

INDIAN LAW AND ORDER COMMISSION

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Rosebud Reservation, South Dakota

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To the Honorable Troy A. Eid, Chairman of the Indian Law and Order Commission, Jeff Davis, Executive Director of the Commission, and the rest of the distinguished Commission members, I bring you greetings from He Sapa (Black Mountains) or Paha Sapa, the Black Hills of South Dakota, my institution, Black Hills State University (BHSU) and our legislatively created Center for American Indian Studies. I am honored and humbled to be asked to provide my brief observations regarding the Tribal Law and Order Act (the Act or TLOA), Pub. L. 111-211, Title II, July 29, 2010, 124 Stat. 2263, from the perspective of a university educator, administrator and occasional scholar. In welcoming folks to South Dakota, I always highlight two striking and generally consistent statistics. First, based upon 2010 US Census projections, South Dakota has the top three poorest counties in entire nation sharing four of the top ten with Mississippi, with

¹ Native Educational Endeavors was formed by concerned Indian and non-Indian academics and attorneys with the assistance of the University of South Dakota School of Law and Black Hills State University. It incorporated in 2005 having recently received its 501(c)(3) non-profit status in 2007. Its mission is to provide educational opportunities for American Indians and to foster cross-cultural respect.

all the South Dakota counties located in Indian Country.² The second less commonly noted statistic is that South Dakota, by calculations based upon tax deductions, is exceeded by just a couple states for charitable giving.³ We live in a beautiful, yet challenging area part of America with people who have a strong sense of community and civic responsibility, yet another dimension of our motto: “Great Places, Great Faces.”

My name is John Glover and I am a professor of American Indian Studies (AIS) at BHSU, a comprehensive, public liberal arts institution offering 72 academic programs at the associates, bachelors and masters level, including major and minor programs in American Indian Studies. I also have had a long association with the University of South Dakota School of Law most recently serving as associate dean of their prominent American Indian Law program from 2007 to 2010. After practicing law briefly in Minnesota and North Dakota, I have spent the last twenty years in South Dakota higher education.⁴

“Ignorance is the parent of fear,” as my students will likely attest, is my all too often referenced favorite quote from Herman Melville’s 1851 novel The Whale or Moby Dick. In and around Indian Country here in the northern Great Plains, that fear can manifests itself between Indian and non-Indians in the forms of disregard, disrespect, ineffectual response, animosity and ultimately ongoing or reoccurring issues. There is little need for me to outline the long history of significant historic and more recent conflicts, events and issues that have occurred within this State

² “Nation’s top three poorest counties in western South Dakota,” *Rapid City Journal*, January 22, 2012 (Ziebach, Todd, Shannon and Corson Counties) http://rapidcityjournal.com/news/nation-s-top-three-poorest-counties-in-western-south-dakota/article_2d5bb0bc-44bf-11e1-bbc9-0019bb2963f4.html

³ “Most Charitable States,” Forbes.com, November 25, 2005. http://www.forbes.com/2005/11/23/most-charitable-states-cx_lh_1125home_ls.html

⁴ A copy of my curriculum vitae was forwarded with my electronic submission. Since 1992, I have not maintained a license to practice law nor do I offer anything opinions or observations that are to be considered as anything but the commentary of an academic scholar, educator and administrator.

from the Black Hills Land Case⁵ which origins date back two centuries to the 1800's, to more recent Indian civil rights matters in this last decade.⁶ Speaking as an educator, I would initially comment that those who crafted TLOA seek not only significant substantive and procedural changes involving Indian criminal and civil jurisdiction, but appear to be inherently conscious of what I would strongly argue is a critical, interdependent necessity: the need to substantially improve awareness of all involved in law enforcement to the general non-Indian and Indian public regarding Tribal sovereignty and Indian jurisdiction. Further, TLOA stated purposes include the directive for greater communication and coordination between the various law enforcement entities,⁷ specifically acknowledging this lack of contact and knowledge, which could provide opportunities to address clearly identifiable issues in collaborative, responsive and potentially far more effective and efficient way.

It is the need to promote greater awareness and to provide the requisite education and training that prompts me to note a few observations and potential opportunities which might help to achieve the intent of TLOA or at least complement its mission, goals and objectives.

The Act specifies a wide variety of the types of educational institutions, including tribal, state and local training academies that can be acceptable to train law

⁵ *United States v. Sioux Nation of Indians*, 448 US 371 (1980); see also subsequent histories such as *Black Hills, White Justice: The Sioux Nation Versus the United States: 1775 to the Present*, by Edward Lazarus, New York: Harper Collins, 1991

⁶ For example, the 2006 ACLU lawsuit in Tripp County, South Dakota, *Antoine v. Winner School District*, 59-2, No. 06-03007 (D.S.D. Mar. 27, 2006). This more recently settled case alleged race discrimination against Indians in the public school system that borders the Rosebud Sioux Indian Reservation.

⁷ Title II Law & Order Act, Sec. 202. "FINDINGS; PURPOSES(b) PURPOSES.—The purposes of this title are—(1) to clarify the responsibilities of Federal, State, tribal, and local governments with respect to crimes committed in Indian country;(2) to increase coordination and communication among Federal, State, tribal, and local law enforcement agencies;(3) to empower tribal governments with the authority, resources, and information necessary to safely and effectively provide public safety in Indian country. "

enforcement personnel “that meets the appropriate Peace Officer Standards of Training.”⁸ Consistent with the Congressional Testimony of Wizipan Garriott, Policy Advisor to the Assistant Secretary for Indian Affairs, the Bureau of Indian Affairs US Indian Policy Academy in New Mexico is the primary location providing the necessary and specialized training for Indian law enforcement. He also references the presence of other, though more general law enforcement training opportunities, offered by other state and federal entities.⁹ Due to the complexities of Indian jurisdiction and the variations with the nine Tribes in South Dakota alone, greater support for and expansion of the existing but limited specialized law enforcement training would seem prudent if not indispensable, to be offered in this region. Such specialized training shared or in collaboration with State run efforts would further advance the overall communication and collaboration goals and objectives of TLOA. Indeed encouraging greater collaboration between the existing educational entities, tribal colleges and universities, community and vocational training programs as well as state and

⁸ Subtitle C—Empowering Tribal Law Enforcement, Agencies and Tribal Governments State training and Federal requirements.”(C) TRAINING AT STATE, TRIBAL, AND LOCAL ACADEMIES.—Law enforcement personnel of the Office of Justice Services or an Indian tribe may satisfy the training standards established under subparagraph (A) through training at a State or tribal police academy, a State, regional, local, or tribal college or university, or other training academy (including any program at a State, regional, local, or tribal college or university) that meets the appropriate Peace Officer Standards of Training.

⁹ BIA and tribal programs provide a wide range of public safety services to Indian Country. These services include uniformed police services, criminal investigations, detention management, telecommunications, and tribal court assistance. To effectively provide these services, staff must receive certification in basic training skills related to their employment field. Because many Indian Country law enforcement officers cover vast areas of both extremely rural and urban terrain which often comprising several thousand square miles, high quality and specialized training is vital for protecting both the public and our officers.

Throughout the nation, many other federal and state agencies operate their own police academies, training officers in basic and advanced techniques to perform law enforcement services. Currently BIA–OJS operates the United States Indian Police Academy (USIPA) located at the Federal Law Enforcement Training Center (FLETC) in Artesia, New Mexico. The USIPA provides training to federal, tribal and local law enforcement officers who work in or near Indian Country. Prepared statement of Wizipan Garriott, Policy Advisor to the Assistant Secretary for Indian Affairs, BIA, US Department of Interior, Hearing before the Committee on Indian Affairs, March 18, 2010.

private colleges and universities could assure that all law enforcement are receiving the needed exposure to variations in criminal jurisdiction.

My examination of TLOA and the emerging commentaries have developed a growing sense of appreciation for its potential, not only in its acknowledgement of inherent tribal authority and potential for strengthening its exercise, but in its realization that local law enforcement is always preferred, and that coordinated and collaborative efforts between all law enforcement entities are even better. Again, to achieve greater effectiveness and coordination - awareness, education and training are going to be critical.

How might the existing educational, training, professional development and continuing training and education programs best foster and facilitate this process? Not being from this region, one might easily concluded that in a State such as South Dakota and those immediately around it, with our small populations, one would likely be quite familiar with all those programs and quite potentially specific individuals engaged in their mutual areas of work.¹⁰ Despite technology, I can say based upon personal experience of over twenty years in the region, that is not the case.¹¹ The actual reason for the lack of awareness and contact may indeed be a product of geography although I would strongly suggest it may have more to do with the invisible, bureaucratic walls that separate programs as tribal, state, local, regional, federal, etc. Thus, I would argue that simply bringing those various entities together and providing limited opportunities or incentives for collaboration would yield not only higher quality educational and training experiences, but would likely do so at significant cost savings. Realizing that those involved in the present process have likely considered some of the following, I would ask for your

¹⁰ Somewhat similar to the question I get while traveling when upon hearing I'm from South Dakota, I am asked if I know some particular person in Fargo.

¹¹ In fact, in South Dakota I am an anomaly having working for two State universities simultaneously and also coordinating a few programs with Tribal colleges

indulgence for a moment while I roughly outline a possible, nominal approach as an example:

- 1) Create an online based consortium of all entities conceivably involved with any aspect of law enforcement and judicial process including Indian and non-Indian high school peer justice programs, pipeline or bridge programs, all criminal justice programs, American Indian Studies law & policy, law enforcement training, paralegal and law school programs, etc.
- 2) Acknowledge the program's parent organizations, upon satisfying certain criteria including a Memorandum of Understanding, as a member or partner. (For some entities, it might be a conditional funding expectation though it may be less effective if not voluntary.)
- 3) Hold an annual meeting and encourage smaller workshops or "think tanks," some of which through internet formats, intentional including programs that normally would not directly interact.
- 4) Provide modest incentives, awards, publication or presentation opportunities for collaborative activities, programs or best practices improvements and efficiencies. The greater the diversity and broader the involvement, the more prominent the acknowledgement.
- 5) Capitalize on the emerging online offerings as we see tremendous capacity building taking place at local and regional educational institutions of all levels. Consider incentives for those institutions engaged in the newly emerging free online course work begun by universities like Stanford¹² and now offered by several other colleges and universities including MIT and Harvard.¹³ Should these efforts reflect "industry standards," such offerings

¹² <http://www.virtualprofessors.com/directory/university/stanford>

¹³ "Harvard, MIT to partner in \$60 million initiative to offer free online classes to all," Metrodesk, boston.com, May 2, 2012.

may become common amongst all colleges and universities, including those in this region.

- 6) Partner with regional non-profit entities such as the Indian Land Tenure Foundation¹⁴ and private granting organizations with American Indian program initiatives such as the Bush Foundation¹⁵ or the Northwest Areas Foundation¹⁶. Approach larger private law firms with in-house trial practice and appellate work training to collaborate on law training in Indian Country.
- 7) Provide a method of assessing, reporting and sharing the best practices that emerge, shared also with other outside departments, programs, organizations and entities involved in Indian Country.

In the event that much of this has already been or possibly implement, consider my comments as an further endorsement of such efforts, which on their surface may seem to be tangentially related to the objectives of TLOA.

In closing, I was asked by your very accommodating and excellent staff that I might also mention another project I have been involved with which again maybe an educational agenda somewhat beyond the pale of TLOA. Beginning in early 2000, and with the assistance of Chiesman Center for Democracy¹⁷ and my undergraduate class in American Indian Government and Politics, we were able to produce and publish a handbook entitled *Tribal Sovereigns of South Dakota: A*

¹⁴ <http://www.iltf.org/>

¹⁵ "Native Nation Building," <http://www.bushfoundation.org/>

¹⁶ "Investing in Indian Country," <http://www.nwaf.org/content/Native%20American%20Initiatives>

¹⁷ The Chiesman Center for Democracy is a public, nonpartisan operating organization that serves as a space and channel to provide greater awareness of the meaning of democracy and the importance of all citizens to be active participants in the democratic process. The Chiesman Center for Democracy, Inc. promotes and supports greater awareness of democracy and democratic ideals by citizens and organizations. It is an organization that provides programming for civic participation, education, and research to achieve the Center's mission and goals. <http://www.chiesman.org/index.php>

*Description of Contemporary Sioux Governments*¹⁸ in 2005. Intended as a first nominal effort to develop a “red book” similar to the blue books commonly produced by States, Tribal Sovereigns includes brief descriptions of the history, structure, demographics, geography, membership, some programs, economy, etc. of the nine Tribes in South Dakota and includes copies of each’s Constitution.¹⁹ As requested, I have submitted a copy of this book with my testimony.²⁰

A likely more relevant resource produced by my esteemed colleague, mentor and friend Law Professor Frank Pommersheim,²¹ is the South Dakota Tribal Court Handbook now in its third publication as of 2006 and available online.²² As a personal comment I wish to specifically acknowledge and highlight the tremendous work and accomplishments of Professor Pommersheim, particularly in this region and certainly beyond.²³

¹⁸ ISBN-10: 0971857237.

¹⁹ As anyone who teaches in American Indian Studies or related areas will attest, there is a lack of curriculum for discussing contemporary Tribal sovereignty. In addition to those more obviously interested in the handbook, I am aware that it continues to be used by particularly South Dakota schools with significant Indian student populations.

²⁰ Chiesman Center was able to produce 1000 soft cover copies sold below cost at \$19.95. I understand few new copies remain available but can be purchased on the secondary markets.

²¹ Professor Pommersheim has lived in South Dakota for more than 35 years. Prior to joining the faculty at the University of South Dakota in 1984, he lived and worked on the Rosebud Sioux Reservation for ten years. He currently serves on a number of tribal appellate courts throughout Indian country including Chief Justice for the Cheyenne River Sioux Tribal Court of Appeals and the Rosebud Sioux Supreme Court. Professor Pommersheim writes extensively in the field of Indian law. He is the author of *Braid of Feathers (American Indian Law and Contemporary Tribal Life)* and numerous scholarly articles. Frank is a contributor to the 2005 edition of *Felix Cohen’s Handbook of Federal Indian Law* and his newest book, *Broken Landscape: Indians, Indian Tribes, and the Constitution*, was published in 2009 by Oxford University Press and has recently been released in paperback. Professor Pommersheim has also received the University of South Dakota Belbas-Larson Award for Excellence in Teaching, the South Dakota Peace and Justice Center Reconciliation Award, and the John Wesley Jackson Award as the Outstanding Professor of Law.

²² <http://www.sdjudicial.com/uploads/downloads/IBook/IndianLaw%20Handbook.pdf> .

²³ Professor Pommersheim in my humble estimation, and certainly amongst his peers, is one of the nation’s leading legal theorists in American Indian law and jurisprudence, with perspectives as a Tribal Judge and attorney that go beyond the experiences of many academics in this field. One need only look at Professor Pommersheim’s numerous former law students who maintain prominent positions as legal and governmental professional involved

Resources directly related to the Tribal governments, Indian law and policy and the legal systems specifically located in this region are few and far between.

Organizations like previously mentioned Chiesman Center for Democracy and the Bush Foundation in particular, continue to consider further development to address these needs and could easily be encouraged and supported in such efforts.

Again, welcome to Indian Country in South Dakota and I trust you will enjoy the hospitality of all its communities. I thank you for the invitation to appear before you and respect each of your personal contribution to Indian Country through the important though arduous tasks in which you are now engaged.

in American Indian law and policy in the public and private sectors, as well as, with academia. I understand Frank was unable to attend this session and appreciate his recommendation for me to participate. Regardless, I would highly suggest the Commission seek out his written testimony should they have not done so already.