

TESTIMONY OF  
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U.S. DEPARTMENT OF JUSTICE

BEFORE THE

UNITED STATES SENATE COMMITTEE ON INDIAN AFFAIRS

Hearing on Contemporary Tribal Governments: Challenges in Law Enforcement Related to the Rulings  
of the United States Supreme Court

July 11, 2002

Mr. Chairman, Mr. Vice-Chairman and Members of the Committee, my name is Tracy Toulou and I am the Director of the Office of Tribal Justice in the United States Department of Justice. Thank you for the opportunity to appear before you today to testify on Contemporary Tribal Governments: Challenges in Law Enforcement Related to the Rulings of the United States Supreme Court.

The Office of Tribal Justice (OTJ) spends a significant amount of time studying and addressing issues related to tribal law enforcement. My office serves to coordinate and focus the Department's policies and positions on American Indian and Alaska Native issues and maintain liaison with the federally recognized Indian tribes, particularly in the area of law enforcement. In addition, we work closely with the U.S. Attorney's offices that prosecute violent crime in Indian country. We also regularly communicate with tribal police departments, the Federal Bureau of Investigation, the Bureau of Indian Affairs' Office of Law Enforcement Services and other Federal law enforcement agencies operating in and around Indian country. Most recently, we have been working with the U.S. Border

Patrol on Native American border security issues. In my experience as an Assistant U.S. Attorney in the state of Montana, I prosecuted Major Crimes Act offenses on a number of Reservations, as well as assisted the Northern Cheyenne Tribe in developing a comprehensive law enforcement program.

Today, I would like to focus on three issues: (1) the problem of Indian country violent crime; (2) the challenges facing tribal law enforcement; and (3) issues that may result from *Nevada v. Hicks*.<sup>1</sup>

#### Indian Country Violent Crime

First, the Department of Justice, Bureau of Justice Statistics' reports entitled *American Indians and Crime*<sup>2</sup> and *Violent Victimization and Race*<sup>3</sup> reveal that American Indians experience higher rates of violent crime than any other group.

In November of last year Attorney General Ashcroft remarked that these reports show "American Indians are victims of violent crime at rates more than twice the national average - far

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<sup>1</sup>533 U.S. 353, 121 S.Ct. 2304 (2001)

<sup>2</sup>BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, AMERICAN INDIANS AND CRIME (NCJ 173386, 1999).

<sup>3</sup>BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, VIOLENT VICTIMIZATION AND RACE, 1993-98 (NCJ 176354, 2001).

exceeding any other ethnic group in the country.”<sup>4</sup> Nearly one out of every four Native Americans between the ages of 18 and 24 is a victim of a violent crime - the highest per capita rate of violence of any racial group considered by age.<sup>5</sup> This accounts for nearly 10 percent of the violent crimes prosecuted by the Justice Department.<sup>6</sup> Indians fall victim to violent crime at about two times the rate of African Americans, two and one-half times that sustained by Caucasians, and four and one-half times that experienced by Asian Americans.<sup>7</sup>

Of particular concern is the problem of domestic violence and crimes against Indian women, which tragically exist to a high degree in Indian country. A recent National Institute of Justice survey revealed that one in three native women reported being raped in her lifetime.<sup>8</sup> Between 1993 and 1998, American Indian females were victimized (e.g., subjected to domestic abuse) by an intimate partner (e.g., a current or former spouse) at rates higher than others -- 23 per 1,000 American Indians females as compared to 11 per 1,000 black females, 8 per 1,000 white females and 2 per 1,000 Asian

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<sup>4</sup>Attorney General John Ashcroft, Remarks at the Native American Heritage Event (Nov. 28, 2001) (transcript available at the U.S. Department of Justice). *See also*, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, AMERICAN INDIANS AND CRIME, at v (NCJ 173386, 1999).

<sup>5</sup>*Id.* at v.

<sup>6</sup>Todd J. Araujo, *Office of Tribe Justice Coordinates Effort to Meet Needs of Indian Tribes*, THE POLICE CHIEF, Jan. 2002, at 31, 32.

<sup>7</sup>BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, VIOLENT VICTIMIZATION AND RACE, 1993-98, at 1 (NCJ 176354, 2001).

<sup>8</sup>BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, NATIONAL INSTITUTE OF JUSTICE SURVEY, *noted in* Attorney General John Ashcroft, Remarks at the Native American Heritage Event (Nov. 28, 2001).

females.<sup>9</sup>

### Indian Country Law Enforcement

As you know, tribal governments have limited law enforcement resources for addressing the high rates of crime in many reservation communities. Law enforcement in Indian country is generally either provided by local tribal law enforcement or the Bureau of Indian Affairs. “The typical [tribal law enforcement] department serves an area the size of Delaware, but with a population of only 10,000, that is patrolled by no more than three police officers and as few as one officer at any one time.”<sup>10</sup> In 1997, the *Final Report to the Attorney General and the Secretary of the Interior of the Executive Committee on Indian Law Enforcement Improvement* found that Indian country was served by only half as many police officers per capita as similarly situated rural communities.<sup>11</sup> This provided the needed impetus for a significant increase in Department of Justice and Bureau of Indian Affairs funding for tribal law enforcement. Since 1999, the Tribal Resources Grant Program (TRGP) within the Community Oriented Policy Services (COPS) program has provided targeted

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<sup>9</sup>BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, VIOLENT VICTIMIZATION AND RACE, 1993-98, at 9 (NCJ 176354, 2001), *noted in* BUREAU OF JUSTICE STATISTICS, Press Release, *Differences in Rates of Violent Crime Experienced by Whites and Blacks Narrow - American Indians are the Most Victimized by Violence* (Mar. 18, 2001).

<sup>10</sup>STEWART WAKELING, MIRIAM JORGENSEN, SUSAN MICHAELSON AND MANLEY BEGAY, U.S. DEP’T OF JUSTICE, POLICING ON AMERICAN INDIAN RESERVATIONS, at vi (NCJ 188095, 2001).

<sup>11</sup>CRIMINAL DIVISION, U.S. DEP’T OF JUSTICE, FINAL REPORT TO THE ATTORNEY GENERAL AND THE SECRETARY OF THE INTERIOR OF THE EXECUTIVE COMMITTEE ON INDIAN LAW ENFORCEMENT, at 6 (Oct. 1997).

resources for tribal departments to hire officers or acquire critical equipment. Last summer, the Attorney General and the COPS office announced grants totaling \$33.7 million, which were awarded to 105 tribal police departments in 23 states.<sup>12</sup>

The efforts of the Department of Justice and tribal police departments have begun to show results. Between 1998 and 2001, the number of inmates in custody at tribal facilities grew by 29%.<sup>13</sup> The increase in the tribal jail population would appear to be closely related to law enforcement resources made available to Tribes through the COPS' Tribal Resource Grants Program. I would point out that the COPS/TRGP program was first funded by Congress through the Indian Country Law Enforcement Initiative in 1999 -- the same year that the number of tribal offenders in custody began to rise.

Finally, I know the Committee is interested in the impact of the Supreme Court's decision in *Nevada v. Hicks*<sup>14</sup> on Indian country law enforcement. As with any single decision which moves the state of the law in a new direction, the *Hicks* decision cannot, and does not, cover every factual scenario that may be encountered by law enforcement. Until there are additional decisions or statutory

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<sup>12</sup> U.S. DEP'T OF JUSTICE, Press Release, *U.S. Dep't of Justice Awards \$33.7 Million in Grants to Native-American Law Enforcement Agencies* (Aug. 30, 2001)

<sup>13</sup> BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, *JAILS IN INDIAN COUNTRY*, 2001, at 1 (May 2002).

<sup>14</sup>*Nevada v. Hicks*, 533 U.S. 353, 121 S.Ct. 2304 (2001).

clarification, there will be varying interpretations of the scope of the decision. In the meantime, I am concerned this ambiguity may become a source of tension between state and tribal law enforcement in some areas. Briefly, in some parts of the country we have seen state law enforcement officers interpreting this case as a basis to assert jurisdiction over Indian people who are on Reservation lands. In at least one case, this resulted in a confrontation between tribal and state law enforcement officers on Indian lands. These types of situations have the potential to become highly charged, and obviously, should be avoided. Our office works closely with the Department's Community Relations Service to mediate conflicts like these. Further, we advocate and assist in the development of cross-deputization agreements and other types of cooperative arrangements to foster better relations between the tribal and state law enforcement communities.

In short, today's tribal governments face serious challenges in the area of law enforcement. The Department of Justice's Office of Tribal Justice is working closely with tribal governments to assist in addressing high violent crime rates, limited law enforcement resources, and the unique challenges of Indian country jurisdiction.

Thank you for the opportunity to appear today. I would be happy to answer any questions you may have.