

**TESTIMONY
OF
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BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
ON
FEDERAL DECLINATIONS TO PROSECUTE CRIMES
IN
INDIAN COUNTRY**

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Mr. Chairman and Members of the Committee, I am pleased to provide testimony for the Department of the Interior. My testimony will focus on the aspects of declination reports that are issued by the United States Attorneys DPC from the perspective of the Bureau of Indian Affairs (BIA) in its law enforcement capacity.

The Bureau of Indian Affairs (BIA) has a service population of about 1.6 million American Indians and Alaska Natives belonging to 562 federally recognized tribes. The BIA supports 191 law enforcement programs with 42 BIA-operated programs and 149 tribally operated programs. Approximately 78 percent of the total BIA Office of Justice Services' (OJS) programs are under contract to Tribes as authorized under Public Law 93-638, as amended, or compacted to Tribes as authorized under Title IV of the Indian Self Determination and Education Assistance Act, as amended.

The Indian Law Enforcement Reform Act of 1990 (25 U.S.C. 2801 et seq.) and the regulations contained in Title 25 of the Federal Code of Regulations provide the statutory and regulatory authority for the BIA. Under these authorities, the BIA provides basic police and corrections services while the Department of Justice (DOJ), including the Federal Bureau of Investigations (FBI), the Drug Enforcement Administration (DEA), and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), also investigate crimes and prosecute offenders in Indian country.

Police, Patrolling and Criminal Investigation Responsibilities

The BIA's responsibility for providing basic day-to-day policing and patrolling of Indian country is provided for in 25 U.S.C. 2802. Tribes have jurisdiction for tribal criminal offenses as defined by the respective Tribe's tribal law. Violations of Federal criminal law within Indian country are the responsibility of the BIA and the FBI. In addition, ATF and DEA are often involved in investigations of weapons and drug offenses and the Environmental Protection Agency's Criminal Investigation Division investigates environmental criminal activity in Indian country. Tribal and state law enforcement agencies assist and have primary roles under existing special law enforcement commissions that are authorized by the Indian Law Enforcement Reform Act

(25 U.S.C. 2801 et seq.). Often these tribal, Federal, and state law enforcement agencies work together on task forces to address crime that impacts their jurisdictions and residents. The BIA encourages a cooperative law enforcement practice between and among tribal, state and other Federal agencies wherever possible.

Criminal Jurisdiction in Indian Country

While jurisdictional issues arise during investigations, for every crime in Indian Country, there is a court with jurisdiction to try the case. Criminal jurisdiction in "Indian Country," 18 U.S.C. 1151, is allocated among Federal, state and tribal courts. Most Federal criminal law for Indian country is set forth in 18 U.S.C. 1151-1170. Jurisdiction over particular cases in Indian country depends, in general, upon three factors: (1) the nature of the offense, (2) whether any jurisdiction has been conferred on the State, and (3) whether the perpetrator or victim is an Indian.

The following scenarios provide an example of the complexities arising from the three factors related to defining criminal jurisdiction for law enforcement in Indian Country when PL 280, which confers State jurisdiction in certain circumstances, does not apply.

Scenario One

A non-Indian commits an assault on another non-Indian on trust property. Criminal jurisdiction lies exclusively with State jurisdiction.

Scenario Two

A non-Indian sexually assaults an Indian on trust property. Criminal jurisdiction lies exclusively under Federal Jurisdiction pursuant to 18 U.S.C. 1152.

Scenario Three

An Indian commits an armed robbery against a non-Indian on trust property. Criminal jurisdiction lies in Federal, Tribal, or both jurisdictions.

BIA and Tribal Police Officers Receiving and Answering Calls

Depending on the local jurisdiction's circumstances, calls for routine or urgent assistance are received from several sources, such as, walk-ins, telephone calls, dispatch or 911 services, if available at the BIA or Tribal Police offices. In certain circumstances dispatch calls may come in from state or other Federal agencies. Subject to applicable jurisdiction and available resources, responses by local law enforcement is the same or similar to any local police department in America.

In the event a criminal complaint is reported, subject to the applicable jurisdiction, the complaint may be referred to and investigated by the United States Attorneys Office. Criminal complaints of violations of Federal, Tribal and sometimes state laws are investigated by Tribal and Federal law enforcement agencies. Depending on the nature of the complaint, Tribal and BIA Police

Officers usually are the first to respond. The scenario that follows is an example of how a major case is investigated.

“A brief synopsis on the anatomy of a fictional Federal investigation in Indian Country that would be conducted by the Bureau of Indian Affairs (BIA), Office of Justice Services (OJS).”

A tribal police officer patrolling the Pine Ridge Indian Reservation received a call for service to a disturbance at Wounded Knee housing. Upon arrival, the officer observed a victim lying in the street who had apparently been beaten unconscious by unknown subjects. First, the officer needed to ensure that proper medical attention was obtained. Other officers arrived on location, the scene was secured, and the tribal police initiated a preliminary investigation. When information suggested the victim had been beaten unconscious with a blunt object, the BIA Criminal Investigations Unit (CIU) was notified and special agents responded to the scene.

Depending on local protocol, the FBI may have been notified. Upon arrival, BIA special agents would collect physical evidence, photographic evidence, and witness statements. Within 24 hours, a Notice of Allegation (NOA) would be sent to the BIA District Special Agent in Charge, the United States Attorney’s Office and to the local resident office of the FBI. The NOA is an administrative tool used to initiate a Federal investigation. At this point of the preliminary investigation, the BIA special agents would be updating the Assistant United States Attorney (AUSA) assigned to the Indian country unit. Once a suspect has been identified and all of the elements of a crime have been met, a report of investigation (ROI) is submitted to the US Attorney for review. The ROI would consist of the following information:

- Table of contents
- Notice of Allegation
- Case Summary
- Details of the Case
- Defendant History
- Additional Information, such as: photographs, diagrams, transcriptions, medical reports, etc.
- Victim/Witness Form(s)
- Witness Briefs
- Police Incident Reports, and, Other Agency Reports

If the AUSA determines federal prosecution is warranted the case, the case would be heard by a Grand Jury. Once the Grand Jury returns an indictment, an arrest warrant or summons would be issued for the suspect and served by BIA special agents. At this point in the investigation, the suspect would have been brought before a Federal magistrate to enter a plea to the charge. The magistrate would set conditions of release, if any, and a court date would be set. If the AUSA determines federal prosecution is not warranted, then the case may be referred for possible prosecution in the tribal or state court if such jurisdiction exists in either forum.

BIA Collaboration with US Attorney, Federal or Tribal Investigators, and Victims

Under the best circumstances, the collaboration and constant communication among law enforcement officials and the AUSAs does exist. Throughout the investigation witnesses are

questioned and the interviews and forensic information are reviewed and analyzed. There is and should continue to be an ongoing dialogue, assessments, and investigation strategy between law enforcement and Federal prosecutors. In Federal cases, victims are often eligible for services from the victim/witnesses offices of the FBI and U.S. Attorneys during the investigation and prosecution phases. The final determination to prosecute, plea, decline, or defer to local prosecution is the decision of the AUSA.

Mr. Chairman and members of the Committee, I thank you for providing the Department of Interior's Bureau of Indian Affairs the opportunity to comment on the aspects that surround declination reports issued by the United States Attorneys from the DOJ in perspective of law enforcement provided by the BIA and Tribal Police in Indian Country. We will continue to work closely with the Committee and your staff, tribal leaders, and our Federal partners. The Bureau of Indian Affairs will be happy to answer any further questions you may have.