



Senate Committee on Indian Affairs Oversight Hearing on “Native Women: Protecting, Shielding, and Safeguarding Our Sisters, Mothers, and Daughters”

By Kayleigh Brown, Summer Law Intern, Indian Law Resource Center

On July 14, 2011, the Senate Committee on Indian Affairs convened a long overdue oversight hearing on protecting Native women. To read testimony from the witnesses at the hearing or to watch a replay of the hearing online, visit <http://indian.senate.gov/>.

Chairman Daniel Akaka began the hearing with a chilling public service announcement from Minnesota called “When I Grow Up,” which focused on ensuring that Native girls will not be plagued by current rates of domestic and sexual violence as adults. Five Senators were present: Chairman Daniel Akaka (D-HI), Vice Chairman John Barrasso (R-WY), Senator Al Franken (D-MN), Senator Lisa Murkowski (R-AK), and Senator Tom Udall (D-NM). The hearing consisted of three panels. On the first panel was Tom Perrelli, Associate Attorney General for the Department of Justice (DOJ), and Rose Weahkee, Director for the IHS Division of Behavioral Health. Panel two was composed of the Honorable Donald W. Rodgers, Chief of the Catawba Indian Nation in SC; Carmen O’Leary, Director of the Native Women’s Society of the Great Plains in SD; and Sherry Sanchez Tibbetts, Executive Director of the American Indian Community Housing Organization. Finally, panel three consisted of Mickey Peercy, Executive Director of Health Services of the Choctaw Nation of Oklahoma, and Sarah Deer, Assistant Professor at William Mitchell School of Law and USA’s Native American and Alaska Native Advisory Council Member.

VAWA and the Senate Judiciary Committee Hearing on “The Violence Against Women Act: Building on Seventeen Years of Accomplishment”

Senator Franken noted that the Senate Judiciary Committee held a hearing on the Violence Against Women Act (VAWA) on July 13, 2011. Senator Franken, among others, called for VAWA to be updated to better protect and provide services for victims of violence. For further information, see <http://judiciary.senate.gov/hearings/hearing.cfm?id=3d9031b47812de2592c3baeba61af68b>.

Criminal (and Civil) Jurisdictional Fixes

Tom Perrelli, Associate Attorney General for the DOJ, focused heavily on a jurisdictional fix. He framed his argument first with statistics on violence against Native women. For example, in some communities, he noted that murder rates of Native women are ten times the national average. Based on this startling statistic, Mr. Perrelli stated that protecting Native women is a high priority of the DOJ and that one of the best ways to protect Native women is by empowering tribal governments, police, and courts. Mr. Perrelli further noted that the Tribal Law and Order Act’s (TLOA’s) heightened sentencing provisions are a good start, but more needs to be done.

Mr. Perrilli emphasized that tribes’ lack of jurisdiction over non-Indians is a major problem. Overall, he noted three major gaps in the current system. First, the current patchwork of federal,

tribal, and state jurisdiction in Indian country needs to be addressed. He asserted that “new Federal legislation could recognize certain tribes’ power to exercise concurrent criminal jurisdiction over domestic-violence cases, regardless of whether the defendant is Indian or non-Indian.” Second, he appeared to be referencing *Martinez v. Martinez* when he said at least one federal court has ruled “that tribal courts have no authority to issue or enforce protection orders against non-Indians who reside on tribal lands.” Finally, he pointed out that federal criminal law is not parallel with state laws (*i.e.*, many states have developed laws recognizing graduated sanctions for escalating conduct in domestic violence (DV) cases). He suggested that federal legislation needs to be passed that more closely matches such state legislation.

When asked by Chairman Akaka what steps need to be taken regarding tribal criminal jurisdiction, Sarah Deer presented two: First, sentencing limits need to be addressed. While TLOA increases sentencing, the maximum sentence for a child rapist is still only three years. For some, this creates a deterrent to reporting such crimes because rapists spend little time in prison and may soon come back to terrorize the victim. Second, Ms. Deer addressed *Oliphant*, saying that Congress needs to restore tribal criminal jurisdiction over non-Indians.

Indian Health Services and Other Victim Resources

As the Director of the IHS Division of Behavioral Health, Rose Weahkee focused heavily on IHS services. She addressed numerous provisions of TLOA that apply to the IHS’s handling of DV cases. For example, in accordance with TLOA, the GAO will publish an upcoming report on IHS’ collection of forensic evidence. When Senator Murkowski asked about how the IHS plans to address problems relating to the collection of such evidence, Weahkee said that the IHS is focusing on proper evidence collection training.

Senator Franken quoted an article by Amnesty International regarding IHS’s improper handling of rape kits. According to the article, while IHS’ services are free, some Native women who have gone to non-IHS facilities have been charged for their rape kits. Often, Native women have never received reimbursement because the reimbursement policy is complex. Ms. Weahkee noted that, in response, the IHS recently established a policy that requires the IHS to provide full reimbursement. Senator Franken also noted that he is currently in the process of attempting to pass legislation that would provide funds so no woman would have to pay for a rape kit.

Sherry Sanchez Tibbets discussed the closure of many Minnesota DV shelters due to national budget cuts. Now that the Minnesota government has shut down, even more DV shelters are in trouble. Two shelters in the Twin Cities alone have closed. Ms. Tibbets explained that homeless shelters are not an adequate substitute for DV shelters because the staff is often not trained to deal with these cases. Having adequate housing for DV victims is especially important because it removes them from the location of their abuser. She also had three recommendations for the Committee. First, more culturally appropriate housing needs to be developed, especially in urban areas. Second, more training and technical assistance is needed for mainstream programs to help identify trafficking victims and to provide culturally aware services. Third, the law enforcement certification requirement for domestic sex trafficking victims to qualify for services funded by federal dollars needs to be eliminated.

Carmen O’Leary asserted that DV services need to be continually funded and supported. Inconsistent funding of services creates a dangerous situation for women; more than two to three year grants are needed for these programs.

Regarding the reauthorization of VAWA, Ms. Deer commented that the key to VAWA is advocacy; advocates hold the act together. Although VAWA provides critical resources to support advocacy groups, there are inconsistencies in the funding of these resources. Ms. Deer pointed out the need to ensure funding for advocacy groups continues from year-to-year.

Sex Trafficking

Sex trafficking was discussed rather frequently throughout the hearing. Senator Murkowski first breached the subject in her opening remarks. She noted that there is a growing level of sex trafficking amongst Native women in Alaska. Sarah Deer, along with witness Sherry Sanchez Tibbetts, previously was involved with the Minnesota Indian Women's Resource Center's report *Shattered Hearts*. Ms. Deer confirmed sex trafficking concerns with deeply disturbing statistics. She is currently in the process of finishing another report that will be out in October which focuses on trafficking and prostitution in Minnesota. For the report, 105 women were interviewed. Deer said that 2/3 of these women had been used for sex by up to 300 men. The women in the study also reported that "70 percent of the women they knew in prostitution had been lured, tricked or trafficked into it."

Ms. Deer's study will add valuable research regarding sex trafficking of Native women. Mr. Perrelli noted there is a currently a lack of research on this subject. He said that the DOJ has done a focus group on sex trafficking of Alaska Native and American Indian women and found that a lack of information and understanding of the issue. More training of law enforcement also is needed.

Senator Murkowski presented an interesting legal argument regarding sex trafficking. She asked Mr. Perrelli whether it would be beneficial to create a law which makes it crime—similar to one under the Mann Act—to transfer a minor from a Native village or reservation to another part of the state for the purpose of committing a sex act, even if the act is entirely intrastate. Mr. Perrelli, responded that a new law is not necessary. Under current law, a person does not actually need to be physically trafficked and moved over state borders, the act just needs to affect interstate commerce to be illegal.

Impact on Children

Frequently, Senators and witnesses noted that DV is cyclical. Children experiencing DV in the home often grow up to be abusers. Chief Don Rodgers provided moving personal testimony. He noted that when he sees his daughter playing with his nieces, based on rape statistics, "one of those children will face this." Chief Rodger is a survivor of DV, which he witnessed as a child. He testified that the psychological ramifications on a child can result in one of two things happening: "it can turn you into a perpetrator or it can turn you into an advocate." Chief Rodger's story highlighted how violence against Native women does not just impact just women, but it affects their children—male and female alike.

TLOA

TLOA was mentioned frequently throughout the hearing as one piece to solving the puzzle of violence against Native women. Sarah Deer also mentioned the UN Declaration on the Rights of Indigenous people, noting that the United States now has international and national frameworks for addressing sexual violence against Native women.

U.S. Attorney Offices' Declination Rates

Senator Udall pressed Mr. Perrelli about what efforts have been made to deal with U.S. Attorneys Offices' high declination rates. Mr. Perrelli noted that three things are happening and need to happen. First, the DOJ has gone to U.S. Attorneys and told them to engage with tribal governments and tribal prosecutors. Second, there has been a direct focus on crimes against Indian women and children. Finally, there needs to be heightened communication between tribal governments and U.S. Attorneys Offices. For example, in Montana the U.S. Attorneys Office has a tribal liaison who talks every two weeks with tribal prosecutors. Mr. Perrelli noted that declination rates will likely remain high for various reasons, such as a lack of federal jurisdiction, but U.S. Attorneys Offices should be doing a better job of explaining high declination rates.

The Committee is accepting written testimony through July 28, 2011. Testimony may be submitted by email at the following address: testimony@indian.senate.gov.