

INDIAN LAW AND ORDER COMMISSION

November 2, 2011

Portland, Oregon

Testimony of Olin C. Jones, Director

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Hello, my name is Olin Jones, and I am the Director of the California Attorney General's Office of Native American Affairs. It is an honor to be with you today.

I have been invited to join you to share my thoughts and comments on relations and cooperative efforts between tribal and state law enforcement agencies in California, which as you know, is a Public Law 280 (PL 280) state and home to 109 federally recognized tribes.

Commissioners Eid and Davis, I would like to thank you and the members of the Indian Law and Order Commission for the invitation to provide testimony.

Before I begin my comments, I would like to recognize Commissioners Gede and Goldberg, and thank them for all of the hard work they have done in California. Our state has benefitted significantly from your lectures, articles, and studies on Indian law. I would also like to acknowledge Commissioner Jefferson Keel, who is the Lieutenant Governor of my tribe, the Chickaksaw Nation of Oklahoma.

Sir, my family and I, appreciate your leadership.

Considering the nature of my invitation to be with you today, I would like to begin by citing one of the most historically significant examples of tribal and state justice-related cooperation that has ever been undertaken in California, the

establishment of the California Attorney General's Office of Native American Affairs. The Office of Native American Affairs was created in 2000, under the administration of former Attorney General Bill Lockyer. The office was continued by Attorneys General Jerry Brown and presently Kamala D. Harris. A little later in my testimony, I will expand on some of the proactive steps Attorney General Harris has recently undertaken to ensure that greater levels of public safety services are reaching California's Indian lands.

The Office of Native American Affairs, referred to as ONAA, is at the executive level and charged with advising the Attorney General and the Department of Justice (DOJ) on matters of tribal importance and ensuring that tribal governments and community leaders are given the opportunity to cooperate with the state on justice-related matters of mutual concern. The office serves as liaison between DOJ's legal and law enforcement divisions, and with tribal governments. ONAA undertakes the coordination of DOJ and other inter-governmental services programs and provides technical assistance for Indian communities as they address the broad spectrum of justice-related issues. The Office of Native American Affairs has developed and maintained cooperative relationships between California's Indian tribes, tribal organizations, Indian citizens and the Department of Justice (DOJ). Since California is one of six states mandatorily subject to federal Public Law 83-280 (PL 280) it was necessary for ONAA to also establish strong working relationships with local, state, tribal and federal justice agencies, as well as statewide law enforcement associations.

ONAA attends and participates in meetings of the California State Sheriff's Association, the California Tribal Police Chiefs Association, the Judicial Council of California, California Department of Corrections Disproportionate Minority Confinement committee, and the Violence Against Women Act Advisory Committee convened by the California Emergency Management Agency.

ONAA MISSION STATEMENT:

The Office of Native American Affairs will serve as an agency liaison and address justice-related issues for California's Native American citizens who reside on reservations, rancherias, and in urban communities for the overall improvement of the quality of life.

ONAA GOALS:

1. To examine the justice-related needs of Native American people of this state and provide technical assistance in the preparation of plans for the alleviation of such needs.
2. To promote mutually beneficial inter-governmental cooperation between tribal governments, DOJ and appropriate federal, state or local agencies.
3. To consult with tribal representatives on the development of DOJ policies, positions and cooperative programs between tribes and this department.
4. To act (when requested) as liaison between DOJ, local law enforcement and tribal law enforcement.
5. To review and recommend a DOJ legislative agenda which promotes the health, safety and welfare for California's Indian citizens.
6. To assemble justice-related information and reports needed by tribal, state and local agencies.
7. To work for greater understanding and improved relationships between Indian and non-Indian people by creating an awareness of the justice-related needs of Indian citizens of California.

I should also mention that shortly after ONAA was established, tribal and state justice stakeholders asked our office to be a neutral convener, educator and technical assistance provider for their agencies and organizations. I agreed to this role and maintain that stance. In the role of neutral convener, ONAA has successfully facilitated several well attended statewide tribal justice training events called Tribal and State Justice Summits. I recall that Commissioners Gede and Goldberg have been presenters at past events. As a strategy, ONAA has undertaken the promotion of tribal and justice agency collaborative groups across California's Indian Country, but I will talk more about this in a moment. ONAA has also joined with the California POST Commission to produce certified statewide

training materials regarding the policing of Native American lands for California's sworn personnel.

In view of the function of this office, I am positive that you can understand that it has provided me with a strong advocacy position and unique vantage point over tribal justice issues for the past eleven years. It is from the advocacy and vantage points that I would like to share some instances of tribal and state justice agency cooperation, or best practices. I would also like to point out that the following examples are not operating under a grant, or utilizing funds outside of the participant's agency or tribal budgets.

The Development of Tribal Liaison Units, Collaborative Groups, and Cooperative Efforts:

Over the past decade, the advancement of Tribal Liaison Units, Tribal and justice agency collaborative groups, and other cooperative efforts have been initiated out of need in several of California's counties that have reservations or rancherias within their jurisdictional borders. These efforts are largely successful because they are generally designed to increase communication, establish protocols for enforcement and accountability. Moreover, the tribal and law enforcement leaders that are the force behind these efforts have a strong vision and are committed to improving public safety services in their communities.

Of the many tribal and justice agency cooperative efforts in existence, I would like to describe several examples among California's tribal justice stakeholders.

They are:

Riverside County Sheriff's Tribal Liaison Unit:

In 2008, following a terrible reservation-based crime, the Riverside County Sheriff's Department realized that the level of service being provided on each of the Indian reservations it serves was not acceptable and that Department partnerships in Indian Country were basically non-existent. The poor level of service being provided resulted in a very negative perception and a lack of trust of the Sheriff's Department in Indian Country. Consequently, the Tribal Liaison Unit was created and given the mission of building trust and partnerships between the

Department and the tribal communities of Riverside County's Indian Country. To accomplish its mission, the Tribal Liaison Unit began by establishing communication with the tribal governments of each reservation to identify their needs and concerns. The end result has been positive changes in Department service and an improved quality of life in Riverside County's Indian Country.

San Diego County District Attorney/Sheriff and Tribal:

In San Diego County, there are 18 federally recognized tribes with 10 operating state compacted gaming facilities, both more than any other county in the nation. California is a Public Law 280 state, in order to address the multitude of law enforcement and jurisdictional issues that arise on tribal lands, the District Attorney and Sheriff of San Diego County, in conjunction with the tribal leaders and their councils, formed a collaborative working group. The overall working group meets quarterly at a tribal leaders' luncheon hosted by one of the tribes. The tribal leaders, their council members, and tribal law enforcement are present. The Chief Judge of the Intertribal Court of Southern California is present. The District Attorney and Sheriff and their staff are present. The United States Attorney for the Southern District of California and her staff are present. Other law enforcement agencies such as the California Highway Patrol, State Parole, the Probation Department, and the State Attorney General's Office are also present. Issues are discussed in an open forum, and there is often a topic speaker presented to address timely issues, such as sex offender registration and checks on reservation lands for example. The overall working group and both its law enforcement and tribal subsets have been very successful at working through issues such as service of subpoenas for witnesses and documents on reservation lands, adoption and enforcement of tribal court domestic violence restraining and child custody orders by the Sheriff and the District Attorney, trespassing on reservation lands, and investigation of casino based crimes. The communication through these working relationships has developed respect, trust and goodwill between the law enforcement agencies and the tribes, their tribal governments, and their members.

Oroville, Butte County, California

The Intertribal Community Task Force (ITC) was established about 15 years ago as a way to make sense of and deal with a tragedy that resulted in the death of a tribal member on the Rancheria. Part of the issue stemmed from a disparity of

opinion between the tribe and Butte County Sheriff's Office (BCOE). The tribe believed that foul play was the cause of death, while BCSO ruled the death a suicide.

ITC brings together Mooretown Rancheria, Enterprise Rancheria, and Berry Creek Rancheria with BCSO, City of Oroville Police, Feather River Tribal Health, probation officers, Butte County Office of Education, county communications, along with a plethora of other county, city, and tribal officials who meet on a bi-monthly basis to discuss issues that involve the local tribes and Indian Country as a whole. Integral to these meetings is the District Attorney for Butte County.

The ITC has worked together with the state of California to produce updated training videos designed to increase awareness about Public Law 280 and is a model organization replicated by tribes in Humboldt County.

Humboldt County District Attorney and Tribal Governments Roundtable:

The Humboldt County District Attorney, Paul V. Gallegos, and representatives from all of the Humboldt County Tribes and Rancherias committed to regular inter-governmental meetings to discuss concerns and devise strategies related to community safety and the administration of justice in Humboldt County. They agreed to call the group the Humboldt County District Attorney and Tribal Governments Roundtable, and they had their official meeting on April 26, 2007.

A copy of their official Memorandum of Understanding, including a mission statement is attached:

Humboldt County District Attorney and Tribal Governments Roundtable

Memorandum of Understanding

This Memorandum of Understanding (MOU) evidences the willingness and commitment of the signers to work toward mutual goals and foster stronger communication between the Humboldt County District Attorney's Office and Tribal Governments.

Mission

The mission of the Humboldt County District Attorney and Tribal Governments' Roundtable is to create and increase communications between sovereign Tribal Governments and the Humboldt County District Attorney's Office. The Roundtable fosters education of our mutual constituencies to meet our needs by

multi-level training, in-services and presentations. The Roundtable is committed to ensuring a mechanism is emplaced to address concerns or issues between our entities.

Purpose and Scope

The Humboldt County District Attorney's Office and the sovereign Tribal Governments are forming a collaboration to address the mutual needs of our entities as we serve our constituents. Each participating organization is responsible for its own expenses related to this MOU. There will not be an exchange of funds between the parties for tasks associated with this MOU, except shared expenses as agreed to by members.

Responsibilities

Each signing entity will appoint a person to serve as the official contact and coordinate the activities of each entity in carrying out this MOU. All parties will work together on public education efforts, and will attend a monthly meeting.

Terms of Understanding

The term of this MOU is for a period of five years from the effective date of this agreement, and may be extended upon written mutual agreement. It shall be reviewed at least annually to ensure that it is fulfilling its purpose and to make any necessary revisions.

Authorization:

On behalf of the entity I represent, I wish to sign this Memorandum of Understanding and contribute to its further development.

Paul V. Gallegos, District Attorney
County of Humboldt

Joyce Moser, Program Coordinator
District Attorney Victim Witness

Leonard Bowman, Chairperson,
Bear River Band of Rohnerville Rancheria

Virgil Moorhead, Chairperson
Big Lagoon Rancheria

Claudia Brundin, Chairperson
Blue Lake Rancheria

Clifford L. Marshall, Chairperson
Hoopa Valley Tribe

Arch Super, Chairperson
Karuk Tribe

Garth Sundberg, Chairperson
Trinidad Rancheria

Gail L. Green, Chairperson
Wiyot Tribe

Maria Tripp, Chairperson
Yurok Tribe

Sally Hencken, Chief
Victim Services Division
California Emergency Management Agency

Olin Jones, Director
Office of Native American Affairs,
California Attorney General's Office

The next citation describes a long standing problem related to policing Indian lands, tribal police access to criminal history files, and the state, federal and tribal collaborative solution to the problem.

Partnering with the Bureau of Indian Affairs, Office of Justice Services:

As previously mentioned, California is a PL 280 state. One of the things that PL 280 did not do was to diminish a tribal government's authority to create its own tribal police function. However, some of California's tribal governments that established tribal police departments experienced a safety gap when their officers could only enforce tribal codes against tribal constituents. They had no legal authority to enforce state or federal criminal codes, on non-Indians or Native Americans. In their own words, tribal leaders felt this was a significant public safety impediment. In 2001, an organized coalition of tribal governments established an effort to frame a state legislative solution to this problem by creating the California Tribal Justice Act of 2001 (SB 911 Alarcon) that would establish California peace officer authority for tribal police. SB 911 was eventually defeated due to a requirement that tribes establishing a tribal police agency under this proposed statute must adhere to the same amount of liability protection that any other state police agency must maintain. In California, there are no liability caps for public safety agencies, which would mean that tribes would need to waive their sovereign immunity in a like (unlimited) amount. This development was unacceptable to tribes and the bill was pulled from committee in early 2003.

As a result, tribal police agencies began to explore other ways to provide adequate policing authority for their officers. The Hoopa Tribal Police Department has entered into a deputation agreement with the Humboldt Co. Sheriff's Department, and the Yurok Tribal Police Department has entered into the same type of agreement with the Del Norte Co. Sheriff's Department. This agreement empowers these tribal police officers with state peace officer authority via the county sheriff's department. This arrangement between a tribal police department and the county sheriff is discretionary, and certainly not all counties

or tribes choose to enter into such agreements. A number of tribal governments entered into contractual agreements with their sheriffs for an increased level of policing service by the county to their tribal lands and economic development venues. Some of the tribes began to examine the Bureau of Indian Affairs Office of Justice Services Special Law Enforcement Commission (SLEC) program as an alternative to empowering tribal police with state peace officer authority. At that time, the SLEC was not well known within California's policing community, and it was viewed as controversial. As you may know, the SLEC will confer federal peace officer authority to a tribal police officer if they can meet significant background, training and certification requirements. Presently, there are about twenty tribal police departments in California, and six of those departments have tribal police officers deputized under the federal SLEC program. Their policing power encompasses federal statutes and includes the authority to enforce these statutes against Native American or non-Native Americans on their tribal lands.

As federally deputized peace officers, the SLEC Officers are on par with other federal law enforcement personnel, and have access to national criminal history databases. As you know, one of the most important tools for officers in the field is to have real time access to criminal history information, especially on traffic stops or other instances where timely suspect identification is essential to officer safety.

Historically, tribal police officers with the SLEC deputation agreement have been able to access national criminal history files, but not California's criminal history databases. California's Penal and Government Codes statutorily defines what agencies may legally access state criminal history files and the California Department of Justice interpretation of that language did not include SLEC officers. The SLEC officers in California viewed the lack of access as an officer safety issue and expressed concern to state and federal officials. Suffice to say the matter was contentious.

In January of 2011, members of California Attorney General Kamala Harris' staff and the Bureau of Indian Affairs (BIA), Office of Justice Services (OJS) began a collaborative effort to address and resolve this serious information access problem. The accessibility issue was successfully resolved when the BIA OJS administratively moved the federally deputized SLEC officers more closely under their agency umbrella to come within the California Code's public agency definition. Credit should be given to California's Attorney General Kamala Harris.

Harris, and to the Bureau of Indian Affairs Office of Justice Services, Deputy Director, Darren Cruzan for framing a solution to this long standing (decade) problem.

Due to our agency's collaborative effort, the BIA's OJS is developing a much stronger presence in California, attending statewide law enforcement association meetings, and is planning to create executive level administrative leadership infrastructure in California. Certainly this tribal, state and federal partnership is in line with the tenets of the Tribal Law & Order Act of 2010.

I would like to mention a final example of a cooperative effort that is in the planning stage.

The California Department of Justice and the Sycuan Band of Kumeyaay Nation's Tribal Police Department (San Diego Co.) is considering a joint application to request federal funding for a collaborative Tribal and State policing pilot project. Obviously, the project related activities would target reservation-based crimes within San Diego County. The responding officers would be two Sycuan Tribal Police Officers that have a SLEC, and two Department of Justice Special Agents funded under the auspices of a COPS grant. The Sycuan Tribal Police Department has set the gold standard for meeting the requirements of the SLEC program. In addition to meeting the stringent requirements of the SLEC deputation program, they have also developed a good working relationship with federal, state and local justice agencies in the San Diego area.

In closing, I would like to recognize that the relationship between tribal and state law enforcement has a ways to go. The building of relationships is an ongoing process. There will always be some level of dissatisfaction, and we can work on improving services to Indian Country. However, in retrospect, I believe we are much better than we were a decade ago. The Tribal law and Order Act of 2010 will strengthen our resolve to improve.

Again, thank you for your kind invitation to appear before the Indian Law and Order Commission to provide testimony related to the cooperative efforts occurring in California.