



Department of Justice

STATEMENT

OF

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DIRECTOR
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BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

CONCERNING

"THE STATE OF FACILITIES IN INDIAN COUNTRY -
JAILS, SCHOOLS, AND HEALTH FACILITIES"

PRESENTED ON

MARCH 6, 2008

WRITTEN TESTIMONY FOR DOMINGO S. HERRAIZ
BUREAU OF JUSTICE ASSISTANCE
OFFICE OF JUSTICE PROGRAMS
SENATE INDIAN AFFAIRS COMMITTEE
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Chairman Dorgan, Vice-Chairman Murkowski, and Members of the Committee: The Department of Justice (DOJ) appreciates the opportunity to testify before the Committee regarding priorities for correctional facilities in Indian Country. The Department recognizes the critical role of planning to ensure that the construction and renovation of Tribal correctional facilities are appropriate for the intended population, supportive of cultural and traditional values, safe and secure when completed, and adhere to Bureau of Indian Affairs (BIA) standards regarding correctional operations, programs, and design. The Attorney General and Department remain committed to partnering with Tribes to cost effectively plan for and renovate facilities associated with the incarceration—and restoration—of juvenile and adult offenders subject to Tribal jurisdiction.

My name is Domingo S. Herraiz, and I am the Director of the Office of Justice Programs' (OJP) Bureau of Justice Assistance (BJA). BJA is committed to preventing and controlling crime, violence, and substance abuse, and improving the functioning of the criminal justice system. BJA has the privilege of administering Tribal programs to help reduce and prevent crime and violence in Indian Country. Based on BJA's involvement with these vital initiatives, I would like to provide you an update in four key areas:

- 1) Cooperation with Tribes and related partners;
- 2) The state of Tribal correctional facilities;
- 3) Factors considered for funding Tribal correctional facilities; and

4) Strategies to maximize the effectiveness of Tribal correctional facilities and improve planning, construction, and renovation programs.

The President and the Attorney General remain committed to addressing the most serious criminal justice problems in Indian country and to ensuring that federally recognized Indian tribes are full partners in this effort. It is in this spirit of partnership that BJA has been a principal supporter of OJP's Interdepartmental Tribal Consultation, Training and Technical Assistance Sessions held in FY 2007 and FY 2008. These sessions have expanded to include five federal departments and ten of their agencies, several of which, have direct responsibility or touch on this area. At each of these sessions, BJA, OJP and our federal partners have offered our expertise to all participants for training workshops, technical assistance, general session panels demonstrating challenges as well as cooperative opportunities available, and through tribal consultation sessions, we have solicited tribal priorities for detention and corrections in their communities. Our latest session began yesterday in Washington, D.C. and will conclude tomorrow.

After consulting with tribes about challenges and barriers to accessing OJP grant resources, in September 2007, BJA and OJP implemented a new Tribal Grants Policy. The new policy will help Native communities seeking OJP resources through our competitive grant solicitation process. We are implementing the policy starting with the Fiscal Year 2008 grants solicitations.

BJA also has an active role in the Justice Programs Council on Native American Affairs, which includes all senior-level OJP leadership and representatives from other Department of Justice offices and agencies. The council coordinates OJP's efforts on behalf of tribes and serves as a liaison with other Department of Justice components on Tribal issues.

Another important outcome from our Council efforts and Tribal consultations has been our establishing a Tribal Justice Advisory Group (TJAG). The TJAG provides advice and assistance to me and other OJP leadership on Tribal justice and safety issues. It convened its initial meeting in November and will meet again tomorrow.

Partnerships also provide the foundation for BJA's administration of the Department's Construction of Correctional Facilities on Tribal Lands Discretionary Grant Program. BJA staff meet regularly with the Senior Advisor for Tribal Affairs from the Office of Justice Programs' Office of the Assistant Attorney General; Department of Health and Human Services' Indian Health representatives, Office of Juvenile Justice and Delinquency Prevention (OJJDP) tribal staff, and Substance Abuse & Mental Health Services Administration (SAMSHA) representatives to discuss the wide range of issues impacting Indian Country, including correctional facilities and construction projects. Equally as important are the partnerships these agencies have with Tribal organizations and Tribal grantees, who share invaluable information through focus groups and other forums regarding ways to better support the criminal justice system in Indian Country.

This information reflects that the criminal justice system in Indian Country is clearly in need of better management. In 2004, DOI's Office of the Inspector General issued a report, "Neither Safe Nor Secure: An Assessment of Indian Detention Facilities," indicating that many of the more than 72 Tribal detention and correctional facilities in Indian Country were outdated and unsafe for both staff and inmates, serving only as detention facilities and providing little in the way of rehabilitation or programming services. Underscoring these concerns, BIA shared information indicating that many of the Tribal detention and corrections facilities are in disrepair.

Simply replacing all correctional facilities is not the answer. Other cost effective strategies for construction of Tribal correctional facilities must be examined. We are looking closely at these, including

the use of correctional alternatives, or non-custody programs; renovating existing buildings for correctional-related functions; and provision of less expensive, lower security beds. This last strategy can be very cost effective, and relies heavily on thorough needs assessments and population profiles. Finally, joint county-Tribal and regional Tribal solutions should be considered when sites are in close proximity to strengthen services and save resources. In addition, the Department has worked closely with the Tribes to expand the scope of its Tribal programs to include training and technical assistance to Indian Country.

DOJ's Tribal construction grant program has provided resources to 26 American Indian and Alaska Native communities, between 1998 to the present. Of these, 22 awards have gone to communities for new correctional facilities, and 4 awards have been made for renovation of existing facilities. By April 2007, 17 Tribes had completed construction of their new facilities; 5 were actively engaged in design and construction; and 4 Tribes were renovating existing structures to achieve federal compliance and become fully operational.

Today, DOJ is in the process of awarding grants to 25 additional Tribes to facilitate construction efforts. While 8 Tribes will receive funding for the renovation of existing structures, another 17 Tribes will receive awards for construction planning. BJA anticipates these awards will be made in April 2008.

The following are key elements of the application process for each new construction grant: Tribes must demonstrate a capacity need for the new facility; provide a developed plan to help prevent overcrowding of the projected facility by tapping into community-based alternatives; discuss the existence and involvement of an executive-level planning team—including the Tribe's capacity to oversee the project and manage costs; and submit a reasonable budget for the proposed design. Likewise, applicants for DOJ's renovation of Tribal correctional facilities funding are required to provide details regarding a BIA assessment supporting the

renovation request and a cost-effective design for completion within a rigorous 18 month timeframe, thus demonstrating the renovation will lead to continued BIA support for operation and maintenance of the facility and the Tribe's capacity to successfully sustain the facility in the future.

A comprehensive planning process is well established with the Construction of Correctional Facilities on Tribal Lands Discretionary Grant Program. Tribes must: 1) examine population projections; 2) demonstrate a need for the facility, determine operational costs, and the ability to cover these costs; 3) determine the ability to recruit, train, and retain qualified staff; 4) explore the use of alternatives such as sanction programs, pre-trial release, day reporting, treatment, and electronic monitoring; 5) determine the availability of treatment and other services such as substance abuse, health, mental health, education, employment, and housing; and 6) demonstrate that Tribal leaders and other community stakeholders have fully participated in the planning and needs assessment process.

To support planning efforts, BJA provides training and technical assistance at no cost from experts dedicated to the correctional issues Tribes face to maximize the cost effectiveness of construction projects and to plan for the long-term effectiveness of the Tribal justice system. For example, more than a dozen *Tribal Construction of Correctional Facilities Project Guides*, from "Selecting an Architect," to "Site Selection," and "Population Profiles, Population Projections and Bed Needs Projections," have been published and distributed to Tribes to guide them throughout their planning, construction, and renovation efforts.

To ensure our programs remain relevant to the needs of Indian Country, the Department continues to seek ways to improve and enhance its Tribal grant initiatives. For example, the President's proposed Fiscal Year 2009 budget consolidates multiple funding streams and

burdensome requirements to create four new competitive grant programs that will provide states, localities, and Indian Tribes with the flexibility they need to address their most critical criminal justice needs. A total of \$200 million is requested for the Byrne Public Safety and Protection Program in Fiscal Year 2009. Another new initiative in the President's proposed budget is the Violent Crime Reduction Partnership Program to help communities suffering from high rates of violent crime form law task forces including local state, Tribal, and federal agencies. A total of \$200 million is requested for this program in Fiscal Year 2009. The Department has taken other steps, as well. In the past two years alone, training and technical assistance to Tribes has increased and further collaborations have been built toward regional and multi-service facility exploration and development.

We are constantly listening and learning from our Tribal partners. Best practices emerge from lessons learned. Knowing what one Tribe has discovered does *not* work allows us to share that knowledge with others experiencing similar issues to save critical time and resources. Offering locally-based training to correctional officer staff, and engaging a wide range of Tribal partners to develop policies and procedures for Tribal correctional facilities will also serve to strengthen related services in Indian Country. Community-based alternatives help to reduce the burden of overcrowding while offering many offenders a hopeful solution to breaking the cycle of alcohol and substance abuse. Linking efforts to results, the Department will continue to seek ways to improve its programs in practical ways that the Tribes themselves have helped to identify and design.

This concludes my statement Mr. Chairman. I would welcome the opportunity to answer any questions you or other Members of the Committee may have. Thank you.