future decisions that are in the best interests of Tribes.

While *Carcieri* addressed only land in trust, there will be further negative consequences if the IRA is not clarified. The IRA is the legal foundation for most Tribal constitutions and serves as a framework for Tribal self-government. Future litigation could threaten the integrity of Tribal organizations, Tribal reservations and lands, and provision of services. It is only a matter of time before criminal defendants seeking to avoid federal or Tribal jurisdiction attempt to invoke *Carcieri*, and this would negatively affect public safety on reservations across the country.

When the Supreme Court has narrowly interpreted an act of Congress in a manner that is fundamentally unfair and not in accordance with its original purposes, Congress should move quickly to amend and clarify the law. NCAI urges Congress to amend the IRA to the effect that all federally recognized Tribes are included in the definitions section. We greatly appreciate your leadership and efforts with Senate Bill 676, which will clarify the status of existing Tribal lands and ensure that IRA benefits are available to all federally recognized Indian Tribes.

Implementation Update

July 29, 2011 marked the one year anniversary of enactment of the Tribal Law & Order Act (TLOA), and this new law continues to gain momentum. The Indian Law & Order Commission, authorized by the Act, was recently funded, the long-term plan for detention in Indian Country has been finalized, some key provisions have been implemented, and consultations are ongoing. Below is a brief update on implementation of some of the TLOA's most significant provisions.

Concurrent Federal Jurisdiction

Section 221 of the TLOA makes a significant amendment to P.L. 83-280 (PL 280) to allow Tribal governments located in P.L. 280 states to request that the Federal Government exercise concurrent jurisdiction over reservation crimes, with consent by the Attorney General. The purpose of this change is to address long standing concerns that some states and local governments have not fully addressed reservation crime under P.L. 280.

NCAI is aware of several Tribes who have placed formal requests with the Department of Justice to have the Attorney General exercise concurrent jurisdiction over their reservations under this provision. No action has yet been taken on these requests.

On March 1, 2011, the Department of Justice issued a letter to Tribal leaders in which it simultaneously announced its plan to consider implementing Section 221 through federal regulations and provided Tribes with a draft of such regulations. The draft regulations propose a framework and procedures for an eligible Indian Tribe to request the assumption by the United States of concurrent Federal criminal jurisdiction within the Indian country of the Tribe and describe the process to be used by the Attorney General in deciding whether to consent to such a request.

Subsequently, the DOJ held a Tribal consultation on Lac Courte Oreilles Chippewa Tribal lands in Wisconsin on March 23rd to focus on the process for implementation of Section 221. Since that time, the Section 221 proposed regulations have been published in the Federal Register for comment and publication of the final rule should be forthcoming. NCAI is encouraging the Department to make prompt decisions on all Tribal requests submitted thus far, notwithstanding the delay in getting the final rule published.

Indian Law & Order Commission

Section 235 of the TLOA mandates establishment of an Indian Law and Order Commission made up of Tribal, federal, and state/local justice officials, and other experts, tasked with reviewing the current justice system on Tribal lands and providing recommendations for improvement.

Although the September 27, 2010 (60 days from enactment) deadline for creation was not met, membership selection for the commission has since been completed by Congress and the President, and includes the following:

- Presidential appointments: Ted Quasula, Carole Goldberg, Theresa Pouley
- Senate appointments: Jefferson Keel, Troy Eid, Affie Ellis
- House appointments: Stephanie Herseth-Sandlin, Earl Pomeroy, Tom Gede

The Commission held its first in-person meeting on April 6, 2011 at the Buffalo Thunder Resort in Santa Fe, New Mexico, where they appointed Troy Eid, former U.S. Attorney for the District of Colorado, as the Commission Chair and commenced their work. The Commission has acquired a small staff of federal detailees to assist with their work. Assistant United States Attorney Jeff J. Davis, a member of the Chippewa Tribe, recently joined the Commission as its Executive Director, and Eileen Garry, the Deputy Director of the Justice Department's Bureau of Justice Assistance, is serving as its Deputy Executive Director. The Commission held its first field hearing at the Tulalip Reservation in Washington State on September 7, 2011 and intends to hold its second at NCAI's upcoming Annual Convention in Portland, Oregon on November 2, 2011.

The Commission was a bit slow in getting off the ground due to delay in passing the FY2011 appropriations bill. However, now that it is funded, the Indian Law and Order Commission has the potential to be an important source of new recommendations for policy changes, as well as a body that can continue oversight on implementation of the Tribal Law and Order Act.

Office of Tribal Justice

Section 214 of the TLOA requires the Attorney General to establish the Office of Tribal Justice as a permanent component of the Department of Justice within 90 days of the law's enactment. On November, 17, 2010, Attorney General Eric Holder announced that the Office of Tribal Justice is now its own, stand-alone component of the Justice Department. Making OTJ permanent was a simple, yet critical, step for Tribes. Bestowed with the responsibility to develop and direct the Department's Indian affairs policies and coordinate and consult with Tribal leaders, OTJ is and will continue to be an important resource for Tribes on justice matters.

Tribal Court Sentencing Authority

Section 234 of the TLOA amends 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. (The previous ICRA language limited the sentencing authority of Tribal courts to one year imprisonment, a \$5,000 fine, or both). It also authorizes Tribal courts to "stack" sentences for up to nine years total imprisonment. However, in order to utilize this enhanced sentencing authority, Tribes must provide a number of defendant protections, including: defense counsel for indigent defendants, legal trained and licensed judges, publicly available Tribal codes, and detention facilities certified for long term detention. Utilizing the enhanced sentencing provisions of the TLOA will require additional resources for the majority of Tribes. In addition, it was always assumed that Tribes would use this authority relatively rarely. As a result, it will likely take time before Tribal courts utilize this new authority.

Long Term Plan to Address Incarceration in Indian Country

One of the most significant requirements of the TLOA, and included in multiple locations throughout the act, is the requirement that the Department of Justice and the Bureau of Indian Affairs coordinate, in consultation with Tribal leaders, courts, law enforcement officers, and corrections officials, to develop a long-term plan to address incarceration in Indian country. The plan was to be submitted to Congress within one year of the TLOA's enactment.

DOJ and BIA held numerous consultations with Tribes on the long term detention plan. Several regional Tribal consultations were held last fall, including one at NCAI's Annual Convention in Albuquerque in November. These were subsequently followed by more at the Interdepartmental Tribal Justice, Safety & Wellness Sessions #12 and #13 in Palm Springs, California in December and Scottsdale, Arizona in May. The Bureau of Justice Assistance (BJA) and the Bureau of Indian Affairs (BIA) have also co-hosted three separate focus groups with Tribal leaders and justice stakeholders at various locations throughout the country (Rapid City, SD; Phoenix, AZ; and Billings, MT). Comments on the long term plan were also solicited via e-mail at TellTLOA@usdoj.gov.

On July 15, 2011, the Departments of Interior and Justice released an initial draft of their "Tribal Law and Order Act (TLOA): Long Term Plan to Build and Enhance Tribal Justice Systems." Comments and feedback on the plan were to be submitted to DOJ by July 21, 2011, which left Tribal leaders less than a week to submit additional feedback before the plan was finalized. On August 8, just over a week past the one-year deadline, DOJ and DOI released the final version of their long term plan and submitted it to Congress.

While we commend DOJ and DOI staff for taking their responsibilities under the TLOA seriously, as well as their obligation to consult with Tribal leaders and justice experts, I would be remiss not to flag our two major concerns with the long term detention plan for the Committee. First of all, we think that the plan's heavy reliance on evidence-based solutions to problems faced by Tribes is problematic. Requiring that federal funding for Tribal alternatives and reentry programs be contingent on use of evidence-based models is a recipe for failure for many Tribes. The plan should explicitly accept and promote successful practices and models that may not have yet received the benefits of costly studies.

Second, we feel that the final plan lacks the strategic long-term vision for the future that Congress intended by including it in the TLOA. It assesses the current landscape of alternatives to incarceration, detention, and reentry in Indian Country and explains to Tribes the federal resources currently available to Tribes for those purposes. The plan makes only minor recommendations for small improvements to the status quo over the next year. We do not believe that this type of a report was what Congress intended when it passed the TLOA. This was to be a thorough, carefully constructed plan that would guide detention in Indian Country and Tribal justice systems for the next 25 years to a half century. In particular, Indian Tribes are looking for a new approach to juvenile justice and alternatives to incarceration so that the detention system is not a factory for creating hard core criminals.

We recognize that the development of a long term detention plan raises a number of complex problems, and we are encouraged that the Departments of Interior and Justice see their initial plan as only the first iteration. We would urge the Committee to continue its oversight in this area, particularly on juvenile justice and alternatives to incarceration.

Declinations and Investigations

Perhaps the main driving force behind the creation of the TLOA was the concern that Tribal leaders have had for many years about high rates of declinations to prosecute major crimes in Indian country by U.S. Attorneys. I have been around the National Congress of American Indians since the 1980's, and we have consistently heard the same message from Tribal leaders for over 30 years. Tribes are very alarmed that crimes occur and are often neither investigated nor prosecuted. We have seen statistics showing that over two thirds of all Indian country crimes are declined. This Administration is working hard to do a better job, but we need to be able to keep track of investigations and prosecutions to make sure that the improvements really happen, so that we can target problems. That is why the TLOA included Section 211, which mandates that the Attorney General submit to Congress annual reports that contain all relevant investigation and prosecution data regarding alleged violations of Federal criminal law that occurred in Indian country that were referred for federal prosecution by law enforcement agencies. This is one of the most critical components of the TLOA, and Tribal prosecutors will need to coordinate closely with their U.S. Attorney counterparts to ensure that it is implemented. The first reports will be due at the end of this calendar year, and we want

to make sure that the reports are useful to Congress and to Tribal leaders in addressing the causes of declinations.

There are many legitimate reasons to decline to prosecute a crime, as well as questionable reasons. For example, one of the most cited reasons for declining to prosecute is the inadequacy of the investigation. If there are problems with the police work, Congress needs to know that so that the issues can be addressed. Do we need more investigators, or more training, or more access to crime labs? The collected data from declination reports should help answer these questions. Another commonly cited concern is the creation of arbitrary “thresholds,” particularly in drug cases. We understand that all prosecutors have limited resources, but we cannot let non-Indian drug dealers run free on Indian reservations when the Tribe has no jurisdiction and the U.S. Attorney refuses to prosecute. The collected data and related Congressional oversight should assist Congress and the Department of Justice in determining the necessary resources to dedicate to Indian country prosecutions.

NCAI would like to begin more communications with the U.S. Attorneys on declination reporting. These reports will be a useful crime fighting tool if Tribes know how to refer crimes for investigation and prosecution and are able to track the results. The first reports are due by the end of this year. So far, this dialogue with the U.S. Attorneys is only beginning, and we have a lot of work to do.

Bureau of Prisons Tribal Prisoner Pilot Program

As part of the enhanced Tribal court sentencing provisions in Section 234, the Department of Justice Bureau of Prisons (BOP) is required to establish a four-year pilot program within 120 days of enactment, under which the BOP shall accept offenders convicted in Tribal court of a violent crime and sentenced to more than two years imprisonment. On Friday, November 26, 2010, the BOP met this key TLOA deadline by launching its pilot program. However, no Tribes have used it to sentence offenders yet.

Indian Alcohol and Substance Abuse

Under Section 241 of the TLOA, the Substance Abuse and Mental Health Services Administration (SAMHSA) is to lead the effort on interagency communication by developing a framework and MOA on the issue. A draft of the MOA was released for Tribal comment in November 2010, and on July 29, 2011, exactly one year after President Obama signed the Tribal Law and Order Act (TLOA) into law, DOJ, DOI, and HHS entered into a Memorandum of Agreement to combat Alcohol and Substance abuse among American Indian/Alaska Native Tribes. The Memorandum of Agreement was formally published in the Federal Register on August 5, 2011 and individual notification was mailed to all 565 federally-recognized Tribes.

Other Advances

Of equal importance to TLOA implementation benchmarks are the new initiatives and improvements to public safety in Indian Country that are developing largely as a result of TLOA enactment. Over the past two years, the Obama Administration has demonstrated an increased commitment toward improving public safety on Tribal lands. The Department of Justice, in particular, has shown extraordinary leadership on these issues by launching new law enforcement initiatives in Indian Country, proposing much-needed legislation that would enhance Tribal sovereignty and protect Native women, and advocating for increased funding for Tribal programs within the federal budget. At the core of this multi-faceted approach is DOJ’s pledge to work together with Tribal nations to improve the overall administration of justice in Indian Country. U.S. Attorney for the District of South Dakota, Brendan Johnson, perhaps said it best when he remarked that “the best ideas for making Tribal communities safer come from Tribes, not from Washington, D.C.” NCAI commends DOJ for staying true to that message, and we look forward to continued collaboration and dialogue with the administration on public safety issues in the future.

Progress is also being made on the local level to combat crime on reservations, due in large part to guidance from the Attorney General’s office to build permanent infrastructure in Indian Country that will sustain Tribal nations long after President Obama’s time in office. Attorney General Holder’s and Associate Attorney General Perrelli’s leadership on these issues has influenced U.S. Attorney’s offices across the country, and resulted in more communication between Tribal and federal justice officials, stronger working relationships, and increased Tribal capacity for investigating and prosecuting reservation crimes. There has also been a surge in the number of Tribal prosecutors appointed as Special Assistant U.S. Attorneys under the TLOA, enabling them to try cases in federal courts. These are just some of the local successes that have resulted from TLOA passage and the leadership of this Justice Department.

Conclusion

Public safety problems in Indian Country remain a critical concern, particularly domestic violence and violence against women, drug crimes, and gang related crimes. While national efforts like implementation of the Tribal Law & Order Act and the DOJ's public safety initiatives in Indian Country are giving Tribes a renewed sense of hope that much needed improvements to the current administration of justice on Tribal lands are forthcoming, we must continue to advocate for progress until crime rates drop and every Tribal community is safe. NCAI looks forward to our continued work to improve public safety within Tribal nations, increase access to justice for Native peoples, and protect the health and wellbeing of all Native people. We hope Congress will join us in these efforts.

Once again, on behalf of NCAI, I would like to thank the Committee for inviting us to testify today. I would be happy to try to answer any questions you may have.

The CHAIRMAN. Thank you very much, Ms. Johnson-Pata.

Councilman Posey, in your testimony you highlight the need to focus on youth. Can you please tell us what an effective system might look at to deter our young people from criminal activity? And what more can we do to support youth?

Mr. POSEY. Thank you, Mr. Chairman.

There are several avenues. Obviously, on our reservation there is a drug court system which gives the judges the alternative process of sentencing. Recently, the last couple of years, we built a new youth facility there and we have created the Boys and Girls Club, which had been in place since 1995, which serves hundreds of kids there. Most of them are from probably 6 years old to 14 years old, but we see probably among Indian nations across the Country here, we are missing the 14 to 18, 20 year olds. And I think back, way back, they could be sentenced to a certain amount of time in being incarcerated. Maybe that turned their lives around.

But I think now we have to look at, I know with us on the Wind River, I think we have a valuable resource there in our natural resources that we have. And I think we need to just think out of the box and develop programs where perhaps they could be introduced back into the natural resources systems and stuff like this.

As you know, we are in a fast-paced society. We need some way to connect them back to that and connect them back to the family. So I think we need to really focus on positive outreach to those teenagers where they have a brighter future, instead of being ones where they continue to go down that road and eventually end up in the penal system, which like I mentioned earlier, they come out more hardened.

So I think that will take collaboration with the schools systems, the social services. And one thing is we need to focus on those kids that are doing good in our communities. There are several of those, youths that are doing very well in our community, but we just kind of forget about them. We say they are doing okay in school so they need no services. So I think we need to balance that and maybe perhaps have a mentoring system to allow those kids with positive attributes in life to share those with others.

The CHAIRMAN. Thank you, Councilman.

Judge Pouley, you are one of the Country's leading advocates for Tribal courts. The Committee is aware that many Tribal courts would like to take advantage of new tools such as enhanced sentencing authority available to them under the TLOA, but they do not yet meet the necessary requirements. What else needs to be done to support the infrastructure and capacity of Tribal courts?

Ms. POULEY. Thank you, Senator. Many things. Number one thing, of course, is funding. One of the things I have been a huge advocate for is base-level funding for Tribal courts. Tribal courts can best decide how to get proper contract individuals, for example, for public defenders that need to be licensed, as well as balanced probation requirements, as well as balance restorative sentencing.

But they need to have some base-level of funding. And like I said, at Tulalip, we only get that at about \$30,000 a year, although the justice system obviously costs hundreds of thousands of dollars a year to run.

But it has to be flexible because each Tribe individually is going to balance each one of those pieces. Not just new funding for Tribal courts, there really is a respect issue. Tribal courts should be treated the exact same as State or Federal courts. Tribal courts and the National Council for Juvenile and Family Court Judges testified together in front of the Senate Finance Committee about how Tribal courts should be able to access court improvement funds.

So there is a variety of court funding mechanisms out there where Tribal courts are just left out of the loop.

A variety of programs like you just heard described from the South Dakota Attorney General that actually go into Tribe on-site to help them develop and create particular programs that are going to work in their communities and to provide them that expertise are absolutely critical.

So money specifically; availability of funding across the board; and training, on-site training for Tribe-specific resources.

Thank you.

The CHAIRMAN. Thank you, Judge Pouley.

Ms. JOHNSON-PATA. in your testimony, you mention a new danger on the *Carciari* decision that a criminal defendant may be able to avoid Federal or Tribal jurisdiction. Why is this the case?

Ms. JOHNSON-PATA. I think because when you bring the cloudiness of jurisdiction. We already have a very complex structure, and we have had conversations in the past, even just last week about the jobs bill and how do we bring more capital to Indian Country.

So you are looking at the access to financing to Indian Country, just think of the complication there. Well, it is the same complication with law and order. We are dealing with cooperative agreements. We are having to deal with high-pursuit cooperative agreements. All these things talk about jurisdiction, where is the jurisdiction and where does the jurisdiction stop.

And so as Tribes bring land into trust or Tribes have recently brought land into trust, it opens up this question of what is the status of this piece of land or this parcel within the Tribe's jurisdiction, or this Tribe.

And that cloudiness creates a loss of time and money, but what it also does in the law enforcement arena, it brings in inaction because it is easier sometimes not to have those questions.

But what hasn't happened yet, and given the number of cases that are cropping up having to do with litigation around *Carciari* and putting into the question of *Carciari*, it wouldn't surprise me that this kind of defense mechanism could be brought forth and somewhat successfully because of the controversy or the question of *Carciari* and land-into-trust.

The CHAIRMAN. Thank you.

Councilman Posey, you mentioned that violent crime rates in your community have dropped since the implementation of the HPPG initiative. Does this demonstrate the initiative's success? What part of the initiative have been most important?

Mr. POSEY. Mr. Chairman, the most important aspect of the HPPG was getting more cops on the street. Like I mentioned in my testimony, it was six cops. Now, we have 22. We have enhanced our Tribal court system. The budget for the Tribal court system went from \$300,000 to \$1.7 million, which is good. It is good base funding, but we also recognized that we are only one of four Tribes that were selected for HPPG. So across the Country, they are still dealing in other reservations with the same problems that we had.

We used to go with people calling the cops and nobody showed up just because it was maybe 35 miles away on the other side of the reservation on a more violent, a more serious call. So right now, we do have a good amount of law enforcement presence there that has decreased violent crimes. I am not saying it completely went away because we continue to have those age-old violent crimes and murders and some of those types of issue, but the response time is better. The cooperation is better.

And out of this whole issue, as the ladies here mentioned, we did create an interagency law enforcement group there that is really not official. We just get together every quarter and discuss how we could work better together. And I think our outside agencies have been very cooperative in helping us when we needed help, so we are trying to do the favor back to them, but it has dropped.

Thank you.

The CHAIRMAN. Thank you.

Judge Pouley, the DOJ is currently developing a declination report due at the end of this year. What is the most important information that should be contained in that report? And what kind of data do you think Tribes and Tribal courts need to know about why cases are not being prosecuted?

Ms. POULEY. I think for declination reports, there are a couple of important pieces of information that Tribal courts need to know. Number one, they just need to know in a timely fashion if that case is going to be prosecuted.

So because we have concurrent jurisdiction with the Federal Government, we may actually be holding that person in detention on Tulalip's dime, if you will, waiting to see if the Federal Government is going to pick up the prosecution.

Now, we can only do that within 90 days. And I guarantee you, at Tulalip Tribal Court if you have a right to a trial within 60 or 90 days, you get it. So that case may actually be adjudicated before the Feds even pick it up.

That means from a resource perspective, we need to know as soon as possible if the Feds choose to decline that prosecution. If we go forward and they pick it up, then that person's being prosecuted twice. So that is a resource issue for both of them.

So the number one thing we would want to see in the report is the timeliness of the information provided.

Number two, the type of crime. Just recently for this year's annual report, we had seen an increased filing of sexual assault cases

in the Tulalip Tribal Court. I haven't seen the same increase in filing of sexual assault cases in the Federal court. But if there was, I would be interested to know that particular piece of information.

Part of concurrent jurisdiction is we prosecute those individuals when they are a danger to our community. So knowing what crimes are being prosecuted is urgent.

And then the last thing is I really would like to commend the Department of Justice about this particular issue because I have heard from almost every Tribal court judge in the Northwest for the very first time they have had them prosecute a case that either involved violence against Indian women or repeat offenses of domestic violence. So I am appreciative of that fact.

So know what they choose to prosecute, what they choose not to prosecute, and timeliness is absolutely critical for the Tribal court.

The CHAIRMAN. Thank you very much for your response.

Ms. JOHNSON-PATA. respecting Native culture is incredibly important as we implement legislation like TLOA. Are there ways that we can improve cultural competence and respect for Native culture in the administration of justice?

Ms. JOHNSON-PATA. Well, I could say that we could do it broader than the administration and the Department of Justice. But in the administration of justice, clear it is very important. In fact, you will see when we talk about the Tribe's ability to expand their jurisdiction, the sentencing authority and some of the challenges of the decisions they are trying to make, and even those who are trying to decide whether or not they want to take advantage of the Bureau of Prisons opportunity.

Part of that decision is a cultural decision. In Indian Country, these opportunities pose questions for Tribal court judges and Tribal leaders, as they contemplate that balance of prosecution versus alternative ways of culturally dealing with juvenile detention, for example. Are there other methods for us to be able to provide that same kind of learning, re-education, life style change, that makes that consistent to our cultural values and where we want our youth or our younger person to go. And all those things are very important.

In addition, so we have that one piece there, in addition to that, making sure that we have culturally sensitive administrations, culturally sensitive U.S. Attorneys. All of those are very important to once again design a system that can be sustained in our community; that is accepted in our community, so it is not an us-against-them, but it is us coming together and working together to find those kinds of solutions.

And I think part of that I would like to echo with this cultural component was where we go with having other governments accept our government as equal government and our Tribal courts as equal courts in the court systems and having that reciprocal kind of relationship.

Just because we may have cultural integration into the way that we do and how we provide our system isn't different than other court systems that are in certain areas of urban America as they deal with the cultural needs of the community they serve. That same kind of respect can be integrated into having those reciprocal

agreements that will strengthen our systems throughout Indian Country.

Thank you.

The CHAIRMAN. Thank you very much.

My final question to all of you on this panel, and this reaches back in your experience of things that have happened. Were there any important provisions in TLOA that did not make it into the final bill that Congress should reconsider?

Ms. JOHNSON-PATA. I would just start. I think I am going to echo what everybody here is going to say, which is we need to be able to have expanded authority over our jurisdictions to be able to deal with not only the amendments that you are proposing in the violence against women to deal with those situations under violence against women.

But I would go a step further to say if we can accomplish that, let's think about jurisdiction of non-Natives beyond just violence against women provisions to be able to make sure that we not only have the protections in our community for all those perpetrators of crimes in Indian Country, and we have a system that works whether it is a partnership with the Federal Government; whether it is a Tribe who takes on those responsibilities; but that recognition of our governmental status to be able to provide those systems within our communities that are equal to those within the States and the local communities.

The CHAIRMAN. Judge Pouley?

Ms. POULEY. I concur 100 percent. We talk about cases like *Suquamish v. Oliphant*, or I talk about cases like *State of Washington v. Eriksen*. And at the heart of those cases is a lack of recognition and respect that Tribal governments should be the enforcers of the law within their boundaries.

And Senator, it leads all of our communities at risk. It is not just the Tulalip Tribal people or the Lummi Nation people in Eriksen who are at risk from that drunk driver. If they didn't stop them, the citizens of the State of Washington would be at risk.

So it is all of our communities that are placed at risk when we have people who are convicted or crimes who subsequently get to challenge those crimes on some jurisdictional basis that doesn't have to do with the crime. That, frankly, and you asked the question a couple of times about *Carcieri* and how important it is that we clear up the status of the land because that is exactly the same thing that is going to happen that sends the message that we should flee to the boundaries of the reservation.

Our law enforcement officers aren't safe. Our Tribal members aren't safe. Our police officers aren't safe. But no citizen of the United States is safe as long as the message we send is run from Tribal police; commit crimes with impunity because you won't be prosecuted because at some subsequent point in time we will find that there wasn't jurisdiction.

We simply can't operate that way. You started at the very beginning about talking about one in three Indian women can expect to be raped in their lifetime. Most of those rapes are perpetrated by non-Indian offenders over which we have no jurisdiction.

I came to the Senate in 2000 to plead for a change in the law. I came again in 2008 to support the Law and Order Act because

I look in my daughter's eyes and she asks me the question: Am I going to be the one or the three, Mom? And I want to be able to answer the question, you are not going to be any of those because we fundamentally changed the way we view law and justice in Indian Country.

Thank you.

The CHAIRMAN. Thank you.
Councilman?

Mr. POSEY. I will be very brief and say that I agree with Jackie and Theresa here on jurisdictional issues regarding Tribal court. I think the Tribal Law and Order Act has a lot in there, and as many other Acts, it is unfunded mandate in some instances. So I think Indian Country does need more of those resources through funding, through manpower to actually implement this area and these issues that have been out there way too long in Indian Country.

So I just echo my sisters' comments over here and thank you.

The CHAIRMAN. I want to thank you. I want to say mahalo and thank you all, and to our witnesses. This has been, for me and for the Committee, a very informative discussion.

As you know, we are trying to gather as much data and information as we can so that we can work on some of these needs and changes that should improve the system.

The Tribal Law and Order Act provides important new tools for Native communities to address threats to their public safety. But these tools are only effective if they are fully and properly implemented. This Committee will continue to examine these issues, especially as other legislation important to Native communities such as the Violence Against Women Act reauthorization continue to make their way through Congress.

Again, mahalo, thank you to all of you who participated in today's hearing. And I want to remind you that the Committee record will remain open for two weeks from today. I would like to also hear from those who couldn't be witnesses to let us know how they feel.

So with that, let me say thank you, mahalo again, and this hearing is adjourned.

[Whereupon, at 4:15 p.m., the Committee was adjourned.]