

STATEMENT

OF

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BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

CONCERNING

S. 1508, TECHNICAL AND LEGAL ASSISTANCE TO
TRIBAL JUSTICE SYSTEMS AND MEMBERS OF
INDIAN TRIBES

PRESENTED ON

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Good morning, Mr. Chairman and Members of the Committee. I am Mark Van Norman, Director, Office of Tribal Justice, Department of Justice. Thank you for inviting me to testify on S.1509, the Indian Tribal Justice Technical and Legal Assistance Act of 1999.

In our view, S. 1508 would complement the joint Justice-Interior Indian Law Enforcement Improvement Initiative. The bill would promote the development of sound tribal justice systems by increasing resources for training and technical assistance. In addition, the bill would provide adjunct civil legal assistance to impoverished tribal members which would be significant in relation to civil rights, child custody matters, housing, social services, and other areas. Tribal members are often underserved in these areas. The bill would enhance criminal legal assistance to indigent Indian defendants and impoverished families and young people in the tribal justice systems, which, in addition to being desperately needed now, seems only fair in view of the increases in funding for tribal law enforcement. In our view, improving assistance to Indian communities in these areas would improve the administration of justice in tribal courts and enhance our overall efforts to improve tribal law enforcement and justice systems.

I. Government-to-Government Relations

Let me begin by emphasizing the fundamental principles that guide the work of the Department of Justice with Indian tribes, before discussing the problems of violent crime among American Indians, and our current efforts to assist tribal courts and justice systems.

Congress and the Executive Branch acknowledge the importance of working with Indian tribes within the framework of government-to-government relations when tribal self-government, tribal land and resources, treaty rights, or other tribal Rights are concerned. Federal Government-to-government relations with tribal governments are rooted in historical treaty relations and the

ongoing trust responsibility of the United States, President Clinton recently affirmed that:

Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. In treaties, our Nation has guaranteed the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory.

Similarly, Congress has declared that the Federal trust responsibility “includes the protection of the sovereignty of each tribal government.”

II. Violent Crime and Law Enforcement in Indian Country

In addition to the Federal Government's trust relationship with Indian tribes, the United States' basic responsibility to preserve public safety for residents of Indian communities derives from federal statutes, such as the Indian Major Crimes Act and the General Crimes Act, that provide for federal jurisdiction over felony crimes, such as murder, rape, robbery, and serious assaults by or against Indians in Indian country. The U.S. Attorneys prosecute such felony crimes in most of Indian country. Tribal police and law enforcement agencies serve as first responders to Indian country crimes and assist the FBI and the BIA in responding to and investigating felony crimes. Tribal courts and prosecutors try and punish misdemeanor Indian crimes. Thus, an effective tribal criminal justice system is an essential adjunct to effective Federal law enforcement in Indian Country.

While crime rates have fallen throughout the Nation, federal and tribal law enforcement agencies report that violent crime in Indian country is rising. The Bureau of Justice Statistics - (B.J.S.) explained in its report, *American Indians and Crime* (1999), that American Indians have the highest violent crime victimization rates of any group in the Nation. From 1992-1996, the

violent victimization rate for American Indians (124 violent crimes per 1,000) was more than twice the rate for the Nation as a whole (50 per 1,000). Violence against American Indian women is severe. American Indians suffer 7 rapes or sexual assaults per 1,000 compared to 3 per 1,000 among Blacks, 2 per 1,000 among whites, and 1 per 1,000 among Asians. Child abuse and neglect are also serious problems among American Indians. The National Child Abuse and Neglect Data System of the Department of Health and Human Services reports that the rate of substantiated child abuse and neglect among American Indian children was the highest of any group in 1995 (the most recent year for which statistics were available).

Violent crime by juvenile offenders and Indian youth gangs is on the rise in many Indian communities. The number of Indian youth in Bureau of Prisons (BOP) custody has increased by 50% since 1994. Demographics contribute to the growing problem of juvenile delinquency and violence in Indian country. Throughout the Nation, the median age of American Indians is 24.2 years compared with 32.9 years for other Americans. On many Indian reservations, roughly half of the population is under 18 years of age.

In 1997, recognizing the severity of violent crime problems in Indian country, the President directed the Attorney General and the Secretary of the Interior to develop a plan to improve public safety and criminal justice in Indian communities. The DOJ/DOI Executive Committee on Indian Country Law Enforcement Improvements found that tribal police and criminal justice systems face severe shortages among police, criminal investigators, detention, and court staff and resources. Tribal law enforcement agencies also lack basic communications and information equipment and technology. The Navajo Nation, the largest land based Indian tribe with 17 million acres of land, has 0.9 police officers per 1,000 compared with 2.3 officer per 1,000 in off-reservation communities. The Attorney General and the Secretary approved the

Executive Committee's findings and recommendation to increase law enforcement assistance to tribal governments. In response, the Administration established the Indian Law Enforcement Improvement Initiative. In Fiscal Year 1999, Congress appropriated \$89 million for the Justice Department for grants to Indian tribes for tribal law enforcement officers, equipment, detention centers, juvenile justice programs, and tribal courts, and for more FBI agents in Indian country. For Fiscal Year 2000, the Administration has requested \$124 million for the Justice Department for the Indian Law Enforcement Improvement Initiative, including \$5 million for tribal courts.

III. Tribal Courts, Criminal and Civil Justice

Under the longstanding Federal policy promoting self-government for Indian tribes, the United States has consistently promoted the development of tribal courts. Under the Indian Reorganization Act of 1934, for example, Congress encouraged Indian tribes to develop and ratify written constitutions and in assisting Indian tribes under the Act, the Secretary of the Interior encouraged tribal governments to develop tribal courts. Similarly, the Indian Civil Rights Act affirms tribal court jurisdiction over crimes by Indians in tribal territory. Tribal courts also have recognized authority over civil matters, such as domestic relations, probate, torts, housing, debt collection, environmental regulations business activities on Indian lands, management of Indian lands and natural resources, and other matters. Congress has declared that tribal courts are “appropriate forums for the adjudication of disputes affecting personal and property rights” and “for ensuring public health and safety and the political integrity of tribal governments.”

Recognizing the evolving role of tribal courts within our Federalist system, the Honorable Sandra Day O'Connor, Associate Justice of the United States Supreme Court, has written:

Today, in the United States we have three types of sovereign entities -- the Federal government, the States, and the Indian tribes. Each of the three sovereigns has its own

judicial system, and each plays an important role in the administration of justice in this country.... The role of tribal courts continues to expand, and these courts have an increasingly important role to play in the administration of the laws of our nation.

Under the Indian Self-Determination Policy, tribal court systems have been rapidly expanding to serve their communities. In 1978, there were “71 tribal courts, 32 CFR courts, and 16 traditional courts.” Today, there are over 250 tribal courts, including intertribal court systems like the Nevada Intertribal Court of Appeals, which serves 24 Indian tribes. Tribal court dockets are increasing dramatically. In 1996, the Honorable William C. Canby, Jr., Senior Circuit Judge, United States Court of Appeals wrote that:

The tribal courts are doing a huge business, and we in the federal and state judiciary could not do without them. The courts of the Navajo Nation this year will decide about 25,000 civil and criminal cases, and this figure does not include traffic offenses, juvenile matters, alternative traditional court proceedings, or appeals. The smaller Gila River Indian Community Court decided 3,200 cases last year. A disappearance of the tribal court system would be a major disaster, not just for the tribes and their courts, but for our whole national system of civil and criminal justice.

In our policy on government-to-government relations with Indian tribes, the Justice Department has pledged to “support and assist Indian tribes in the development of their law enforcement systems, tribal courts, and traditional justice systems.” See 61 Fed. Reg. 29424 (1996). In 1995, the Justice Department helped to coordinate an academic conference and an articles symposium on tribal courts, and the Attorney General explained:

While the federal government has a significant responsibility for law enforcement in much

of Indian country, tribal justice systems are ultimately the most appropriate institutions for maintaining order in tribal communities. They are local institutions, closest to the people they serve. With adequate resources and training, they are most capable of crime prevention and peace keeping....

Tribal courts are essential mechanisms for resolving civil disputes that arise on the reservation or otherwise affect the interests of the tribe or its members. The integrity of and respect for tribal courts are critical for encouraging economic development and investment, on the reservations by Indians and non-Indians alike.

Tribal courts are also important vehicles for helping to resolve family problems. They can bring families together and hold parents and children accountable to themselves, each other, and the community."

The Justice Department supports the BIA's efforts to provide assistance to tribal courts, and with our departmental mission of strengthening and assisting state, local, and tribal law enforcement and justice systems, we have begun complementary efforts to support and assist tribal courts and justice systems throughout the Nation. The Justice Department is working to promote cooperation between the Federal, tribal, and state court systems. For example, the Justice Department has sponsored Federal-Tribal judicial training on child sexual abuse cases, and the Office for Victims of Crime (OVC) is working with the University of North Dakota to fund scholarships for tribal judges to attend OVC training workshops on other issues related to crime victims. The National Judicial College, which provides training courses for Federal and state judges, is developing a special curriculum for tribal court judges under a Justice Department grant. Similarly, recognizing the significance of traditional tribal justice systems, the Office of Juvenile Justice and Delinquency Prevention will sponsor a workshop on traditional tribal justice

at the Mississippi Band of Choctaw's tribal headquarters in November 1999.

The Justice Department has also included a number of tribal courts in grant programs generally available to state, local, and tribal justice systems, like the Drug Courts Program (DCP). For example, the Hualapai Tribal Court of Arizona used a DCP grant to establish a "Wellness Court" to assist tribal members who are chronically involved in the criminal justice system due to non-violent alcohol-related offenses. Several Alaska Native villages, which suffer from high levels of alcohol abuse, have initiated similar DCP efforts. For Fiscal Year 1999, the Drug Courts Program has made 7 planning grants and 2 implementation grants to Indian tribes, totaling \$506,448 out of its \$40 million national program.

In addition, when planning the Indian Law Enforcement Improvement Initiative, tribal courts were facing rapidly increasing caseloads and we recognized that the influx of funding for tribal police officers would inevitably increase tribal court caseloads further. So, the Justice Department included a tribal court program as an essential part of the overall initiative to fight violent crime and promote public safety. For Fiscal Year 1999, Congress appropriated \$5 million under the Justice Department Tribal Court program "to assist tribal governments in the development, enhancement, and continuing operations of tribal justice systems." Demonstrating the high level of need for this program, 181 Indian tribes submitted applications for funding under this program. From among these applications, on behalf of the Office of Justice Programs, the Bureau of Justice Assistance (BJA) is awarding 15 large tribal court enhancement grants ranging up to \$100,000, 15 small tribal court enhancement grants ranging up to 50,000, and a number of tribal court planning grants of up to \$30,000. In addition, BJA will award substantial tribal court technical assistance grants and one or more tribal court technical assistance providers.

As noted above, for Fiscal Year 2000, the Justice Department has requested \$5,000,000

for the Tribal Court Program. We recognize that “tribal courts play a vital role in tribal self-government,” and we view the Department's Tribal Court program as a very significant component of the overall joint Justice-Interior initiative to improve tribal law enforcement and justice systems to address violent crime in Indian communities.

The Bureau of Indian Affairs provides baseline funding for tribal courts through the Indian Self-Determination Act, In FY 1999, the BIA had just over \$11 million for tribal courts through this program and the Administration has requested nearly \$14 million for FY 2000.

IV. S. 1508, the Indian Tribal Justice Technical and Legal Assistance Act of 1999

As noted above, in our view, S.1508, the Indian Tribal Justice Technical and Legal Assistance Act of 1999, would complement the joint Justice-Interior Indian Law Enforcement Improvement Initiative, and we have several specific comments in relation to the provisions of the bill.

In regard to the findings, we suggest that finding (3) be redrafted as follows: "the rate of violent crime victimizations committed against American Indians is more than twice, the national rate of violent Crime victimizations." This will ensure that the finding better reflects the results of the BJS Report on American Indians and Crime (1999). In regard to tribal self-sufficiency, we recognize that many Indian tribes suffer high unemployment rates and economic deprivation and sound tribal court systems are an essential part of the tribal governmental infrastructure necessary to attract business to Indian communities Addressing the White House Conference on Building Economic Self-Determination in Indian Communities on August 5, 1998, the Attorney General said: “[I]t is important ... to focus attention on tribal courts and ... to give them the resources necessary to do the job.”

In regard to Section 101, Tribal Justice Training and Technical Assistance Grants, we

recommend that Indian tribes be among the membership of national or regional membership organizations and associations receiving grants hereunder. For examples the National Congress of American Indians (NCAI) is a national membership organization consisting of Indian tribes, and NCAI may well be an appropriate technical assistance provider for tribal justice training. In regard to Section 102, we recommend inserting Indian tribes as eligible grantees because some Indian tribes are developing legal advocacy offices for tribal members in the area of violence against women and other areas. Consistent with the principle of government-to-government relations, Indian tribes should also be included to provide governmental and community services to Indian communities under their jurisdiction. In addition, to avoid duplication in the provision of services to Indian communities, we recommend that non-profit entities be required to submit a statement of support from the tribal government with jurisdiction over the Indian community or communities to be served, or a statement demonstrating that there is no duplication of or conflict with existing tribal government services in the area.

In regard to Section 103, similar changes should be made to promote consistency with the Principle of government-to-government relations and to avoid duplication of services. Moreover, where there is funding for the public defense, of indigent defendants in the Federal courts under the Criminal Justice Act, tribal courts are not receiving funding under that Act, Accordingly, it would be appropriate to ensure that funding under this section is primarily directed to enhancing the public defense of indigent defendants in tribal courts. We are available to work with the Committee's staff on these issues, if that would be of assistance.

V. Conclusion

In conclusion, American Indian communities face serious problems of rising violent crime, including violence against women, gang activity, juvenile delinquency, and child abuse. Federal

and tribal law enforcement officials in the field report that poverty and alcohol abuse are substantial contributing factors to these problems. Justice and Interior have undertaken the Indian Law Enforcement Improvement Initiative to address these crime problems. S. 1508 would complement our overall initiative.

Tribal courts are also an important part of the tribal governmental infrastructure necessary to build economic self-sufficiency in Indian communities. This bill would enhance the development of strong tribal courts, and thereby, promote the long-term goal of economic self-sufficiency for Indian communities.