

THE NORTH DAKOTA UNITED STATES ATTORNEY'S
OFFICE'S ANTI-VIOLENCE STRATEGY FOR TRIBAL
COMMUNITIES: WORKING TO MAKE RESERVATIONS
SAFER THROUGH ENFORCEMENT, CRIME PREVENTION,
AND OFFENDER REENTRY PROGRAMS

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ABSTRACT

In the summer of 2011, in an effort to address unacceptable rates of violent crime on the reservations in North Dakota, the North Dakota United States Attorney's Office (USAOND) implemented its Anti-Violence Strategy for Tribal Communities. The Anti-Violence Strategy (AVS) was the culmination of USAOND's consultations with the North Dakota tribes and with federal, tribal, state, and local law enforcement agencies on the issue of violent crime on the reservations in North Dakota. The AVS sets forth a strategic framework for USAOND's efforts to reduce violence in tribal communities. The AVS establishes a three-pronged approach towards violent crime prevention that is focused on: (1) vigorous enforcement of federal criminal laws on the reservations with the goal of removing the most dangerous perpetrators of violence from those communities; (2) initiation of and support for viable crime prevention programs in tribal communities; and (3) support for prisoner reentry programs that reduce recidivism rates for offenders returning to the reservation communities from federal prison. Finally, the AVS also requires that USAOND be attentive and responsive to the victims of violent crime by working to find ways to prevent further victimization of these individuals. The AVS has also provided a platform for the USAOND to address two types of violence of

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particular concern on the reservations in North Dakota: Domestic Violence and Sexual Assault.

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I.	THE CHALLENGE OF PUBLIC SAFETY ON INDIAN RESERVATIONS IN NORTH DAKOTA	

On September 13, 1963, then Attorney General of the United States Robert F. Kennedy addressed the annual meeting of the National Congress of American Indians at the Grand Pacific Hotel in Bismarck, North

Dakota.¹ In his remarks, the Attorney General lamented the conditions faced by Native Americans on the reservations in the United States, calling the Native American “the victim of racial discrimination in his own land.”² Attorney General Kennedy noted that the infant mortality rate for Native Americans was twice that of any other racial group, and education, employment, and income rates for Native Americans were significantly lower than the national average.³ Summarizing the devastating effects of this poverty and isolation, the Attorney General said:

Poverty, under-education, and disease are evil forces in their own right, but perhaps their most destructive effect in a society like ours is that they breed a practical loss of freedom.

The Indian may be technically free—to vote, to stay on his reservation or leave it, to take part in state and federal government—but that freedom amounts to precious little when he must struggle every day, against heavy odds, to feed and clothe and shelter his family.⁴

Sadly, despite Attorney General Kennedy’s call for action nearly fifty years ago, more needs to be done on the issues of poverty, isolation, and public safety in Indian country.⁵ Current statistical information continues to paint a bleak picture of crime rates on the reservations. This is particularly true when it comes to statistics related to the sexual assault of Native American women and the rates at which Native American women are subject to domestic violence.

It is a grim statistical fact that a Native American female baby has a one in three chance of being sexually assaulted in her lifetime.⁶ Forty-six percent of Native American women report having experienced rape, physi-

1. ARTHUR M. SCHLESINGER, JR., ROBERT KENNEDY AND HIS TIMES 409 (1978).

2. Robert Kennedy, Remarks Before the National Congress of American Indians in Bismarck, North Dakota (Sept. 13, 1963), *available at* <http://www.justice.gov/ag/rfkspeeches/1963/09-13-1963.pdf>.

3. *Id.*

4. *Id.*

5. “Indian country” is a statutory term that refers to:

(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. 18 U.S.C. § 1151 (2006).

6. PATRICIA TJADEN & NANCY THOENNES, U.S. DEP’T. OF JUSTICE, FULL REPORT OF THE PREVALENCE, INCIDENCE, AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN 13-18 (2000), *available at* <http://www.ncjrs.gov/pdffiles1/nij/183781.pdf>. This study concluded that a Native American woman had a 34.1% chance of being raped in her lifetime. *Id.*

cal violence, and/or stalking by an intimate partner in their lifetime.⁷ Department of Justice data also establishes that Native American women are at least two and a half times more likely to be raped or sexually assaulted than the women of other races.⁸ Further, Native American and Alaska Native woman are the victims of homicide at a rate almost fifty percent greater than Caucasian women, and Native American or Alaska Native women who live in some American Indian or Alaska Native communities will face a risk of homicide even higher than this elevated figure.⁹

II. ACTION BY THE HOLDER JUSTICE DEPARTMENT: THE OGDEN MEMO

In response to the public safety challenges facing Indian country evidenced by these statistics, the Department of Justice under Attorney General Eric Holder instituted a new strategic policy aimed at improving public safety in Indian country in early 2010. On January 11, 2010, then Deputy Attorney General¹⁰ David W. Ogden issued a memo to all United States Attorneys whose Districts contained Indian country.¹¹ The Ogden Memo noted that:

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.¹²

In light of these Department of Justice responsibilities, the Ogden Memo set forth new requirements for United States Attorney's Offices

7. CENTER FOR DISEASE CONTROL AND PREVENTION, THE NAT'L INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT (2011), *available at* <http://www.cdc.gov/violenceprevention/nisvs/>.

8. STEVEN W. PERRY, U.S. DEP'T. OF JUSTICE, BUREAU OF JUSTICE STATISTICS, NCJ 203097, AMERICAN INDIANS AND CRIME – A BJS STATISTICAL PROFILE 1999-2002, at 4 (2004), *available at* bjs.gov/index.cfm?ty=pbdetail&iid=386.

9. See RONET BACHMAN, HEATHER ZAYKOWSKI, RACHEL KALLMYER, MARGARITA POTEYEVA, & CHRISTINA LAINIER, VIOLENCE AGAINST AMERICAN INDIAN AND ALASKA NATIVE WOMEN AND THE CRIMINAL JUSTICE RESPONSE: WHAT IS KNOWN 18-26 (2008), *available at* <https://www.ncjrs.gov/pdffiles1/nij/grants/223691.pdf>.

10. The Deputy Attorney General is the second-ranked official at the Department of Justice.

11. Memorandum from David W. Ogden to U.S. Attorneys with Districts Containing Indian Country (Jan. 11, 2012), *available at* <http://www.justice.gov/dag/dag-memo-indian-country.html>.

12. *Id.*

(USAOs) with Indian country jurisdiction. Each such USAO was directed to “engage annually, in coordination with our law enforcement partners, in consultation with the tribes in that district.”¹³ Following these consultations, all USAOs were directed to “develop an operational plan addressing public safety in Indian Country.”¹⁴ Given the presence of several reservations within the State of North Dakota, these new requirements were applicable to the United States Attorney’s Office for the District of North Dakota (USAOND).

III. INDIAN COUNTRY IN NORTH DAKOTA AND JURISDICTION OF THE NORTH DAKOTA UNITED STATES ATTORNEY’S OFFICE

Contained within the State of North Dakota are the whole or part of four Reservations: (1) the Fort Berthold Reservation, home to the Three Affiliated Tribes; (2) the Spirit Lake Reservation, home of the Spirit Lake Nation; (3) the Standing Rock Reservation, home of the Standing Rock Sioux Tribe; and (4) the Turtle Mountain Reservation, home to the Turtle Mountain Band of Chippewa Indians.

The Fort Berthold Reservation was created by the Fort Laramie Treaty of 1851 and is located in the west central part of North Dakota. It is home to the Three Affiliated Tribes comprised of the Mandan, Hidatsa, and Arikara (Sahnish) Tribes. The Fort Berthold Reservation is the largest reservation in the State in terms of area. It covers 981,215 acres and lies within portions of six counties: Dunn, McKenzie, McLean, Mercer, Mountrail, and Ward. Approximately 4,500 Native Americans live on the Reservation according to the 2010 census.

The Spirit Lake Reservation was established in 1867 by treaty between the United States and the Sisseton-Wahpeton Sioux Bands. It is located in the east central part of the State. The Reservation covers approximately 245,000 acres and lies within portions of four counties: Benson, Eddy, Nelson and Ramsey. The 2010 census figures report that approximately 3,600 Native Americans live on the Reservation.

The Standing Rock Sioux Reservation lies within both North Dakota and South Dakota. It was established by the Fort Laramie Treaty of 1868. The North Dakota portion of the Reservation includes all of Sioux County, located in the south central part of North Dakota. The North Dakota portion of the Reservation covers approximately 722,000 acres. Members of the Standing Rock Sioux Tribe are from the Dakota and Lakota nations.

13. *Id.*

14. *Id.*

The 2010 census reports that approximately 3,500 of the over 4,000 residents of the Standing Rock Reservation are Native American.

The Turtle Mountain Indian Reservation is home to the Turtle Mountain Band of Chippewa Indians. The Reservation was created by Executive Orders of December 21, 1882, and March 29, 1884. It is located within Rolette County in the north central part of the State, seven miles from the Canadian border. The exterior boundaries of the Reservation are twelve miles by six miles, or 46,080 acres. In addition, there are parcels of allotted trust land that lie outside the boundaries of the Reservation. Land was also allotted to the Tribe in western North Dakota which is known as the Trenton Indian Service Area. The 2010 census reports that 8,320 Natives live on the Turtle Mountain Reservation and its trust land. According to the tribal enrollment office, there are 12,610 enrolled members who live within the Reservation and surrounding Rolette County.

There also exists, in Richland and Sargent Counties in southeastern North Dakota, a small amount of tribal trust land belonging to the Sisseton-Wahpeton Oyate Tribe. The vast majority of the tribal trust land belonging to the tribe is in South Dakota. These lands were part of the Lake Traverse Reservation that was formed by treaty in 1867.

According to the 2010 census, North Dakota has approximately 36,500 people (5.4% of the population) who consider themselves Native American. This number increases when people who consider themselves part Native American are added. In 2009, the North Dakota State Data Center reported an estimated 43,167 people in North Dakota considered themselves all or part Native American.

Under the Indian Country Crimes Act, 18 U.S.C. § 1152 and the Major Crimes Act, 18 U.S.C. § 1153, USAOND has the jurisdiction to prosecute certain violent crimes that occur within these reservations and tribal trust land which are defined as “Indian Country” as by 18 U.S.C. § 1151. These offenses include murder, manslaughter, kidnapping, maiming, incest, assault with the intent to commit murder, assault with a dangerous weapon, assault resulting in serious injury, assault against an individual less than sixteen years of age, arson, burglary, robbery, aggravated sexual abuse, sexual abuse, sexual abuse of a minor, abusive sexual contact, sexual abuse resulting in death, and other offenses.¹⁵ The Indian Country Crimes Act, 18 U.S.C. § 1152 also permits federal prosecution for certain state law crimes that may be incorporated into the federal criminal code by the Assimilative Crimes Act.

15. 18 U.S.C. § 1153.

IV. THE UNITED STATES ATTORNEY'S OFFICE FOR THE DISTRICT OF NORTH DAKOTA'S CONSULTATIONS WITH TRIBES IN NORTH DAKOTA

On August 5, 2010, the author was confirmed by the United States Senate as North Dakota's eighteenth United States Attorney. Following this confirmation, work began almost immediately at USAOND to implement the requirements of the Ogden Memo in North Dakota through consultation with the Tribes and by creation of an Operation Plan.¹⁶

In the author's first ten months as United States Attorney, he made eleven trips to the reservations in North Dakota in order to meet and consult with tribal members in their home communities. Specifically, four such meetings were held with the Three Affiliated Tribes on the Fort Berthold Reservation, three meetings were held in Fort Totten with members of the Spirit Lake Nation, two meetings were held in Fort Yates with the Standing Rock Sioux Tribe, and meetings were also held in Belcourt and Agency Village (South Dakota) with the Turtle Mountain and Sisseton-Wahpeton Tribes, respectively. The meetings took many forms, including formal appearances before Tribal Councils, meetings with the heads of the Bureau of Indian Affairs (BIA) and Tribal Police Departments; night shift ride-alongs with front line BIA Police Officers; meetings with tribal judges, prosecutors, and public defenders; training events and meetings with BIA

16. Improving public safety on the reservations in North Dakota is a personal priority of the author as U.S. Attorney. In a 2011 interview with *Indian Country Today*, the origins of this priority were discussed as follows: "You've said in the past that you have long been interested in Indian issues. Any specific reasons?"

When I moved back home to North Dakota in 1994 to clerk for U.S. District Judge Bruce Van Sickle, I had the opportunity to visit a reservation community for the first time. I will never forget that visit to Cannonball, North Dakota, a tribal community located on the Standing Rock Sioux Reservation. I remember thinking, "How is it possible that, in the United States of America, U.S. citizens must live in such isolation, poverty, and hopelessness?" That experience has stayed with me over the years.

Further, when I was a lawyer in private practice, I represented many, many Native Americans in federal court as a court-appointed indigent defense attorney. I spent considerable time on the reservations while defending these cases, meeting with my clients and their families and getting to know about their lives.

Finally, I have spent a lot of time over a number of years hunting grouse and pheasant on the Fort Berthold Reservation. As a result, I have gotten to know many tribal members in the White Shield, North Dakota area. Talking to these folks over coffee or pick-up window to pick-up window has allowed me to learn more about the public safety issues they face every day.

These experiences all helped me see the need for change in tribal communities. Frankly, it was these experiences that led me to seek the position of U.S. Attorney in North Dakota. I saw the U.S. Attorney position as one that could be used to help address the public safety issues on the reservations in North Dakota. Rob Capriccioso, *U.S. Attorney Tim Purdon: Fighting for Tribal Justice*, INDIAN COUNTRY TODAY (Mar. 29, 2011), <http://indiancountrytodaymedianetwork.com/article/u.s.-attorney-tim-purdon%3A-fighting-for-tribal-justice-25307>.

and Tribal social services, child welfare professional, and Indian Health Service professionals; and tours of tribal colleges. The purpose of these trips and meetings was to vigorously solicit input from tribal governments, tribal members, and law enforcement on what USAOND could do to improve public safety on the reservations in North Dakota. In addition to these consultations that occurred on the reservations, the USAOND held its first Tribal Listening Conference at United Tribes Technical College in Bismarck, North Dakota on March 16, 2011. Nearly 150 tribal members; federal, state, and county law enforcement officials; tribal social services, corrections, probation, and law enforcement personnel; and members of the tribal, state, and federal judiciary, attended the Conference. The Tribal Listening Conference enabled the United States Attorney and the Assistant United States Attorneys to listen to tribal concerns in a series of breakout sessions, some of which focused on tribe-specific concerns and others which addressed several substantive areas including: (1) Domestic Violence in Tribal Communities; (2) Law Enforcement in Indian Country; (3) Offenses Against Children: Protecting the Future; (4) Strengthening Tribal Courts; and (5) Re-entry: How do returning offenders impact the community? Concerns raised in these breakout sessions were considered in the creation of USAOND's Operation Plan. For example, a common theme at the Tribal Listening Conference was a lack of communication between tribes and the USAOND. Responsive efforts to increase communication can be found in the implementation of the Community Prosecution Strategy and the changes made to implement the coordination requirements found in the Tribal Law and Order act of 2010, set forth below. Additionally, several reservation-specific concerns raised at the Tribal Listening Conference were addressed in tribe-by-tribe addendums that were attached to the original Anti-Violence Strategy.

This first Tribal Listening Conference was a success. The editorial page of the Bismarck Tribune praised the Conference as “eclips[ing] other outreach efforts” in the recent past and noted that the “discussion, dialog and partnership possibilities were exciting and encouraging” and that the spirit of cooperation and listening evidenced at the Conference “could lead to something big.”¹⁷

17. John Irby, *N.D. 's Largest Minority Has Huge Impact*, BISMARCK TRIB., Mar. 20, 2011, at 6C.

V. THE UNITED STATES ATTORNEY'S OFFICE FOR THE
DISTRICT OF NORTH DAKOTA'S OPERATIONS PLAN: AN
ANTI-VIOLENCE STRATEGY FOR TRIBAL COMMUNITIES IN
NORTH DAKOTA

USAOND's Operations Plan under the Ogden Memo was formally implemented on June 15, 2011, and presented to the Tribes, law enforcement, and the general public at that time. The Operation Plan was the culmination of the consultations by USAOND with the tribes in North Dakota, and federal, tribal, state, and local law enforcement partners, as well as the Tribal Law and Order Act of 2010. The Operations Plan took the form of an Anti-Violence Strategy for Tribal Communities in North Dakota.¹⁸

The Anti-Violence Strategy begins with an overview of the District of North Dakota and the tribal communities within the District. The Strategy then describes a new framework for USAOND's efforts to reduce violence in Indian country. It sets forth a three-pronged approach toward violence prevention that calls for vigorous enforcement of federal criminal laws on the reservations, support for viable crime prevention programs, and creating support structures for working with offenders who have been released from federal prison as they re-enter tribal communities.

The Anti-Violence Strategy recognizes that the central mission of the prosecutors in the USAOND who work in Indian Country is the enforcement of federal criminal statutes on the reservations. The Anti-Violence Strategy rededicates USAOND to that core function and makes it the cornerstone of the strategy. The Anti-Violence Strategy commits USAOND to vigorously enforcing the laws that punish sexual assaults, domestic assaults, gun offenses, gang activity, drug-related crimes, and other acts of violence and to working to remove the most violent individuals from tribal communities. These enforcement efforts are supported by the USAOND's parallel education and prevention strategies for the longer-term crime reduction.

Although essential as a short-term approach, the aggressive enforcement of federal criminal statutes in tribal communities will not solve the violent crime problems on the reservations in the long-term. Therefore, the Anti-Violence Strategy commits USAOND to augment its enforcement efforts with support for viable, community-based crime prevention efforts in the communities beset by violence. Under the Anti-Violence Strategy, USAOND will engage in front-end solutions to violent crime, rather than simply enforcing the law reactively on the back end of the problem. There-

18. A copy of USAOND's Anti-Violence Strategy for Tribal Communities in North Dakota follows as Appendix I.

fore, in addition to targeting the most violent criminals with apprehension and incarceration, the Anti-Violence Strategy commits USAOND to the support of organizations working to empower these communities to reduce or eliminate the forces, influences, catalysts, and causes that feed violent behavior. This strategy contemplates the pursuit of both front and back end solutions, often pursued simultaneously in tribal communities which suffer from persistent levels of violent crime.

Finally, enhanced support for offenders who are reentering tribal communities also has a significant impact on violence prevention. The Anti-Violence Strategy increases USAOND's focus on reentry efforts so those individuals on supervised release following a period of incarceration can become productive citizens once they are back in the community. USAOND is committed by the Anti-Violence Strategy to the support, where consistent with Department of Justice policies, of potential reentry courts and other initiatives in the District Court of North Dakota.

The Anti-Violence Strategy also includes a summary of the changes made within USAOND to take action in furtherance of each of these three prongs. Finally, the original plan included addendums specific to each tribe which summarized many of the tribe-specific challenges that were raised at the Tribal Listening Conference, as well as specific actions to be undertaken by the USAOND to address these concerns.

The Anti-Violence Strategy sets forth a new way forward. It is intended to be a strategic, not tactical, plan. In furtherance of its goals, however, many tactical changes have been implemented by USAOND. The three most critical changes to USAOND operations that were implemented in furtherance of the goals of the Anti-Violence Strategy were: (1) committing additional prosecutorial resources to Indian country; (2) implementing a Community Prosecution Model on the reservations; and (3) the launching of the annual Tribal Listening Conference. These seminal changes are discussed below.

A. COMMITTING ADDITIONAL PROSECUTORIAL RESOURCES TO INDIAN COUNTRY

As part of the Anti-Violence Strategy, USAOND reallocated its internal resources to prioritize prosecution of violent crimes on the reservations in North Dakota. Specifically, USAOND assigned an additional AUSA to the responsibility for the prosecution of violent crimes in tribal communities. This increased the number of AUSAs at the USAOND assigned to prosecute violent crimes on the four high referral reservations from three to four. This change represented a thirty-three percent increase in the number of AUSAs at the USAOND with responsibility for prosecution of violent

crimes in these four high referral tribal communities: Standing Rock, Fort Berthold, Spirit Lake and Turtle Mountain. Further, each AUSA is assigned prosecution responsibility for only a single reservation. This allows the AUSAs to focus tribal consultation efforts toward a single tribal community.

B. IMPLEMENTING A COMMUNITY PROSECUTION MODEL

To further the mission of vigorously enforcing federal criminal laws and supporting viable crime prevention programs on the reservations, USAOND committed to getting its AUSA resources on the reservations on a much more frequent basis. Now, each AUSA assigned responsibility for a reservation is required to physically visit that reservation several times per year in addition to case-related travel. While on the reservation, the AUSAs put an emphasis on communicating with tribal law enforcement and the tribal courts. USAOND's Tribal Liaison and the United States Attorney also make additional visits to each reservation in North Dakota to engage in government-to-government consultations with the Tribal Chairs and Tribal Councils.

C. LAUNCHING OF THE ANNUAL TRIBAL LISTENING CONFERENCE

Recognizing that tribal communities are the customers for the public safety "product" that USAOND is producing, USAOND committed to keeping the lines of communication with its tribal and law enforcement partners open. Specifically, the USAOND announced that the North Dakota United States Attorney's Office's Tribal Listening Conference would be an annual event. This annual event will ensure that USAOND will continue to receive feedback, positive and negative, on its efforts.

VI. ONE YEAR IN INDIAN COUNTRY: IMPLEMENTATION OF THE ANTI-VIOLENCE STRATEGY

The Ogden Memo required that all U.S. Attorney's Offices review their operational plans for Indian country. USAOND undertook the first such review of the Anti-Violence Strategy in the summer of 2012. USAOND's review of its experiences in 2011-2012 led to the continued belief that the framework set forth in the Anti-Violence Strategy was sound. Specific areas of progress and initiatives in the first year are discussed below.

A. ENFORCEMENT OF FEDERAL CRIMINAL LAWS: MAKING TRIBAL COMMUNITIES SAFER.

The central mission of the prosecutors in the USAOND who work in Indian country is enforcement of federal criminal statutes on the reservations. In the first year of the Anti-Violence Strategy, USAOND worked hard to vigorously enforce federal criminal laws that punish sexual assaults, domestic assaults, gun offenses, drug-related crimes, and other acts of violence. These efforts remain our first priority and the cornerstone of the Anti-Violence Strategy.

1. *Increase in the Prosecution of Crime in Indian Country*

As a result of the implementation of the Anti-Violence Strategy, USAOND has seen a sharp rise in the number of criminal cases filed in Indian country. Specifically, Indian country criminal case filings have increased approximately eighty-four percent from fiscal year 2009 to fiscal year 2012.¹⁹ This increase was due to many factors. First, as set forth above, part of the Anti-Violence Strategy was to commit additional prosecutorial resources to Indian country. The increase in the number of AUSAs at the USAOND assigned to prosecute violent crimes on the four high-referral reservations from three to four certainly lead to additional cases being filed. Additionally, the Community Prosecution Strategy has helped establish closer working relationships between AUSAs and Indian country law enforcement and this has resulted, in some cases, in an improvement in the quality of investigations presented to USAOND for prosecution. In any event, the increase in prosecutions and convictions has resulted in additional violent offenders being removed from the reservations in North Dakota.

2. *Prosecution of Habitual Domestic Violence Offenders in Indian Country*

Federal law makes it a felony to perpetrate domestic violence on a spouse or intimate partner in Indian country if the perpetrator has at least two prior domestic abuse convictions in a “Federal, State or Indian tribal court proceeding.”²⁰ In an effort to ensure that it had as many tools as possible to address enforcement of domestic violence offenses in Indian country in North Dakota, USAOND litigated the appeal of *United States v.*

19. The Department of Justice’s fiscal year runs from October 1 to September 30.

20. 18 U.S.C § 117(a) (2006).

Cavanaugh.²¹ In this case, USAOND argued that Defendant Cavanaugh's prior tribal court convictions for domestic violence offense could serve as predicate offenses for purposes of 18 U.S.C. § 117, even though Defendant Cavanaugh had not had court appointed defense counsel in those tribal court cases.²² The Eight Circuit agreed and allowed the felony prosecution of Defendant Cavanaugh to proceed.²³ Defendant Cavanaugh eventually pled guilty and was sentenced to sixty-five months in federal prison.²⁴ With the success achieved in the *Cavanaugh* case, USAOND was able to bring other habitual domestic violence offender felony cases under 18 U.S.C. § 117 in 2011 and 2012.²⁵

3. *Implementing a Community Prosecution Model*

As discussed above, under the Anti-Violence Strategy, each AUSA assigned responsibility for a reservation was required to visit that reservation several times per year, in addition to case-related travel. In calendar year 2011, USAOND personnel made over fifty such trips to the reservations in North Dakota. During these trips AUSAs emphasized communication with our tribal law enforcement and tribal court partners. AUSAs engaged in a number of activities on the reservations, including convening multi-disciplinary team (MDT) meetings, attending child-protection team meetings, reviewing and coordinating case investigations with FBI, BIA, and tribal law enforcement, reviewing and coordinating charging decisions with tribal prosecutors, providing training to BIA, tribal, and county law enforcement, and providing training or support to the tribal courts. These efforts improved communication between USAOND and both the tribes whose reservations it serves and law enforcement agencies and tribal court personnel who are working with USAOND to improve public safety in Indian country. Better communications has led to better investigations and better prosecutions.

21. 643 F.3d 592 (8th Cir. 2011).

22. *Id.* at 593-94.

23. *Id.*

24. *Id.*

25. *See* United States v. Little Bear, 12-CR-20, United States District Court, District of North Dakota; United States v. Eagle Boy, 12-CR-92, United States District Court, District of North Dakota; United States v. Walette, 11-CR-132, United States District Court, District of North Dakota.

4. *Standing Rock Sioux Tribe Special Assistant United States Attorney*

In late 2011, USAOND entered into an agreement with the Standing Rock Sioux Tribe to have the Tribe's Chief Prosecutor appointed as Special Assistant United States Attorney (SAUSA). With this designation the Tribe's Chief Prosecutor was given the ability to appear in United States District Court along with an AUSA to represent the United States in the prosecution of certain violent crimes committed on the Standing Rock Sioux Reservation. This arrangement served to highlight the relationship USAOND built with the Standing Rock Sioux Tribe and their Tribal Prosecutor's Office. Additionally, it shows the commitment USAOND has to work together as partners to address the issues of domestic violence, sexual assault, and other violent crimes on the Standing Rock Reservation.

5. *Creation of the "Indian Country Team" within the USAOND*

The Anti-Violence Strategy required the establishment of an Indian Country Team ("IC Team") within the USAOND. In 2011 the IC Team was formed. It presently consists of the U.S. Attorney, First Assistant U.S. Attorney, Criminal Chief, Senior Litigation Counsel, Law Enforcement Coordinator, Victim Witness Coordinators, and the AUSAs and paralegals who handle violent crime prosecutions in tribal communities. The IC Team met formally on a monthly basis during the first year of the Anti-Violence Strategy to staff Indian country cases and discusses policies and procedures that impact USAOND's Indian country prosecutions.

6. *Special Law Enforcement Commission Training at Fort Berthold Reservation*

USAOND conducted Special Law Enforcement Commission (SLEC) training in June 2012 for the Three Affiliated Tribes (TAT) Police Department. Successful completion of this training by TAT Police Officers allowed them to acquire certification from BIA to enforce federal law on the reservation, in addition to their enforcement of tribal laws. This additional training of the TAT officers who live and work on the reservation serves to enhance investigation of domestic assaults, sexual assaults, and other violent crimes at Fort Berthold.

7. *Human Trafficking Working Group at the Fort Berthold Reservation*

In response to law enforcement concerns about possible human trafficking on the Fort Berthold Reservation, the USAOND, the FBI, and mul-

multiple tribal organizations created a Human Trafficking Working Group to address the abuse of women and children through prostitution on the Fort Berthold Reservation. The work of this group resulted in the April 2012 conviction of a New Town man on sixteen counts of sex trafficking, sexual abuse, drug trafficking, and witness tampering.²⁶ The facts at trial established that the defendant had conspired to distribute illegal drugs on the Fort Berthold Indian Reservation and surrounding area.²⁷ As part of this conspiracy, the defendant recruited minors and young adults to be part of a gang.²⁸ According to testimony at trial, the defendant also used physical force and coercion to cause an adult female he had recruited for the gang to engage in commercial sex acts on the Fort Berthold Indian Reservation and in Williston and Minot.²⁹ Finally, as part of the gang's activities, the defendant and other members of the gang had illegal sexual contact with several juvenile girls.³⁰ USAOND continues to believe that innovative, cooperative efforts like the investigation that led to this conviction are a key to battling organized criminal activity on the reservations.

8. *Implementing the Prosecutorial Coordination Provisions of the Tribal Law and Order Act of 2010*

The USAOND also made changes in the way it communicates to tribal law enforcement and tribal prosecutors on whether to prosecute or not prosecute a matter. Under the Tribal Law and Order Act of 2010, when a USAO makes a non-prosecution decision on an alleged violation of federal criminal law in Indian country, the USAO is required to “coordinate with the appropriate tribal justice officials regarding the status of the investigation and the use of evidence relevant to the case in a tribal court with authority over the crime alleged.”³¹ In response to these new requirements, it is now USAOND policy that when a non-prosecution decision is made, the responsible AUSA will draft a detailed memorandum explaining the reasons for the non-prosecution decision and will send this memorandum to (1) the appropriate tribal prosecutor, and (2) the law enforcement agencies involved in the investigations. Additionally, USAOND attaches to this memorandum a standard form whereby a tribal prosecutor can request

26. *United States v. Morsette*, No. 4:10-CR-070-2, 2012 WL 1999637, at *1 (D.N.D. June 4, 2012).

27. *Id.* at *5.

28. *Id.* at *4.

29. *Id.* at *6.

30. *Id.* at *4.

31. 25 U.S.C. § 2809(a)(3) (2006).

access, subject to the restrictions of federal law, to the evidence obtained in the course of the investigation.

B. CRIME PREVENTION: SUPPORT FOR CRIME PREVENTION INITIATIVES IN TRIBAL COMMUNITIES

Although essential as a short-term approach, the aggressive enforcement of federal criminal statutes in tribal communities will not solve the violent crime problems on the reservations in the long term. Put simply, USAOND and its law enforcement partners cannot arrest our way out of this problem. Rather, enforcement efforts must be augmented by support for viable, community-based crime prevention efforts in these communities beset by violence. In the first year of the Anti-Violence Strategy, USAOND took on the challenge of involvement in crime prevention activities on the reservations in North Dakota like never before.

1. *Standing Rock School Outreach Program*

The USAOND started the Standing Rock High School Outreach Program during the 2011-12 school year. USAOND, in cooperation and partnership with the Standing Rock Sioux Tribal Prosecutor's Office, held a series of presentations to the student bodies of Standing Rock High School and Standing Rock Middle School regarding issues of concern to Native youth. The presentations were intended to educate the students for their personal safety and as to the legal and physical/psychological hazards associated with certain conduct. In the 2011-12 school year there were eight such presentations to students on topics including alcohol and seatbelt safety, dangers of gangs, internet safety and sexting, cyber bullying, and sexual assaults, reporting, and thriving: A Victim's Perspective, and Dangers of Drug Usage and the Personal Cost of Distribution. Each presentation also included a member of a law enforcement agency, BIA or other State and Federal agencies, describing his or her occupation and career path. The Standing Rock students were receptive to these presentations and their overall trust and acceptance of the program and the presenters grew throughout the year. Impressed with this program, the Bismarck Tribune editorialized that "[t]o have an assistant U.S. attorney making his or her presence felt on the Standing Rock Indian Reservation—not in the courtroom but in the lives of young Native Americans—has to make a positive difference."³² The Standing Rock School has agreed to continue the program.

32. Editorial, *Reaching out on the Reservation*, BISMARCK TRIB., May 3, 2012, at 8A.

2. *Pediatrician-Led Child Sexual Assault Response Training at Spirit Lake Reservation*

In the fall of 2011, USAOND organized training on recognizing the signs of head trauma, sexual abuse, neglect, and physical abuse to tribal first responders on the Spirit Lake Reservation. This training, which was conducted by a Fargo pediatrician who specializes in treating child abuse and child sexual abuse, equipped the attending first responders with tools to help them identify child victims of abuse and sexual abuse. Innovative trainings such as these serve to improve child abuse and neglect investigations in Indian country.

3. *Prescription Drug Take-Back Initiative*

On October 29, 2011, the USAOND worked with the Drug Enforcement Administration (DEA) and BIA to ensure that, for the first time, prescription drug take-back locations were available on all North Dakota reservations for DEA's National Prescription Drug Take-Back Day. The presence of the drug take-back sites in Indian country resulted in the turnover of multiple pounds of unused and unwanted prescription drugs that otherwise may have found its way to the streets.

4. *SORNA Training for Tribes in North Dakota*

USAOND partnered with the United States Marshal's Service and the North Dakota Attorney General's Office to provide five training sessions on the implementation of the Sex Offender Registration and Notification Act (SORNA) to law enforcement and tribal court professionals from all reservations in North Dakota. The training addressed implementing SORNA in Indian country. Specifically, USAOND addressed the tribes' obligations regarding registry requirements for sex offenders living in Indian country. The U.S. Marshals Service and USAOND also provided information on how to successfully investigate and prosecute "failure to register" cases.

5. *Second Annual Tribal Consultation Conference*

Fulfilling its promise to make its Tribal outreach conference into an annual event, USAOND hosted the 2012 Tribal Consultation Conference on April 26, 2012, at United Tribes Technical College in Bismarck, North Dakota. The event brought together tribal and law enforcement leaders from across the state to discuss how they can work together to improve public safety in tribal communities in North Dakota. The keynote speaker for the Conference was the Honorable James Cole, Deputy Attorney General,

United States Department of Justice. DAG Cole is the number-two official at the Department of Justice and advises and assists the Attorney General in formulating and implementing Departmental policies and programs and in providing overall supervision and direction to all organizational units of the Department. In addition to DAG Cole, the Conference also featured presentations by DOJ's Bureau of Justice Assistance and Office of Juvenile Justice and Delinquency Prevention on new initiatives and studies that are available to assist tribes and law enforcement in North Dakota in addressing public safety issues. The Conference also featured working breakout sessions. Breakout-session topics included: (1) Domestic Violence in Tribal Communities: Are We Making Progress?; (2) Law Enforcement Challenges in the Bakken Oil Patch; (3) Brainstorming Tribal, State, and Federal Court Partnerships in Reentry; and (4) Environmental Enforcement in Indian Country: Working Together to Protect Tribal Lands and Wildlife. The breakout sessions were designed to gather input from tribal and law enforcement participants on key areas of concern. Nearly 130 people attended the Conference.

6. *Offering Hope to Victims in the Spirit of Justice Conference*

USAOND partnered with USAOSD to offer a conference to providers of direct victim services who work on reservations in North Dakota and South Dakota. Approximately 200 direct-service providers, law enforcement officers, medical staff, mental-health professionals, and court personnel attended this conference, held in Rapid City, South Dakota, in August 2011.

VII. LOOKING FORWARD: ADDITIONAL CHANGES DESIGNED TO SUPPORT THE ANTI-VIOLENCE STRATEGY

While some progress has been made in the first year of the Anti-Violence Strategy, there remains much to do to make tribal communities in North Dakota safer. USAOND has identified several areas where we will take action in the future.

A. CREATION OF WHITE COLLAR CRIME/PUBLIC CORRUPTION TEAM

Historically, AUSAs assigned to Indian country prosecute not only the violent crimes that arise on their assigned reservation but also any white collar or public corruption cases that arise there as well. However, as part of an office-wide effort to centralize the prosecution of white collar crime and public corruption cases, USAOND will create a White Collar Crime/Public Corruption Team within the office. This organizational

change will, among other things, further increase the resources of USAOND dedicated to Indian country. This is because the AUSAs who are part of the White Collar Crime/Public Corruption Team, none of whom currently have any formal Indian country case responsibility, will be assigned white collar and public corruption cases that arise in Indian country. This change in staffing will serve many positive purposes, including streamlining the case load of AUSAs assigned to Indian country so they may concentrate their practice primarily on the prosecution of violent crimes. It will also bring additional expertise to the prosecution of white collar crime and public corruption cases in Indian country, as those cases will now be handled by AUSAs who specialize in that area.

B. IMPLEMENTATION OF DOJ/OVW GRANT TO FUND AN
ADDITIONAL STANDING ROCK SIOUX TRIBAL SAUSA TO
PROSECUTE DOMESTIC VIOLENCE CASES

In 2012, the Department of Justice's Office of Violence Against Women (OVW) awarded a grant to the Standing Rock Sioux Tribe to fund hiring an additional Tribal Prosecutor to prosecute domestic violence cases on the Standing Rock Sioux Reservation. This grant provides that this new OVW-funded Tribal Prosecutor will also be a SAUSA in the USAOND and in the United States Attorney's Office for the District of South Dakota. When this SAUSA is hired, USAOND will work shoulder-to-shoulder with the SAUSA in prosecuting domestic violence cases in federal court in North Dakota.

C. THE CHALLENGE OF REENTRY: ESTABLISHING PARTNERSHIPS

The final prong of the USAOND's Anti-Violence Strategy is to work to improve the manner in which those convicted of criminal violations in federal court reenter tribal communities after serving their federal sentences. USAOND has held many promising initial conversations with various potential reentry program partners. USAOND has learned that sometimes it can be difficult for prosecutors to engage in reentry in an impactful way. However, the issue of reentry in Indian country is too important for USAOND to let these difficulties dissuade us from moving forward. In January of 2012, the DOJ reversed a policy that had historically discouraged United States Attorneys from participation in reentry programs. With the resolve to do more and with this support from the highest levels of DOJ in mind, USAOND will redouble our efforts to find partners to work with us toward the goal of improving reentry in Indian country in North Dakota. In the future, USAOND will explore options for starting a formal

Indian country reentry program in North Dakota. USAOND will reach out to our partners in the federal criminal justice system in North Dakota, to the tribes and tribal court systems in North Dakota, to criminal justice entities in North Dakota state government, and to Department of Justice components that have expertise and resources to share in this area to seek their cooperation in this effort.

VIII.CONCLUSION: A RIPPLE OF HOPE

USAOND's Anti-Violence Strategy cannot solve all of the public safety challenges in tribal communities in North Dakota as these challenges are centuries in the making. The increased risk of sexual assault and domestic violence faced by Native American women cannot be erased through the twelve-month implementation of a new strategy. Rather, impactful changes on violent crime rates in Indian country will take many years of focus and hard work. The Anti-Violence Strategy is not the final word. It will surely grow and change as lessons are learned from shared experiences, as progress is proven, and as setbacks are suffered. While we have now taken a first step together toward safer tribal communities in North Dakota, we recognize that our work is just beginning.

USAOND's hope, however, is that this first step can lead to a new era of government-to-government consultation and cooperation between the USAOND and the tribes in North Dakota. Our hope is that USAOND's contributions here will help open a new, broader conversation between tribal members, law enforcement officials, and North Dakotans who may not live in Indian country, but who are committed to ensuring safe communities for all who live in North Dakota. Perhaps this first small step by USAOND can be, as Robert Kennedy contemplated, one of many "tiny ripple[s] of hope," which "crossing each other from a million different centers of energy and daring," will "build a current which can sweep down the mightiest walls of oppression and resistance."³³ Surely, the people of North Dakota, Indian and non-Indian, working together can fashion such a current to crash and crash again at the walls created by violent crime on the reservations in North Dakota until these walls too are swept away.

33. Robert Kennedy, Day of Affirmation Speech in Cape Town, South Africa (June 6, 1966), available at <http://www.jfklibrary.org/Research/Ready-Reference/RFK-Speeches/Day-of-Affirmation-Address-news-release-text-version.aspx>.

UNITED STATES ATTORNEY'S OFFICE
DISTRICT OF NORTH DAKOTA ANTI-VIOLENCE STRATEGY
FOR TRIBAL COMMUNITIES IN NORTH DAKOTA

TIMOTHY Q. PURDON, UNITED STATES ATTORNEY,
UNITED STATES ATTORNEY'S OFFICE,
DISTRICT OF NORTH DAKOTA

OPERATIONS PLAN FOR INDIAN COUNTRY: AN ANTI-
VIOLENCE STRATEGY FOR TRIBAL COMMUNITIES IN
NORTH DAKOTA

*"Federal prosecutors should see themselves as neighborhood
problem solvers, not case processors."^{1*}*

I. TRIBAL COMMUNITIES IN THE DISTRICT OF NORTH
DAKOTA

North Dakota was admitted to the United States of America in 1889 and covers 68,994 square miles. The 2010 Census reports that North Dakota has a population of over 672,591. The District of North Dakota encompasses the entire state of North Dakota.

According to the 2010 Census, North Dakota has approximately 36,500 people (5.4 percent of the population) who consider themselves Native American. This number increases when people who consider themselves part Native American are added. In 2009 the North Dakota State Data Center reported an estimated 43,167 people in North Dakota considered themselves all or part Native American.

Contained within the state are the whole or part of four reservations: the Fort Berthold Reservation, home to the Three Affiliated Tribes (the Mandan, the Hidatsa, and the Arikara); the Spirit Lake Reservation, home of the Spirit Lake Tribe; the Standing Rock Reservation, home of the Standing Rock Sioux Tribe; and the Turtle Mountain Reservation, home to the Turtle Mountain Band of Chippewa Indians. Federal jurisdiction exists over all of these reservations.

The Fort Berthold Reservation was created by the Fort Laramie Treaty of 1851, and is located in the west central part of North Dakota. It is home to the Three Affiliated Tribes, comprised of the Mandan, Hidatsa, and Ari-

* Attorney General of the United States Eric Holder, Project Safe Neighborhoods Conference, New Orleans, Louisiana, July 2010.

kara (Sahnish) Tribes. The Fort Berthold Reservation is the largest reservation in the state in terms of area. It covers 981,215 acres and lies within portions of six counties: Dunn, McKenzie, McLean, Mercer, Mountrail, and Ward. Approximately 4,500 Native Americans live on the reservation according to the 2010 Census. This is the only reservation in North Dakota where law enforcement is the primary responsibility of the local Tribe pursuant to a contract between the Tribe and the Bureau of Indian Affairs. The BIA maintains the primary criminal investigatory responsibilities on the Fort Berthold Reservation.

The Spirit Lake Reservation was established in 1867 by treaty between the United States and the Sisseton-Wahpeton Sioux Bands. It is located in the east central part of the state. The reservation covers approximately 245,000 acres and lies within portions of four counties: Benson, Eddy, Nelson, and Ramsey. The 2010 Census figures report that approximately 3,600 Native Americans live on the reservation.

The Standing Rock Sioux Reservation lies within both North Dakota and South Dakota. It was established by the Fort Laramie Treaty of 1868. The North Dakota portion of the reservation includes all of Sioux County, located in the south central part of North Dakota. The North Dakota portion of the reservation covers approximately 722,000 acres. Members of the Standing Rock Sioux Tribe are from the Dakota and Lakota nations. The 2010 Census reports that approximately 3,500 of the over 4,000 residents of the Standing Rock Reservation are Native American.

The Turtle Mountain Indian Reservation is home to the Turtle Mountain Band of Chippewa Indians. The reservation was created by Executive Orders of December 21, 1882, and March 29, 1884. It is located within Rolette County in the north central part of the state, seven miles from the Canadian border. The exterior boundaries of the reservation are twelve miles by six miles, or 46,080 acres. In addition, there are parcels of allotted trust land that lie outside the boundaries of the reservation. Land was also allotted to the Tribe in western North Dakota, which is known as the Trenton Indian Service Area. The 2010 Census reports that 8,320 Natives live on the Turtle Mountain Reservation and its trust land. According to the tribal enrollment office, there are 12,610 enrolled members who live within the reservation and surrounding Rolette County.

There also exists in Richland and Sargent Counties in southeastern North Dakota a small amount of tribal trust land belonging to the Sisseton Wahpeton Oyate Tribe. The vast majority of the tribal trust land belonging to the tribe is in South Dakota. These lands were part of the Lake Traverse Reservation, which was formed by treaty in 1867.

II. AN ANTI-VIOLENCE STRATEGY FOR TRIBAL COMMUNITIES

At the Project Safe Neighborhoods Conference in New Orleans in July of 2010, Attorney General Eric Holder articulated a renewed commitment to reducing violent crime across the United States. In a speech to the conference, the Attorney General said:

[W]e've reached an important point for updating our goals, for modernizing and refocusing our strategies, and for compiling the latest and best thinking we have on the most effective and economically viable ways to reduce violent crime and build safe, vibrant, and productive communities. . . . Finding the solutions we need begins by updating the Justice Department's violent crime strategy, a critical initiative that's well underway. The development of this strategy is being led by our outstanding network of U.S. Attorneys. It is focused on three key areas: enforcement, prevention, and reentry.¹

As the Attorney General has clearly stated, the Department of Justice must take a balanced approach to combating, and ultimately reducing, violent crime. Violence prevention is a three-legged stool requiring strong enforcement of federal criminal laws, a commitment to programs aimed at the prevention of violent crimes, and viable reentry programs. Without reinforcement of any leg of that stool, a strategy will fail to achieve potential for necessary community impact. Heeding the Attorney General's call for a three-pronged approach (enforcement, prevention, and reentry) to combating violent crime, the USAOND has made and will make significant changes to the strategy we employ to combat violent crime on the reservations in North Dakota.

A. VIGOROUS ENFORCEMENT OF FEDERAL CRIMINAL STATUTES

The central mission of the prosecutors in the USAOND who work in Indian Country is the enforcement of federal criminal statutes on the reservations. We must continually rededicate ourselves to that core function and make it the cornerstone of our anti-violence strategy. We must vigorously enforce the laws which punish sexual assaults, domestic assaults, gun offenses, gang activity, drug-related crimes, and other acts of

1. The Attorney General's Advisory Committee accepted the Attorney General's challenge of leadership in the area of violent crime reduction and prevention. The committee developed a November 16, 2010, Memorandum that sets forth the Department of Justice's Anti-Violence Strategy. This strategy, with its focus on enforcement, prevention, and reentry, has direct application to tribal communities in North Dakota. As a result, this Anti-Violence Strategy integrates materials from this Memorandum.

violence. We must remove the most violent individuals from our tribal communities. Nothing we do is more important than this. Under any analysis, the identification, apprehension, conviction, and removal from tribal communities of the most violent criminals is indispensable to our success. This will remain the cornerstone of our anti-violence strategy as we forge ahead with parallel education and prevention strategies for the longer-term crime reduction which our tribal communities so desperately need.

Successful violent crime prosecution is the product of effective collaboration between Assistant United States Attorneys (AUSAs) and law enforcement investigators. Federal prosecutors should be involved early in long-term violent crime investigations and work closely with investigators from the Federal Bureau of Investigation (FBI) and the Bureau of Indian Affairs (BIA), and the tribes themselves in the identification of targets and the use of various investigative tools. We must use the statutory tools at our disposal to protect victims and witnesses in violent crime investigations so as to create an atmosphere that results in greater reporting of crime by victims, and greater cooperation by victims, witnesses, and, when appropriate, co-defendants with the USAOND. Finally, we must be prepared to commit a sufficient amount of our in-house prosecutorial resources to these time-intensive violent crime investigations.

B. SUPPORT FOR VIABLE CRIME PREVENTION PROGRAMS

Although essential as a short-term approach, the aggressive enforcement of federal criminal statutes in tribal communities will not solve the violent crime problems on the reservations in the long-term. Put simply, we cannot arrest our way out of this problem. We must augment our enforcement efforts with support for viable, community-based crime prevention efforts in these communities beset by violence. We must therefore focus on front-end solutions to violent crime, rather than simply enforcing the law reactively on the back end of the problem.

Therefore, in addition to targeting the most violent criminals with apprehension and incarceration, we must support organizations working to empower these communities to reduce or eliminate the forces, influences, catalysts, and causes which feed violent behavior. This strategy contemplates the pursuit of both front- and back-end solutions, often pursued simultaneously in tribal communities which suffer from persistent levels of violent crime.

Prevention efforts should not, however, exist separately from enforcement activity. Tribal communities will also need an enhanced focus on prevention if they are to achieve any measure of lasting success. The

important work of treatment, education, and prevention should not be attempted independently of enforcement efforts. Rather, these different approaches should be interlocking components of an integrated, comprehensive strategy coordinated by the USAOND.

In short, our prevention strategy must build on the best thinking and research about what works. For example, we know that complex social issues like these are most effectively addressed through collaborative, multi-strategy responses and partnerships that include law enforcement, social services, schools, community- and faith-based organizations, public health, the business community, and others. We also recognize that crime doesn't impact all communities in the same way. It is up to the USAOND and our tribal partners to craft strategies that recognize these differences and use local data to pinpoint the nature of violent crime problems, as well as local resources that can be deployed to solve those problems.

C. REENTRY PROGRAMS

Prisoner reentry into tribal communities also has a significant impact on violence prevention. Ninety-five percent of people in prison today will be released. If we are serious about public safety, we must increase focus on reentry efforts so those individuals on supervised release following a period of incarceration can become productive citizens once they are back in the community. United States Attorneys have been encouraged to evaluate their office's support for programs which help offenders reintegrate into society upon release from incarceration. See January 19, 2011, Memorandum from Deputy Attorney General James Cole to all United States Attorneys. As such, the USAOND will support, where consistent with Department of Justice policies, reentry courts and other initiatives in the District Court North Dakota. We look forward to working closely with North Dakota's United States District Court Judges and the United States Probation Office in exploring additional reentry programs aimed at tribal communities.

D. FOCUS ON VICTIMS

In each of the three elements of this anti-violence strategy, we need to be attentive and responsive to those who feel violence most directly: victims of violent crime. We should find ways to prevent further victimization of these individuals and remember that how we think about and treat victims has a tremendous impact on their efforts to rebuild their lives. We must also realize that the impact of victimization goes beyond the direct victim. Violence ripples through communities and can make an

entire community feel unsafe. Insensitive handling of victims of violent crime will erode public confidence in the criminal justice system and discourage cooperation with law enforcement. Conversely, sensitive treatment of victims increases community connections to law enforcement and helps restore a sense of order in areas plagued by violence.

We will be vigorous in our unfailing adherence to the provisions of the Justice for All Act. This statute applies to all federal crimes to ensure victims' rights are respected and enforced. Beyond compliance with this statute, we will find ways to keep safe those victims and witnesses who are cooperating with law enforcement. We will fully support our Financial Litigation Unit as it collects restitution awards and ensures that victims receive just compensation for the crimes perpetrated against them.

III. RESOURCE ALLOCATION OF THE NORTH DAKOTA UNITED STATES ATTORNEY'S OFFICE

The USAOND has made several changes to the way we do business in order to more effectively implement our three-pronged approach to reducing violent crime in tribal communities in North Dakota.

A. COMMITTING ADDITIONAL PROSECUTIVE RESOURCES TO INDIAN COUNTRY

As of December 2010, an additional AUSA has been assigned Indian country prosecution duties. Prior to December 2010, three AUSAs handled Indian country prosecutions arising on the four high-referral reservations: Fort Berthold, Standing Rock, Spirit Lake, and Turtle Mountain. The additional AUSA is now assigned to handle violent crime prosecutions arising out of the Standing Rock Reservation. This new configuration has one AUSA assigned to each of the four reservations that produce a significant caseload.

This change represents a thirty-three percent increase in the number of AUSAs at the USAOND with responsibility for prosecution of violent crimes in these four high-referral tribal communities.

Finally, while the USAOND historically received a very small number of annual referrals for prosecution of violent crimes from the Sisseton Wahpeton Oyate Tribe, in March 2011 the USAOND formally designated an additional (fifth) AUSA with responsibility for cases arising out of this reservation and gave that AUSA some limited responsibility for tribal and law enforcement consultation as well.

B. IMPLEMENTING A COMMUNITY PROSECUTION MODEL

Starting in February 2011, each AUSA assigned responsibility for prosecution of violent crimes in Indian country is being required to physically visit their assigned reservation several times per year, in addition to any reservation travel related to case preparation. While on the reservation the AUSAs will place an emphasis on communicating with our tribal law enforcement and tribal court partners. The AUSAs will engage in a number of other activities while on the reservations, including convening multi-disciplinary team (MDT) meetings; attending child protection team meetings; reviewing and coordinating case investigations with FBI, BIA, and tribal law enforcement; reviewing and coordinating charging decisions with tribal prosecutors; providing training to BIA, tribal, and county law enforcement; and providing training or support to the tribal courts. Our Tribal Liaison and the United States Attorney will make additional visits to each reservation in North Dakota throughout the year to engage in government-to-government consultations with the Tribal Chairs and Tribal Councils.

It is our expectation that this frequent travel to the reservations and frequent consultation with the tribal officials will improve communications between the tribes and our office so that, together, we may jointly implement effective crime prevention programs in tribal communities.

C. LAUNCHING OF ANNUAL TRIBAL LISTENING CONFERENCE

On March 16, 2011, the USAOND held its first Tribal Listening Conference at United Tribes Technical College in Bismarck, North Dakota. The editorial page of the Bismarck Tribune praised the Conference as “eclips[ing] other outreach efforts” in the recent past and noted that the “discussion, dialog and partnership possibilities were exciting and encouraging” and that the spirit of co-operation and listening evidenced at the Conference “could lead to something big.” “State’s Largest Minority has Huge Impact,” Bismarck Tribune, March 20, 2011.

The Conference was attended by nearly 150 tribal members, federal, state, and county law enforcement officials, tribal social services, corrections, probation and law enforcement personnel, and members of the tribal, state, and federal judiciary. The Conference enabled the U.S. Attorney and AUSAs to listen to tribal concerns in a series of breakout sessions, some of which focused on tribe-specific concerns and others which addressed several substantive areas, including: (1) Domestic Violence in Tribal Communities; (2) Law Enforcement in Indian Country; (3) Offenses Against Children: Protecting the Future; (4) Strengthening

Tribal Courts; and (5) Reentry: How do Returning Offenders Impact the Community?

Concerns raised in these breakout sessions have been considered in the creation of this Operation Plan. For example, a common theme at the Listening Conference was a lack of communication between tribes and the USAOND. Responsive efforts to increase communication can be found in the implementation of the Community Prosecution strategy discussed above and the changes made to implement the coordination requirements found in the Tribal Law and Order Act of 2010 set forth below. Additionally, several reservation-specific concerns raised at the Tribal Listening Conference are addressed in the tribe-by-tribe addendums that are part of this plan.

The USAOND will make this Tribal Listening Conference an annual event.

D. FOUNDING OF “INDIAN COUNTRY TEAM” WITHIN THE USAOND

In April 2011 the USAOND established an “Indian Country Team” within the office. The IC Team consists of the U.S. Attorney, the First Assistant U.S. Attorney, the Criminal Chief, the Senior Litigation Counsel, the Law Enforcement Coordinator, the Victim Witness Coordinators, and the AUSAs and Paralegals who handle violent crime prosecutions in tribal communities. The IC Team will meet formally on a monthly basis to staff IC cases and discuss policies and procedures that impact our Indian country prosecutions. By involving the senior leadership of the office, as well as the Law Enforcement Coordinator and the Victim Witness Coordinators, on a monthly basis in IC issues, these IC Team meetings are a way to further leverage USAOND resources for combating violent crime in tribal communities.

E. CREATING THE POSITION OF “SPECIAL COUNSEL TO THE UNITED STATES ATTORNEY FOR INDIAN COUNTRY”

In June 2011, the position of “Special Counsel to the United States Attorney for Indian Country” was established within the USAOND. The creation of this position, which will be filled by an AUSA with substantial experience in prosecuting violent crime in tribal communities, will serve to complement the efforts of our Tribal Liaison by providing additional resources to mentor and assist the AUSAs prosecuting violent crime cases in tribal communities and providing additional experienced leadership to the IC Team.

F. IMPLEMENTING THE PROSECUTORIAL COORDINATION PROVISIONS OF THE TRIBAL LAW AND ORDER ACT OF 2010

The USAOND has made changes in the way it communicates to tribal law enforcement and tribal prosecutors the decision whether to prosecute or not prosecute a matter. Section 212 of the Tribal Law and Order Act of 2010 requires that, when a U.S. Attorney makes a non-prosecution decision on an alleged violation of federal criminal law in Indian country, the U.S. Attorney shall coordinate with the appropriate tribal justice officials regarding the status of the investigation and the use of evidence relevant to the case in a Tribal court with authority over the crime alleged. TLOA, § 212.

In response, it is the policy of the USAOND that when a non-prosecution decision is made the responsible AUSA will draft a detailed memorandum explaining the reasons for the non-prosecution decision and will send this memorandum to: (1) the appropriate tribal prosecutor; and (2) the law enforcement agencies involved in the investigations. Additionally, the USAOND will attach to this memorandum a standard form whereby a tribal prosecutor can request access to the evidence obtained in the course of the investigation. This access will be, of course, subject to the restrictions of federal law.

G. STARTING SCHOOL OUTREACH PROGRAMS

In order to foster an ongoing relationship of trust with tribal members, the USAOND, will, on selected reservations, begin programs of outreach to tribal youth through the public school system. These outreach programs will initially take different forms in an effort to identify best practices.

One such effort on the Standing Rock Reservation will include frequent presentations to the students regarding areas of concern such as internet and texting safety, bullying, drug and alcohol abuse, and gangs. The intent of these presentations is to educate the students about the dangers involved in the identified conduct and to increase the interaction between the members involved in criminal justice system and those who will become the future adults on the reservation.

Another outreach effort on the Spirit Lake Reservation includes the “adoption” of an eighth-grade class at the local school by an AUSA. As part of this outreach program, it is planned that the AUSA will serve as a role model to the class. Students will be provided information on career objectives with job-shadowing opportunities. Classroom presentations will be made on a variety of subjects, including federal jurisdiction on reserva-

tions, sexting, computer safety, and alcohol/drug education. To accomplish this, federal agents will be brought in to help educate the students.

H. STAFFING OF SEX-TRAFFICKING WORKING GROUP

The USAOND, in conjunction with the FBI and multiple tribal organizations, is participating in a Sex-Trafficking Working Group to address the abuse of women and children through prostitution on the Fort Berthold Reservation. The working group is developing a protocol to address reporting and investigation of sex-trafficking violations and a community response to the shelter, treatment, and other needs of the victims of such abuse.

IV. CONCLUSION

This Anti-Violence Strategy will not solve all of the public safety challenges in Tribal Communities. Rather, the specific actions outlined in this strategy represent our best efforts to address the tide of violent crime in tribal communities in North Dakota. The prioritization of both front- and back-end solutions reflects an acknowledgment that we can't arrest our way out of the violent crime problem. The USAOND, working closely with tribal communities and law enforcement partners, must identify specific community needs and coordinate the diverse responses to those needs. This strategy should serve to ultimately make tribal communities in North Dakota safer for the people we serve.

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