



Department of Justice

STATEMENT

OF

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U.S. DEPARTMENT OF JUSTICE

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ENTITLED

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

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**Statement of Brendan V. Johnson
United States Attorney for the District of South Dakota
Department of Justice**

**Before the
Senate Committee on Indian Affairs**

**At a hearing entitled
“Tribal Law and Order Act One Year Later:
Have We Improved Public Safety and Justice Throughout Indian Country”**

**Presented on
September 22, 2011**

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 well-received 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% 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 responsibilities 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.