

OPINION

Strange justice in INDIAN COUNTRY

The U.S. government's failure to provide equal legal protection to Native American victims of serious crimes is just bizarre.

BY MARK J. MACDOUGALL
AND KATHERINE DEMING BRODIE

Conditions in this obscure country, as reported by sources ranging from Amnesty International to a U.S. Senate committee, are appalling. One in three women will be raped in her lifetime. Half the reported murders and 72% of child sex crimes are never prosecuted. Ninety percent of sexual assaults on native women are committed by men from the dominant ethnic groups. The nation's highest courts regularly reverse convictions based solely on the defendant's race.

This country is not Sudan, Rwanda or Kosovo during ethnic cleansing. Rather, this is the state of law enforcement today on the 310 Indian reservations that are home to nearly a million Native American citizens of the United States.

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ON THE RESERVATION: The Pine Ridge Reservation in South Dakota, home to the Oglala Sioux tribe, is one of 310 Indian reservations that constitute Indian country today.

“Indian Country”—the federal government’s name for the 54 million acres of reservation lands in the United States—is larger than Minnesota or Utah. The layers of social ills on most reservations— alcohol and drug abuse, unemployment, malnutrition and chronic disease—are a well-documented national shame. But the failure of the U.S. government

to provide equal legal protection to victims of serious crimes, who happen to be Native American, is just bizarre.

As the U.S. Court of Appeals for the 9th Circuit wrote in February of this year, in *U.S. v. Cruz*, “The exercise of criminal jurisdiction over...Indian country [encompasses] a complex patchwork of federal, state, and tribal law, which is

better explained by history than logic." That patchwork is rooted in 19th century legislation that established the rule that serious crimes in Indian country can only be prosecuted in the federal courts. A 1978 Supreme Court case, *Oliphant v. Suquamish Indian Tribe*, expanded that doctrine by holding that only the U.S. Department of Justice (DOJ)—not tribal or state authorities—may prosecute crimes committed by non-Native Americans on Indian lands. Although tribal courts operate on most reservations, their authority is limited to the prosecution of Indian defendants and to prison sentences of a year or less.

The consequences of these laws are stark. Unless federal authorities intervene, murder, rape and other felonies committed on the reservation by Native Americans may only be punished in a tribal court with a sentence of a year. Crimes committed by non-Indians cannot be prosecuted by tribal courts at all.

Felony prosecutions on Indian reservations are the responsibility of the U.S. attorney for the district in which the reservation is located. The 93 U.S. attorneys—one for each judicial district—are appointed by the president. Like the rest of DOJ, however, U.S. attorney's offices have limited resources and must establish priorities. With few exceptions, crimes committed in Indian country are rarely at the top of the list. U.S. attorney's offices in districts with some of the largest Indian reservations, such as those in Arizona and California, are also

responsible for major urban and border areas. Rural offices—such as those in Alaska and the Dakotas—must allocate small staffs to vast territories.

In June, addressing the National Congress of American Indians, Associate Attorney General Tom Perrelli announced the first major DOJ initiative in 15 years to address escalating public safety problems in Indian country. Among other steps, he announced a listening conference with tribal leaders to increase engagement, coordination and action on a variety of tribal justice matters.

Earlier this month, the Senate Indian Affairs Committee approved the Tribal Law and Order Act of 2009. The act would allow tribal courts to impose sentences of up to three years and create a special office to review decisions by U.S. attorneys to decline prosecutions of reservation crimes.

The DOJ initiative and the Senate bill, although commendable, don't go far enough. Greater accountability and transparency are important, but equal legal protection for victims of serious crimes in Indian country requires more.

A SEPARATE U.S. ATTORNEY'S OFFICE

One immediate solution that Congress and the Obama administration should consider is a separate office of the U.S. attorney for Indian country (USAIC). The jurisdiction of the USAIC would extend to all Indian reservation and trust lands. The USAIC would have the authority to investigate

felonies on Indian reservations nationwide, seek indictments and pursue prosecutions, without regard to the race of the defendant. Cases would be brought by the USAIC in the judicial district where the crime was committed, like any other case brought by the U.S. attorney for that district.

The critical difference would be that serious crimes on reservations—by Indians as well as non-Indians—would receive the same level of prosecutorial resources as an offense committed outside the reservation. At the same time, the jurisdiction of the USAIC would not be limited to violent crimes but would extend to the full range of federal offenses, including political corruption, financial fraud and narcotics trafficking in Indian country.

The treatment of native peoples is one of the darkest chapters in American history. Although nothing can be done to change that history, extending basic legal protections to residents of Indian country, equal to those enjoyed by their fellow citizens, is a modest goal.

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