



Recommendations of the Indian Law and Order Commission

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Indian Law and Order Commission



A ROADMAP FOR MAKING NATIVE AMERICA SAFER

Report to the President &
Congress of the United States



Indian Law & Order Commission
November 2015



Indian Law & Order
COMMISSION

THE COMMISSION

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Established under Tribal Law and Order Act (2010) with Presidential and Congressional Appointees



Commissioners:

TROY EID (CHAIR), attorney and former United States Attorney, District of Colorado

FORMER U.S. REPRESENTATIVES STEPHANIE HERSETH-SANDLIN (SD) and EARL POMEROY (ND), who were instrumental in writing and enacting TLOA

AFFIE ELLIS (Navajo), government affairs consultant, former assistant attorney general for Wyoming

TOM GEDE, attorney and former head of the Conference of Western Attorneys General

UCLA LAW PROFESSOR & VICE-CHANCELLOR CAROLE GOLDBERG, who is also a Justice of the Hualapai Court of Appeals

JEFFERSON KEEL, Lieutenant Governor of the Chickasaw Nation, former President of the National Congress of American Indians, and a Vietnam veteran

CHIEF JUDGE THERESA POULEY (Colville) of the Tulalip Tribal Court

TED QUASULA (Hualapai), former police chief and law enforcement expert; General Manager, Grand Canyon Skywalk Development

The Commission in Action

- Field hearings and visits to all 12 Bureau of Indian Affairs regions since August 2011
- Participation from citizens representing the majority of Indian nations in the United States
- Hundreds of hours of witness testimony from tribal, state, local and federal officials, non-profit organizations, and other stakeholders
- Advisory committee of tribal leaders, representatives

Unanimous, Bi-Partisan Recommendations on Jurisdiction

- Tribe-by-tribe option to exit federal and state jurisdiction
- Tribe-by-tribe option to exercise jurisdiction over all persons within their territory
 - Subject to review by a new, special federal court
 - Review limited to protection of procedural constitutional rights (fair process)
- Tribal courts can use waivers for alternative justice

Further Unanimous Recommendations

- Return juvenile justice to tribes, at tribal option
- Amend ICWA to apply notice, intervention, transfer provisions to state delinquency proceedings for on-reservation acts, and notice, intervention to proceedings for off-reservation acts
- Enhance tribal justice through parity with non-tribal systems
 - Consolidation of activities/support in DOJ, with more block funding
 - Funding for tribes subject to state jurisdiction
- Support alternatives to incarceration, especially for juveniles
- Improve tribal-state cooperation through specific strategies

How We Got to Consensus

- Pragmatic concern with safer communities
- Belief in a right to equal access to safety/protection
- Attention to research results
 - Perceived legitimacy of justice system matters
 - Local accountability/knowledge/access matters
- Ideologies differed but converged on the result
 - Some favored tribal sovereignty
 - Some favored local control

Entire Chapter Devoted to Alaska



Distinctive Legal Arrangement

- Native allotments and townsites – 4-6 million acres
- IRA incorporation and reservations for some of the 225+ Native villages/tribes
- Public Law 280 as of statehood
- ANCSA and the competing narratives of Native empowerment and termination
- BIA regs (1980) refused land into trust in AK
- *Venetie* (USSC, 1998) denied “Indian country” status to village-owned fee lands

Challenges of distance, lack of service, cultural mismatch, mentality



A centralized state system, unwilling to recognize tribal authority



Tribal leaders decry violence, lack of justice services/cooperation



Village members seek a greater role in policing, dispensing justice



AK Native Public Radio interview generated controversy over “Indian country” in AK



AK Supreme Court has begun acknowledging tribal sovereignty



ILOC Addresses Conditions in AK

Statistics

- 1-1.4 law enforcement officers/million acres (including unarmed VPSOs)
- Native women overrepresented in DV by 250%
- Highest rates of sexual assault in US; 1/2 of all Native women
- Native youth 4X more likely to be referred to juvenile court

“The serious and ongoing crime and disorder problems in rural and Native regions of the State are evidence that the system is deeply flawed and that it has failed.”

“...the status quo in Alaska tends to marginalize and frequently ignores the potential of tribally based justice systems, intertribal institutions, and organizations to provide more cost-effective and responsible alternatives to prevent crime and keep all Alaskans safer.”

ILOC Recommendations: Territorial Authority

- Congress should overturn *Venetie* and authorize land transfers from Native Corporations to villages
- BIA should take land into trust (*Akiachak*, USDC DC 2013)
- Interior Solicitor should reaffirm Indian country status of allotments, townsites
- Congress should affirm inherent jurisdiction of villages/tribes over their territory

ILOC Recommendation: Repeal VAWA § 910 Special Rule for the State of Alaska

(a) Expanded jurisdiction

In the State of Alaska, the amendments made by sections 904 and 905 shall only apply to the Indian country (as defined in 18 U.S.C. § 1151) of the Metlakatla Indian Community, Annette Island Reserve.

(b) Retained jurisdiction

The jurisdiction and authority of each Indian tribe in the State of Alaska under 18 U.S.C. § 2265(e)...—

- (1) shall remain in full force and effect; and
- (2) are not limited or diminished by this Act or any amendment made by this Act.

(c) Savings provision

Nothing in this Act or an amendment made by this Act limits or diminishes the jurisdiction of the State of Alaska, any subdivision of the State of Alaska, or any Indian tribe in the State of Alaska.

Exclusions

- Section 904: Partial *Oliphant*-fix, allowing tribal prosecution of non-Indians for domestic and dating violence under limited conditions, including for violation of protective orders
- Section 905: “For purposes of this section, a court of an Indian tribe shall have full civil jurisdiction to issue and enforce protection orders **involving any person**, including the authority to enforce any orders through civil contempt proceedings, to exclude violators from Indian land, and to use other appropriate mechanisms, in matters arising anywhere in the Indian country of the Indian tribe (as defined in §1151) **or otherwise within the authority of the Indian tribe.**”

ILOC Recommendation: Repeal § 910

- Sen. Murkowski's (poorly received) defense: ensuring Metlakatla wasn't excluded
- NARF's Natalie Landreth: *"We are tired of the separate but equal treatment that Alaska tribes receive from courts and Congress. . . . These exclusions, which have found their way into numerous bills over the years, say to Alaska's tribes that they are different and lesser than other tribes. In the case of VAWA, it means that Alaska Native women are less deserving of protection, less important. I find that unconscionable."*

ILOC Attention Yielding Results

- Federal regulations proposed to authorize land into trust
- State legislation (HR 199) authorizes arming of state-trained VPSOs at tribal option
- Congress just repealed VAWA § 910
- State recognizes need for tribal-state cooperation for community safety