



Department of Justice

STATEMENT OF BRENDAN V. JOHNSON
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FOR THE DISTRICT OF SOUTH DAKOTA

UNITED STATES DEPARTMENT OF JUSTICE

BEFORE THE
INDIAN LAW AND ORDER COMMISSION

PRESENTED ON
MARCH 7, 2012

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United States Attorney for the District of South Dakota
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Good Afternoon, Mr. Chairman, and Members of the Indian Law and Order Commission. My name is Brendan Johnson, and I am the United States Attorney for the District of South Dakota and Chairman of the Attorney General's Advisory Committee's Native American Issues Subcommittee at the Department of Justice.

I want to open my remarks today by thanking Chairman Eid for his contributions to the work of the Native American Issues Subcommittee ("NAIS"). Chairman Eid has now appeared before the NAIS on two separate occasions, in Rapid City, South Dakota and Albuquerque, New Mexico. During both meetings he provided the NAIS with an update on the progress of the Commission and shared with us some of the valuable input that you have received from Tribal leaders across the United States. As a former United States Attorney, Chairman Eid's insights have been of great value to the NAIS. I also want to recognize former Representatives Stephanie Herseth-Sandlin and Earl Pomeroy. Their work on the Tribal Law and Order Act, as well as their contributions in Indian Country long before the Act was a reality, have served to inspire many of us on the NAIS, myself included. Finally, I want to acknowledge the Commission's Executive Director Jeff Davis. Mr. Davis is a great asset to the Department of Justice, and while we look forward to his return, we also applaud the important work he is doing for the Commission.

The U.S. Attorney community recognizes that the challenges facing Indian Country require continuing focus and commitment. It has been my experience that the Attorney General's Department-wide initiative to enhance public safety in Indian Country, coupled with enactment of the Tribal Law and Order Act, is beginning to yield significant progress in public safety and justice throughout Tribal nations. Early in this Administration, the Attorney General, Deputy Attorney General, and Associate Attorney met with Tribal leaders to discuss how to improve Tribal public safety. Since then, virtually every component of the Department has taken steps to improve its work to serve American Indian and Alaska Native people. My testimony today focuses on the important work of the U.S. Attorneys Offices across the country, which have the primary role for prosecuting Federal crimes in Indian Country.

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) each of the 46 U.S. Attorney's Offices ("USAOs") 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 develop or update the district's operational plan for Indian Country public safety within eight months of assuming office. As a result, every USAO with Indian Country responsibility has developed an operational plan, and 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 for improving public safety in their communities. Some of the highlights of our new operational plan in South Dakota include (1) a community prosecutor who spends approximately four days each week working at his office on the Pine Ridge Reservation; (2) Tribal Prosecutors cross-designated to serve as Special Assistant United States Attorneys (“SAUSAs”) who work in the USAOs and 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 at which USAO personnel and Tribal law enforcement discuss cases involving sexual abuse against children; (8) a Tribal Youth Diversion Program that allows the cases of 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, which was held on September 29, 2011 and focused 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 North Dakota’s 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. 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 Native communities. 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. By fostering relationships of trust and developing confidence in the justice system, the goal is that 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 through the initiative. 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 will work 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 Tribal communities by having the U.S. Attorney personally host a quarterly Indian Country Public Safety meeting which 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. 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 a variety of 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 estimates that, due in part to cooperation with several tribal law enforcement agencies, the district’s declination rate has dropped significantly in recent months.

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 presented, with Coeur d'Alene Tribal personnel, a training session 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 examples provided in my testimony constitute a small sample of the work that United States Attorneys have been engaged in to improve public safety in Indian Country. We believe in this work. We respect the tribes and the people we serve. And we believe that our strengthened government-to-government relationships with Tribal nations has helped to improve the safety and security of all those who live in and around Indian

Country.

