

# Memorandum

<b>Subject:</b> <b>IMPLEMENTATION OF INDIAN COUNTRY FEDERAL CRIME CASE TRACKER</b>	<b>Date:</b> October 10, 2008  WWM:SKF
<b>To:</b> Tribal Chairs Tribal Judges Tribal Prosecutors Tribal Police Chiefs Victim-Witness Personnel in Indian Country Domestic Violence Prevention/ Advocacy Personnel in Indian Country Tribal Social Services Personnel Indian Health Service/Tribal Health Board Unit Directors	<b>From:</b> Bill Mercer United States Attorney P.O. Box 1478 Billings, MT 59103 <a href="mailto:bill.mercer@usdoj.gov">bill.mercer@usdoj.gov</a> Phone: (406) 247-4639 FAX: (406) 657-6055  Maylinn Smith, Director Indian Law Clinic School of Law The University of Montana Missoula, MT 59812-6552 <a href="mailto:maylinn.smith@umontana.edu">maylinn.smith@umontana.edu</a> Phone: (406) 243-2544 FAX: (406) 243-2132

In 2008, the U.S. Attorney's Office and the Indian Law Clinic began on-going discussions regarding the creation of a mechanism to ensure that matters which appear to you to constitute federal crimes are identified by individuals in tribal departments and programs in regular disclosures to the U.S. Attorney, whether or not you believe the FBI or BIA is already investigating the matter.

In its work, the Indian Law Clinic hears from tribal members and tribal government personnel regarding their views about perceived inattention to matters which merit federal investigation and prosecution. In the course of your work, you may become aware of matters which should be referred to investigative agencies and the U.S. Attorney's Office for investigation and possible federal prosecution. With respect to Indian Country crimes, it is fairly rare that the U.S. Attorney's Office becomes aware of investigations or potential investigations unless an investigative agency forwards a report to the U.S. Attorney seeking a prosecution or a report which explains why a prosecution should not be undertaken.

After discussions with the Indian Law Clinic, we concluded that there would be value in creating a monthly reporting mechanism from Tribes directly to the U.S. Attorney to ensure all potential federal crimes, particularly violent crimes, are known to the U.S. Attorney's Office for follow-up and tracking with the appropriate investigative agencies. This type of information will enhance accountability for federal law enforcement efforts within Indian Country and will be invaluable in interactions between the U.S. Attorney's Office and federal investigators. **AS SHOULD BE EVIDENT, THIS IS NOT A SUBSTITUTE FOR REGULAR AND TIMELY REPORTING OF CRIMES TO TRIBAL POLICE, BIA AND THE FBI. THIS NEW PROCESS IS DESIGNED TO FACILITATE THE INTERAGENCY TRACKING OF CRIMINAL MATTERS.**

Attached is a copy of the tracking form developed to facilitate this communication. If you wish to submit this information to the U.S. Attorney electronically, please call or e-mail Sally Frank ([sally.frank@usdoj.gov](mailto:sally.frank@usdoj.gov) or (406) 247-4638) and she will e-mail the report template to you. You may instead fax the form to the U.S. Attorney's Office at (406) 657-6055 or mail it to the address listed above.

We have attached a summary of the federal offenses and the elements necessary to prove each of the crimes if they (1) occur in Indian Country and (2) an Indian person is the perpetrator and/or the victim. Even if you have extensive experience in this area, I urge you to review the document because Congress has created a number of new crimes applicable to Indian Country in two recently adopted laws, the Adam Walsh Act and the reauthorization of the Violence Against Women Act.

With twenty-four Assistant U.S. Attorneys, you should also assume that the U.S. Attorney's Office in Montana is committed to the prosecution of viable cases for most of the statutes listed in the summary, including all cases under the Major Crimes Act.

It is our belief that submission of this form by the appropriate tribal departments and programs on a regular basis will help to ensure that all potential federal crimes in Indian Country are investigated in a timely fashion and referred for prosecution where the investigation yields adequate evidence to prove the crime beyond a reasonable doubt. If you believe other individuals should be invited to participate in this reporting process, please let either one of us know.