



# SYCUAN TRIBAL POLICE DEPARTMENT

ORI# CADIT0400

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5459 Dehesa Road • El Cajon • California • 92019

*William Denke*  
*Chief of Police*

## **Written Testimony before the Indian Law and Order Commission, 02-16-2012**

Greetings honorable members of the Indian Law and Order Commission:  
My name is Bill Denke; I've been the police chief for the Sycuan Band of the Kumeyaay Nation in San Diego County for the past 7 years. I am also the current chairman of the California Tribal Police Chiefs' Association and the vice-chairman of the International Association of Chiefs' of Police (IACP), Indian Country Section. Prior to my appointment as chief of police for Sycuan, I spent more than ten years grappling with tribal justice issues that are unique to California for the tribe. I am truly honored to have the opportunity to testify to such a distinguished group of people who have spent countless hours of their careers making Indian Country safer place to be for all those who live there, work there, and visit.

It is more than safe to say by now that Public Law 280 has hindered the development of tribal justice systems in California. This hindrance has been exacerbated by the large number of Reservations and Rancherias, along with the gross disparity in population sizes and geographical locations, as well as the lack of sustainable federal funding. As a matter of fact, if it weren't for the economic development of a number of tribes in California, the recent success and development of their tribal justice systems would not have occurred.

As tribes frame their justice systems, which includes the development of their law enforcement programs, things seem to be more amenable when it comes to collaboration with the state and local governments as of late. However their still seems to be contention with the state/local governments when we start talking about criminal enforcement against non-Indians within our tribal communities. This criminal enforcement becomes a big issue when a number of reservations' visiting populations, or so-called transient non-Indian populations, outnumber tribal residential populations as much as 10-to-1. As a result, more than 90% of the crimes being committed on many reservations in California are being perpetrated by non-Indians.

Although I have first-handedly seen the importance of our tribal court development, and the success it enjoys when tribal interest-cases in state court are brought back to the tribe's court for adjudication, we cannot lose focus on finding a solution to mitigate non-Indian perpetrated crime on our reservations. In 2001, as testified to by

Olin Jones in a previous hearing, in an attempt to give tribal law enforcement officers criminal enforcement authority over non-Indians, a state senate bill was introduced to give qualified tribal law enforcement officers California peace officer status. The California Attorney General's Office, as a neutral party, hosted several meetings between tribal leaders, opposing sheriffs and other law enforcement agencies. Even though some consensus was made with hiring requirements and California peace officer training standards, the issue of tort claims against tribal law enforcement officers became insurmountable and the bill died.

In hind-sight it was probably too big and broad of a step to take, especially since there hadn't been much collaboration between tribes and counties before the legislation was proposed. Also, other issues such as a tribe's police department's ability to be insulated as a law enforcement agency from the day-to-day political influence of the tribe, and for the tribal law enforcement organization to remain transparent when working with its federal, state, and local partners were stumbling blocks. These issues were never really put on the table for discussion, but were definitely brought up during *side-bar* meetings while the negotiations were taking place.

At the time, I completely agreed with other tribal justice official and leaders, that the opposition was a move against the tribes' sovereign right to self govern. What not a more beautiful exercise of self government---a fully complimentary tribal justice system, capable of policing anyone on their lands, no matter if Indian or non-Indian.

As time has gone by and I have had the opportunity to be a part of a number of successful collaborative efforts with the state and local government agencies, I have a slightly different perspective now. I still agree that the ability to police anyone on tribal lands is a powerful exercise of self government, however, I don't think the opposition at the time was always a direct an attack on a tribe's sovereignty. Nobody was telling the tribes how to enforce its own laws against its members or other Indians, nor impose regulations on those tribal enforcement programs that only enforced tribal law. Rather, as I had heard more than once," if we want to play in the proverbial sandbox of state jurisdiction then we need to play by the same set of rules."

If state legislation is too big and broad of a step, what steps do we take in order to move forward? In 2006, Sycuan took a bit of a smaller step by entering in to a deputation agreement with the Bureau of Indian Affairs, Office of Justice Services (OJS) to issue Special Law Enforcement Commissions (SLEC) to its qualified officers. The idea was first, and most importantly, to allow Sycuan's police officers to enforce applicable federal laws, especially drug offenses, along with working more interoperably with other law enforcement agencies in the area.

Collaterally, it would also allow Sycuan's police officers to enforce certain state violations. According to state law, specifically Penal Code Section 830.8, federal law

enforcement officers can enforce state law incidental to their federal enforcement duties when there is an immediate danger to persons or property as long as the officers have met the minimum state peace officer training requirements. The section goes on to say that federal law enforcement law enforcement officers who meet the State's training requirements are **defined as state peace officers** when enforcing laws on federal land with the **permission of the sheriff**.

Although there has been recognition by some county sheriffs with their respective SLEC tribal officers on the first part of this state section, movement on latter part of the section, giving federal officers broader state peace officer authority has been slow to develop throughout the state. A contributing factor to this was misinformation that came out of Office of Justice Services before Darren Cruzan was appointed Deputy Bureau Director, watering down, and sometimes contradicting our deputation agreements. There was even a written document that referred to tribal law enforcement officers holding SLECs as "neutered" BIA police officers. Not only was this insulting to tribal leaders trying to move their law enforcement programs forward via an SLEC program, the negative impact on state and county collaboration was resounding.

This negative impact did not just affect the forward movement of enforcing state and federal laws, but also affected the ability to work out interoperable radio communication agreements with local law enforcement agencies as well as access agreements to state criminal databases. Because of this, tribal law enforcement officers continued to, and some cases still, operate completely in the dark---no way of knowing who they are contacting and if the person they are contacting is wanted on an egregious felony warrant with no way of hailing another law enforcement agency for assistance.

Fortunately after the Tribal Law and Order Act (TLOA) was signed into law, and soon after Darren Cruzan was appointed Deputy Bureau Director of BIA OJS, we started to notice a shift from a lack of OJS support to the fostering of a true collaborative partnership. Director Cruzan has come to the table, heard our concerns and has started to act on them. On April 22, 2011, I received notification from Director Cruzan that he had sent out a letter clarifying our SLEC officers as "deputized BIA police officers" and rescinding previous written communications that had undermined the authority of an SLEC officer in California (see attachment). Deputy Cruzan has also established a new, much needed, OJS district for California specifically. This should make the statement to other stakeholders in California that BIA OJS has a law enforcement interest in this state.

Since the TLOA was signed into law, most, if not all, tribal law enforcement agencies with BIA deputation agreements in California have noticed that their respective U.S. Attorneys' Offices have reached out with technical assistance, along with directly accepting cases that meet their prosecutorial guidelines, and for lesser infractions---utilization of the Central Violations Bureau of U.S. District Court. However, I must say, without any insult to the U.S. Attorneys' Offices, there are many cases of

concurrent federal/state jurisdiction which I feel are better prosecuted at the state level. Examples of these would be many of our drug related cases along with all violations that fall below the U.S. Attorneys' Offices thresholds for prosecution, but at the same time are too serious to be adjudicated through the Central Violations Bureau.

### **Accessing State and Federal Law Enforcement Sensitive Databases**

The California Attorney General's Office has opined that tribal law enforcement agencies in California do not qualify for access into the state's system, the California Law Enforcement Telecommunications System (CLETS) under California's Government Code. The hang up is the requirement for the law enforcement agency to be defined as a *public agency*. In California CLETS is the gateway to national databases through the National Crime Information Center (NCIC). As a work around to this problem, in 2010 under the direction of Attorney General Holder and facilitated by the Office of Tribal Justice, FBI vetted tribal agencies were sponsored by the Justice Department for connectivity to NCIC and the National Law Enforcement Telecommunications System (NLETS). NLETS provides the interstate sharing of law enforcement information, however, not all CLETS information can be accessed through NLETS. Examples of inaccessible state information is, but not limited to: parole and probations status, local warrants, photographs, detailed motor vehicle information, firearms files, and *be-on-the-lookout* information.

Although, the tribal law enforcement agencies that currently have access to NCIC and NLETS initially hit a snag with accessing state information via NLETS, California Attorney General Kamala Harris' staff along with the BIA Office of Justice Services Deputy Bureau Director Cruzan's staff have collaborated to fix it, thus allowing Justice Department sponsored tribal law enforcement agencies with SLEC officers access. **It is very important to note though**, until vetted tribal law enforcement officers have full access to CLETS, there will remain a huge officer safety issue in California's Indian Country. With that being said, I strongly encourage the collaboration between the California Attorney General's Office and the BIA Office of Justice Services to continue in an effort to find resolve. And for the local sheriffs who are assisting with this, I commend.

### **Best Practices**

In San Diego County, most public agencies, public safety and civilian alike, operate their radio communications on the Regional Communications System. Historically tribal law enforcement agencies did not qualify for the law enforcement talk-groups, rendering them completely non- interoperable with all other law enforcement agencies in the region. The danger to this never stood out more than this past year when one of Sycuan's SLEC tribal polices officer spotted a dangerous federal fugitive wanted by the U.S. Marshal's Service.

The subject of interest failed to yield to the police officer and proceeded to flee; a loaded semiautomatic firearm was thrown from the vehicle within the first half of a mile into the pursuit. The pursuit continued for approximately 8 miles when the Sycuan police officer began to slow down because the subject vehicle was approaching a busy intersection and he still didn't have any other agency assisting him. The lag time with other agency assistance was because the officer had to radio back to a dispatcher on the Sycuan Reservation, and the Sycuan dispatcher had to communicate with the sheriff's department via land-line.

The subject vehicle ended up colliding with another vehicle within a quarter mile after the officer slowed down. The Sycuan police officer was able to apprehend the driver after a short foot pursuit---still without assistance; one of the other two occupants of the vehicle was a parolee who was arrested near the scene of the collision by a deputy sheriff. The subject driver, who had a felony history of assaulting peace officers, had a large amount of methamphetamine in her possession along with products to help package the methamphetamine for distribution. Also, the vehicle she was driving had been reported stolen. One of the first things spoken by the subject to the police officer was that she didn't think tribal police officers had any authority and that when she had ran from them in the past, no action was ever taken against her.

The San Diego County District Attorney's Office successfully prosecuted the case, including the charge of felony fleeing from a peace officer. Although this cooperation was much appreciated, it was the cooperation and collaboration between the San Diego Sheriff's Department and the Sycuan Tribal Police Department after the incident that is the most historical.

Essentially, the San Diego Sheriff's Department, in collaboration with the Sycuan Tribal Police Department, amended the governing policy of the Regional Communications System (see attachment). This allowed tribal law enforcement agencies with SLEC officers, full access to all law enforcement talk-groups. Within three months of the aforementioned incident, Sycuan's police officers radio communications were 100% interoperable with every local law enforcement agency.

Some irony to this was, within the first 24 hours of implementation, a sheriff's deputy hailed our officers on the radio to assist with a high-risk vehicle stop near the reservation. A Sycuan police officer was on scene with that deputy within two minutes. To add to the irony, local sheriff's deputies and Sycuan's police officers had just completed high-risk vehicle stop training together just days before.

This best practice is not an isolated example of how recent collaboration is a win-win for all involved. From joint investigations, to community oriented policing projects with our county, state, and federal counterparts, to recent discussions on direct prosecution of our cases with the district attorney's office, are allowing Sycuan tribal police officers along with their county and state partners to more effectively and efficiently police the local area on and off the reservation. The goal here is for each

agency's roles to be defined, but at the same time the application of law enforcement services, from the public's perspective, be seamless.

In conclusion, it's very clear that recent progress in California, with regard to enforcement issues of non-Indians and the sharing of law enforcement sensitive information is predicated on tribal law enforcement programs entering into deputation agreements with the Office of Justice Services. Just as important though, is a tribal law enforcement agency's ability to remain transparent. The term "*law enforcement transparency*" is often tied to a police agency being held accountable by the people it serves. I like to take that term a bit further though and apply it to our partnerships and collaborative efforts with local, state, and federal law enforcement agencies. Tribal police agencies sharing department policies and procedures, law enforcement sensitive information and reports, entering into MOUs spelling out specific enforcement roles, are all part of operational transparency. This also includes agreeing to operate in a way that is consistent with our allied law enforcement partners in regard to hiring and training standards, key polices such as the use of force, vehicle pursuits, and critical incident response.

I want to be clear that I am not condemning a future wholesale legislative remedy to recognize qualified tribal police officers as state peace officers, especially for those tribal areas of the state where requested good faith collaboration is falling on deaf ears. However, I do feel, if it can be worked out, that agreements at the local level can be more flexible and specific to finding resolve to local needs, especially when our federal partners, such as the Office of Justice Services are supporting us from behind.

Again, thank you for offering me the opportunity to testify to the Indian Law and Order Commission. I am always available to discuss other best practices and lessons learned as it applies to my experience with tribal policing in California.