

**Testimony of Myra Pearson
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October 21, 2010

**“United States Department of Justice Consultation on the Implementation of the
Tribal Law and Order Act”**

This written testimony is submitted by Myra Pearson, Chairwoman of the Spirit Lake Tribe. This testimony focuses on the issues and recommendations for the implementation of the Tribal Law and Order Act of 2010.

The Tribal Law and Order Act calls for federal agencies to significantly change the manner of delivery of justice services to tribal communities in a number of ways. Having reviewed the many provisions in the Act I believe that the impact on Tribes will vary greatly depending upon current services and resources available to the Tribal Justice system. I believe the Tribal Law and Order Act has the potential to either become an historical piece of legislation that will forever change the face of our tribal justice systems or it will become nothing more than a well-intentioned piece of legislation that stalls out, all of which is dependent entirely on how the Act is implemented.

In my mind we are only going to see this as an historic period in the development of our tribal justice systems if we implement this legislation while being both realistic and honest in our assessment and our path for change. It is in that spirit of realism and honesty that I would like to deliver both my comments about our present justice system on the Spirit Lake Reservation and what I believe to be realistic approaches that can and should be taken under the Tribal Law and Order Act to implement meaningful change.

I. Law Enforcement

Currently the Spirit Lake Tribe receives law enforcement services through the BIA. The services that we receive can be characterized as inadequate at best. Our services have declined to the point that when you call law enforcement for assistance it is rare for an officer to come and assist. In the rare instances that an officer responds to a call the

response is generally inadequate with little to no follow up investigation. Add to this the fact that Officers generally have no back up and a very dangerous situation has been created for the Officer and the community. Additionally, what few officers we do have are oftentimes detailed to other reservations for extended periods of time, further compounding our personnel shortages. Of course I would be remiss if I did not mention the fact that investigations rarely occur unless felony activity is involved leaving me wondering why we distinguish the BIA investigators from FBI agents as they all seem to believe that they bear no responsibility for investigating crimes unless they are delineated in the Major Crimes Act.

That said, I believe we are truly in an era of community policing and by that I do not mean police are leading with the assistance of the community but rather community members are launching their own investigations into crimes. Our community has so little faith in BIA law enforcement that they are being forced to take matters into their own hands. In recent years we have seen our tribal property stolen, our community members victimized and even our courthouse burned and yet we see no accountability and little to no response on the part of law enforcement. What message are we sending that one can burn down a courthouse and there will be no accountability? The only good news in all of this is that BIA law enforcement services have gotten so bad that there is seemingly nowhere to go but up.

The issues that I see with the current law enforcement services provided by the Bureau of Indian Affairs include: Officer Shortages, training deficiencies and inadequate facilities.

A) Officer shortages: Office shortages have plagued the tribal justice system at Spirit Lake for many years, resulting in slow response times, inadequate investigations and reports, and a number of related problems. It has gotten to the point that many people are not even reporting criminal activity as they have no faith that anything will be done to help them.

Recommendations:

1) there are several tribal colleges across the nation providing an excellent opportunity for the recruitment of prospective law enforcement officers. The BIA has done little to focus on post-secondary educational institutions to actively

recruit qualified candidates to enter BIA law enforcement services. I believe that the local agencies should be engaging our youth and people who are demonstrating an interest in pursuing careers in criminal justice. A simple bi-annual visit to area community colleges should be a part of the responsibilities for active duty law enforcement officers.

2) Additionally the placement of officers plays a big role in retention and if efforts are made to ensure placement closer to an individual's home community that would be a significant factor in recruitment and retention not to mention that this promotes community-oriented policing and investment in our tribal community.

3) Hiring qualified applicants in senior positions is crucial. There is little to no information made available to the Tribe on the hiring process for BIA law enforcement officers. Tribes have little to no input into the candidates for such positions as police Chiefs who have a significant impact on the operations of local law enforcement.

4) Providing alternative locations for completion of the basic training academy is essential. Currently the academy located in Artesia, NM is the only BIA training facility in the nation. The fact that recruits are expected to relocate for an extended period of 4 months is often a barrier to employment as many of the most qualified individuals have dependent children and family members. The isolation that these individuals experience is a factor in the 47% attrition rates for the academy in Artesia, NM. One means to overcome this barrier is to regionalize BIA police academies. For example the United Tribes Technical College (hereinafter "UTTC"), which is located in Bismarck, ND provides an excellent location to serve as an academy for the entire Great Plains Region. UTTC is a tribal college that is within driving distance of many tribal communities including those located in North Dakota, South Dakota, Minnesota, Montana. The close proximity of UTTC to these tribal communities would enable weekly visits for recruits while they complete their training. This small factor would have a huge impact on the attrition rates for BIA law enforcement officers. Additionally the UTTC is a fully accredited educational institute and has offered an Associate's degree in criminal justice studies for more than 30 years. The UTTC also has an

existing MOU with the BIA to provide supplemental in-service training to law enforcement officers and has already outlined a plan for the delivery of training and officer placement.

- B) Lack of Training:** it is imperative that the officers who are providing law enforcement services on the Spirit Lake Reservation be adequately trained both for their safety and for the safety of the community. It is alarming that BIA officers are expected to respond to often volatile crimes such as domestic violence, with little to no back up. This creates a dangerous situation not only for the officers but also for the victims on the scene.

Recommendations: 1) Mandate ongoing education is a requirement for ongoing employment to ensure the provision of quality law enforcement services to the Spirit Lake Tribe. 2) Allow BIA employees to attend national and regional training events as well as training offered through tribal community colleges in furtherance of required continuing education credits. Regional academies, such as the one proposed at UTTC, are an essential part of providing relevant training for recruits and active duty law enforcement officers. It has been clearly stated by tribes for many years that the needs of tribes and the demographics of tribes vary greatly. The development of regional academies would foster environments in which general law enforcement training could be provided but it also provides a tremendous opportunity for issue specific training that is relevant to tribes in the region. The training academy should focus on basic training for new officers and should also include continuing education for existing officers. Continuing education should be available regardless of an officer's desire to change their rank or position within the BIA.

- C) Inadequate facilities:** BIA law enforcement field offices are located in buildings that are in desperate need of repair, remodel, or new construction. Attempts by the Tribe to secure construction dollars has either been unsuccessful due to lack of available funding or alternatively the BIA facilities management program has authorized funds to renovate existing facilities in lieu of new construction dollars or sufficient funds to properly renovate existing facilities. The end result is that

the funds came to the Tribe to renovate, however the strings attached to these funds resulted in a cosmetic face lift but did little to enable the Tribe to update the facility in a manner that would actually meet the needs of the community.

Recommendations: 1) provide a more cohesive means for tribes to access bricks and mortar funds for facility construction whilst also addressing plans for facility operations. Rather than requiring Tribes to seek construction dollars from one agency and operations funds from another perhaps a joint process should be employed to ensure that Tribes are working with necessary federal agencies from the onset of the planning process through completion of the construction and implementation phases. This is the type of process that will not only result in a building but will result in a building that facilitate the provision of services to the community.

One of the predominant threads that run through most of the problems that exist with facilities, recruitment, retention, hiring and training are lack of adequate funding and lack of strategic planning. Federal appropriations must be made to ensure that necessary funds are available to implement provisions of the Tribal Law and Order Act. Strategic planning should be a part of the process for each field agency and area office and such planning should involve input from the Tribes so that we have meaningful input into the improvement of justice services in our respective communities.

II. Tribal Courts and Prosecution

The Tribal Law and Order Act also includes many provisions that will significantly impact Tribal and Federal Prosecutions. Whether looking at the sentencing enhancements, communications across agency and jurisdictional lines or the access to crime data, the fact remains that all of these efforts will require additional funds. In particular I would like to reference the significant shortfalls in the pl-93-638 contract dollars that are provided to the Spirit Lake Tribe for the operations of our court system. The 638 contract dollars are not sufficient to provide for even the most basic justice system personnel, which in and of itself is contrary to existing federal law. The Spirit Lake Tribe is only able to support a judge and a few members of the administrative staff

from our current PI 93-638 court budget. All other funding for the court is provided either through local EDF dollars or comes from competitive grant programs through the Department of Justice. It is unbelievable that we are required to rely on competitive grants to provide such basic services as an associate judge, a data entry clerk, or a probation officer. To this end it is time that the budget for the BIA be reevaluated in terms of the funds that are funneling from the top down through the area offices. Perhaps by cutting out some of the middle men we can save enough dollars to actually provide adequate 638 contract funding to our tribal courts thereby allowing additional enhancement services and programs to be funded through competitive grants, as is the case for the other courts in this nation.

In terms of the Tribal Law and Order Act this fact is even more significant as the provisions of the Act are clear that only those Tribal Courts that are providing basic services such as defense counsel will be entitled to apply increased sentencing options.

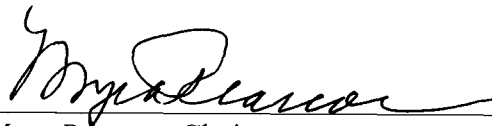
III. Communication, Collaboration and Data

One of the predominant aspects of the Tribal Law and Order Act is the call for information sharing with respect to investigations, prosecutions and crime data as a whole. I agree that such efforts are necessary, however as the Tribal Law and Order Act is implemented it is imperative that the efforts to coordinate services include input from the local level. It does a disservice to our communities to have policies, procedures and plans developed in an office in D.C. by people who have no clue what our tribal infrastructures or demographics are. We need consultation not only at national sessions such as this but more importantly we need consultation at the local level through strategic planning committees who would meet to more specifically outline a plan of action for each tribal community. Through the development of a Tribal Law and Order Act implementation plan each Tribe would have direct input into addressing their needs and would further be fully informed as to what measures federal agencies are taking with respect to their tribal community. Another benefit to such a process would be that the Tribe would be able to identify areas that are within the Tribes control and could be developed to increase the positive impact of the Act. We are continuously saying and hearing that a one sized fits all approach does not work in Indian country so in true

government to government fashion lets change that approach to one that is more individualized and to one that involves less bureaucratic input and more grassroots input from the people who are in the field doing the work.

In closing, it is my opinion the approach that the BIA has taken in addressing justice issues in tribal communities has demonstrated that the agency is completely out of touch with Indian country. There have been far too many people climbing the ranks and leaving the field offices ill equipped to meet the needs of the communities they are supposed to be serving. I think it is time for the United States Congress to take a hard look at the upper level administration within the Bureau of Indian Affairs and assess what needs to improve within the leadership of the BIA. A team will only be as good as its leader and from what the BIA is showing us, leadership is poorly lacking. As tribal leaders we are developing short and long term strategic plans to develop our communities, to justify our requests for federal funding and to further support our expenditures of those funds. That same process should be mandated of the BIA with respect to the programs and funds that are administered through their agency. This would provide a measure of accountability to both the United States Congress and the tribes that the BIA is supposed to be serving and would be a step towards real and honest change.

Respectfully submitted this 21st day of October, 2010.



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