



U.S. Department of Justice

Office of the Deputy Attorney General

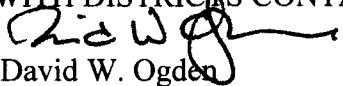
The Deputy Attorney General

Washington, D.C. 20530

January 11, 2010

MEMORANDUM FOR UNITED STATES ATTORNEYS
WITH DISTRICTS CONTAINING INDIAN COUNTRY*

FROM:


David W. Ogden
Deputy Attorney General

SUBJECT: Indian Country Law Enforcement Initiative

This memorandum implements a critical component of the Attorney General's initiative to improve public safety in tribal communities by setting forth new policy for U.S. Attorneys' Offices (USAOs) with Indian Country jurisdiction, and by identifying as a Justice Department priority the goal of combating violence against women and children in tribal communities.

The Department of Justice recognizes the unique legal relationship that the United States has with federally recognized tribes. As one aspect of this relationship, in much of Indian Country, the Justice Department alone has the authority to seek a conviction that carries an appropriate potential sentence when a serious crime has been committed. Our role as the primary prosecutor of serious crimes makes our responsibility to citizens in Indian Country unique and mandatory. Accordingly, public safety in tribal communities is a top priority for the Department of Justice.

Indian Country Law Enforcement Initiative

The Attorney General has launched a Department-wide initiative on public safety in tribal communities. As part of this effort, Department of Justice leadership conducted a series of meetings across the country addressing violent crime in Indian Country. On October 28-29, 2009, the Justice Department convened a national tribal leaders listening session in St. Paul, Minnesota. Also in October, the Justice Department held its annual tribal consultation on violence against women, as required by the Violence Against Women Act of 2005. The Department again had the opportunity to engage with tribal leaders on public safety in tribal communities during the White House Tribal Nations Conference in November. In addition to these sessions with tribal leaders, Department leadership has conducted meetings with Indian Country experts on law enforcement and public safety efforts. I also have had the opportunity to

* A list of districts that contain Indian Country as of the date of this memorandum is attached hereto as Appendix A.

meet with our own Justice Department specialists in the field – including U.S. Attorneys with significant Indian Country responsibility, Assistant U.S. Attorneys serving as Tribal Liaisons, and FBI Special Agents and Victim Witness personnel working in Indian Country – and have relied on their invaluable insights.

Tribal leaders have confirmed what our own experts working in Indian Country have reported: violent crime in Indian Country is at unacceptable levels and has a devastating impact on the basic quality of life there. Many tribes experience rates of violent crime far higher than most other Americans; indeed, some face murder rates against Native American women more than ten times the national average. Tribal law enforcement resources are typically scarce, a problem exacerbated by the geographic isolation and/or vast size of many reservations. Federal and state resources devoted to Indian Country have also typically been insufficient to address law enforcement needs.

Despite these challenges, tribal governments have the ability to create and institute successful programs when provided with the resources to develop solutions that work best for their communities. And the tireless efforts of the dedicated women and men working for the Department of Justice in Indian Country to seek justice for victims of crime, hold offenders accountable, and safeguard tribal communities are commendable. Assistant U.S. Attorneys and federal prosecutors serving as Tribal Liaisons continue to contribute greatly to the success of those efforts; Safe Trails Task Forces, coordinated by the FBI, play a critical role in coordinating law enforcement in tribal communities; FBI agents work tirelessly to investigate Indian Country crimes; and FBI and USAO victim specialists working in Indian Country are often the sole providers of essential services for the victims of violent crime there.

There is no one-size-fits-all solution to the challenges confronting Indian Country. Indeed, each district and each tribe presents a different set of issues. It is clear, however, that our success depends on the leadership of our U.S. Attorneys, and the focus and commitment of our law enforcement personnel in the field. This memorandum therefore directs each U.S. Attorney with Indian Country jurisdiction to establish a structure and plan for that leadership and focus in his or her district.

In developing this directive, I have worked closely with the Attorney General's Advisory Committee through its Native American Issues Subcommittee (NAIS) and the Executive Office for United States Attorneys (EOUSA), and I am grateful to them for their leadership in this area. I have also asked the NAIS and EOUSA to identify next steps for implementing this directive at the NAIS's January meeting.

U.S. Attorney Consultations and District-Level Operational Plans

The United States has a government-to-government relationship with federally recognized Indian tribes. The success of any intergovernmental relationship is based on consistent and effective communication. Moreover, the public safety challenges in Indian Country are not uniform; they vary widely from district to district – and from tribe to tribe – based upon unique conditions, a complex set of legal jurisdictional issues, geographic challenges, differences in tribal cultures and the number of tribes and reservations within a particular district.

Accordingly, I direct every USAO with Indian Country in its district to engage annually, in coordination with our law enforcement partners, in consultation with the tribes in that district. In addition to tribal governmental and law enforcement leaders, consultation sessions should include other federal law enforcement partners, including FBI, BIA, USMS, DEA, and ATF, and, where appropriate, state and local law enforcement. In addition, it may be appropriate and helpful to include other federal agency representatives with Indian Country responsibility in your district, for example, the Department of Housing and Urban Development, the Department of Health and Human Services' Indian Health Service, and the Interior Department's Bureau of Indian Education.

Following such consultation, I direct all such USAOs to develop an operational plan addressing public safety in Indian Country.

In coordination with the law enforcement agencies and tribes in that district, every USAO with Indian Country jurisdiction should review and, as necessary, revise its operational plan on an annual basis. Every newly confirmed U.S. Attorney in such districts, upon assuming office, should conduct a consultation with tribes in his or her district and develop or update the district's operational plan within eight months of assuming office, unless an extension of time is provided by EOUSA.

The subject matter of each district's plan will depend on the legal status of the tribes in that district (i.e., whether the jurisdiction is Public Law 280, non-Public Law 280, or partial-Public Law 280) as well as the unique characteristics and challenges confronting those tribal nations. Districts that include non-Public Law 280 or partial-Public Law 280 tribes should generally consider inclusion of the following elements in their operational plans: a plan to develop and foster an ongoing government-to-government relationship; a plan to improve communications with each tribe, including the timely transmittal of charging decisions to tribal law enforcement, where appropriate; a plan to initiate cross-deputization agreements, Special Law Enforcement Commission training and a tribal SAUSA program, where appropriate; and a plan to establish training for USAO staff and all relevant criminal justice personnel on issues related to Indian Country criminal jurisdiction and legal issues. Districts that include non-Public Law 280 or partial-Public Law 280 tribes are encouraged to meet individually with each of those

tribes in the course of the planning process. Districts containing only Public Law 280 tribes may consult with EOUSA on an appropriate strategy to ensure regular engagement with tribes and an appropriate assessment of the Justice Department's responsibility with respect to those reservations.

To assist in this process, I have asked EOUSA to develop and provide to the USAOs, by February 1, 2010, model approaches for district tribal consultations and operational planning. These models may be used as guidance to develop individual consultations and operational plans for each district. To help districts address training needs, EOUSA has also created a new position devoted to Indian Country prosecution and investigation training.

Upon adoption of its plan, or revision or update thereto, I request that each district provide the Office of the Deputy Attorney General, through EOUSA, a summary of its operational plan to improve public safety in Indian Country. I also direct that you make these summaries available to the tribes in your district.

The public safety challenges confronting Indian Country are great, and I realize that our efforts in Indian Country can be resource intensive. I am therefore pleased to be able to inform you that the Justice Department's FY 2010 appropriation includes an additional \$6,000,000 for Indian Country prosecution efforts. Overall, at least 35 additional Assistant U.S. Attorneys and 12 additional FBI victim specialists will be added in offices with an Indian Country caseload. These new resources will also enable the Justice Department to bring the federal justice system closer to Indian Country, including through a Community Prosecution Pilot Project that EOUSA is currently developing.

The Attorney General is depending upon you, as leaders of the Justice Department in your respective districts, to craft individual tribal assessments and action plans that respond to the unique challenges facing tribal communities in your district.

Violence against Women and Children in Tribal Communities

Addressing violence against women and children in Indian Country is a Department of Justice priority. The Department, through the USAOs, has a duty to investigate and prosecute serious crimes in Indian Country, including crimes against women and children. In much of Indian Country, the federal government alone has authority to prosecute certain violent crimes against Native Americans where the offender is non-Indian and to obtain meaningful punishment for any serious offender. In those circumstances, only USAOs can pursue justice for the victim and the community.

Reports of sexual assault or domestic violence in Indian Country should be investigated wherever credible evidence of violations of federal law exists, and prosecuted when the

Principles of Federal Prosecution are met. Although sexual assault offenses may often occur outside the presence of witnesses and may present other prosecutorial challenges, these factors should not deter law enforcement personnel from diligently and thoroughly investigating the crime or pursuing prosecution. Where federal jurisdiction exists, the responsibility to investigate and prosecute violence against women in Indian Country also extends to misdemeanor assaults committed by non-Indian offenders against Native American women on federally recognized reservations. Due care should be exercised to recognize ongoing risks to victims in sexual assault and domestic violence cases, and to expeditiously make charging decisions in high-risk cases to minimize or eliminate those risks.

In developing district-specific operational plans for public safety in tribal communities, I direct every U.S. Attorney to pay particular attention to violence against women, and to work closely with law enforcement to make these crimes a priority. This may include reevaluating, together with law enforcement partners including the FBI and the Department of Interior's BIA, existing memoranda of understandings addressing such crimes. Federal law provides for a number of felony level domestic violence offenses in addition to those crimes listed in the Major Crimes Act (18 U.S.C. §1153) and the General Crimes Act (18 U.S.C. §1152), and I have asked EOUSA, working closely with the NAIS, to develop guidance on these additional statutes.

Many sexual assault cases arising in Indian Country require a team investigative effort involving FBI, tribal police, and BIA. Successful multijurisdictional investigations and prosecutions also require a collaborative working relationship. Tribal Liaisons and Assistant U.S. Attorneys assigned to cases of child sexual abuse on the reservations currently use the multidisciplinary model provided in 18 USC §3509(g) with great success. USAOs are encouraged to consider also using this team approach in cases where adult women are the victims of sexual assault. EOUSA will provide further guidance on this issue in coming weeks.

Conclusion

The Department has a responsibility to build a successful and sustainable response to the scourge of violent crime on reservations. In partnership with tribes, our goal is to find and implement solutions to immediate and long-term public safety challenges confronting Indian Country. This directive creates a structure through which U.S. Attorneys will develop targeted plans to help make tribal communities in their districts safer, and to turn back the unacceptable tide of domestic and sexual violence there.

Attachment

cc: All United States Attorneys

B. Todd Jones
United States Attorney
District of Minnesota
Chair, Attorney General's Advisory Committee

Robert S. Mueller, III
Director
Federal Bureau of Investigation

Michele Leonhart
Acting Director
Drug Enforcement Administration

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms & Explosives

John F. Clark
Director
United States Marshals Service

H. Marshall Jarrett
Director
Executive Office for United States Attorneys

Appendix A: Federal Districts with Federally Recognized Tribes

1. Southern District of Alabama
2. District of Alaska
3. District of Arizona
4. Central District of California
5. Eastern District of California
6. Northern District of California
7. Southern District of California
8. District of Colorado
9. District of Connecticut
10. Southern District of Florida
11. District of Idaho
12. Northern District of Iowa
13. District of Kansas
14. Western District of Louisiana
15. District of Maine
16. District of Massachusetts
17. Eastern District of Michigan
18. Western District of Michigan
19. District of Minnesota
20. Southern District of Mississippi
21. District of Montana
22. District of Nebraska
23. District of Nevada
24. District of New Mexico
25. Eastern District of New York (anticipating federal recognition of the Shinnecock Nation)
26. Northern District of New York
27. Western District of New York
28. Western District of North Carolina
29. District of North Dakota
30. Eastern District of Oklahoma
31. Northern District of Oklahoma
32. Western District of Oklahoma
33. District of Oregon
34. District of Rhode Island
35. District of South Carolina
36. District of South Dakota
37. Eastern District of Texas
38. Western District of Texas
39. District of Utah
40. Eastern District of Washington
41. Western District of Washington
42. Eastern District of Wisconsin
43. Western District of Wisconsin
44. District of Wyoming