

Restoration

OF NATIVE SOVEREIGNTY AND SAFETY FOR NATIVE WOMEN



10th Annual USDOJ – Tribal
Nations Consultation
November 4, 2015

OCTOBER 2015





Cover: September 16, 2015 –
Lori Jump, Executive Director of
Uniting Three Fires Against Violence,
pictured on the second day of the
Tribal Leadership Summit organized by
the tribal coalition at Mackinac Island,
Michigan. The summit was designed to
assist Indian tribes to prepare for the
annual VAWA consultation scheduled
for November 4th, at Squaxin Island in
Washington. See page 16.

"This fall we are called upon once again as a national movement to stand in unity for the safety of Native women and sovereignty of Indian nations. Just as great civil rights movements have over the decades rallied to defend injustices, the safety for Native women's movement must now raise its voice to the United States Supreme Court. We must unite as a national movement to defend the rights of Indian nations to protect Native women and children from crimes occurring on their tribal lands. NIWRC is honored to file an amicus brief in support of the Mississippi Band of Choctaw in the Dollar General case. We are honored to raise our voice for the safety of Native women."

Lucy Simpson
Executive Director
NIWRC



"For 20 years, VAWA has set the course in a new direction for the United States by creating laws and policies to hold sex offenders accountable for their crimes. Yet in 2015, we witnessed Dollar General turn a blind eye to a child victim of sexual assault. This national corporation with stores on tribal lands across the United States is calling on the Supreme Court to strip Indian tribes from their civil authority to provide justice. The more humane action would be to acknowledge the damage done by its store manager and offer assistance to correct this wrong. The national movement must speak loudly in support of justice for the victim of this crime. Justice should not be denied because the sex offender is a non-Indian. Justice should not be denied because the sex assailant works for a non-Indian corporation."

Jacqueline "Jax" Agtuca
Editor
Restoration



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National Task Force
to End Sexual and
Domestic Violence Against Women



National Indigenous Women's Resource Center

Dear Friends,

Welcome to the 2015 annual conference in San Diego, California.

Since the establishment of the NCAI Task Force on Violence Against Women in 2003, *Restoration* magazine has provided tribal leaders, advocates, and attendees with an update on emerging issues impacting the safety of American Indian and Alaska Native women. While so many gains have been realized, we find the progress comes with constant challenges to the VAWA advances to increase protections for Native women.

Unfortunately, the national movement for the safety of Native women is called upon once again to unite and stand together for the safety of Native women and the inherent sovereignty of Indian nations to protect their citizens. Two cases are looming before the national movement. The first is the *Dollar General* case now before the Supreme Court challenging tribal court civil jurisdiction over tort cases occurring on tribal lands. The second is the *Bryant* case challenging the constitutionality of the Habitual Offender provision of the VAWA 2005 Safety for Indian Women Title. These attacks on tribal sovereignty call us to take action once again as a national movement for the safety of Native women and sovereignty of Indian nations.

On a positive note, we are excited to share news of the introduction of a legislation to amend the Victims of Crime Act (VOCA) to create a dedicated funding stream for Indian tribes. The VOCA is funded solely by revenue generated from federal prosecutions. Over the last decade, the NCAI Task Force, tribal leaders, and the tribal grassroots movement have raised concerns that under the VOCA no dedicated funding stream exists for Indian tribes. Tribal leaders consistently expressed these concerns during previous USDOJ annual VAWA consultations. In addition, NCAI passed a resolution in support of amending VOCA to create a dedicated Indian VOCA program during the Anchorage 2014 national conference. We encourage everyone concerned to follow and voice his or her opinion regarding the need for a dedicated tribal VOCA program. This volume provides highlights of these and other emerging national issues.

The NCAI Task Force on Violence Against Women has worked for more than a decade to steadily increase the safety of Native women on a national level. Year after year, we have consistently joined together to strengthen our national movement. As with each volume of *Restoration*, we hope this information assists you in understanding the many new developments in our efforts to increase the safety of Native women in the United States!

Chair, NCAI Task Force on Violence Against Women

Juana Majel
Traditional Legislative
Counsel, Pauma Band of
Luiseno Mission Indians





Task Force on Violence Against Women

Sunday, October 18, 2015
9:00 a.m. – 12:00 p.m.

- 9:00 a.m. **Opening & Introductions**
NCAI Task Force on Violence Against Women Co-Chair:
Juana Majel-Dixon, Pauma Band of Mission Indians
- 9:15 a.m. **Overview of *Restoration* Magazine: News and Emerging Issues**
Jacqueline "Jax" Agtuca, NIWRC Consultant
- 9:30 a.m. **Department of Justice**
Office on Violence Against Women Update
Lorraine Edmo, Deputy Director, Tribal Affairs, OVW USDOJ
- 10:00 a.m. **Litigation Update**
Mary Kathryn Nagel, Pipestem Law, NIWRC Consultant
- *Dollar General v. Mississippi Band of Choctaw*
 - *U.S. v. Bryant*
- 10:15 a.m. **VAWA Annual Consultation 2015**
- Review of Tribal Briefing Materials – *Restoration* Magazine
 - Discussion of DOJ Funding Proposal
- VAWA Implementation Update**
- 11:00 a.m. *Virginia Davis*, Senior Policy Advisor, NCAI
- 11:15 a.m. **Policy Updates**
- **FVPSA**
 - **VOCA**
 - **Appropriations**
 - **International Advocacy** – *Jana Walker*, Indian Law Resource Center
- 11:30 a.m. **Regional Updates**

Feeding the Fire for Tribal Safety, Justice, and Sovereignty

Criminal Justice Institute

On September 1-3, 2015, the National Indigenous Women's Resource Center hosted a criminal justice institute to celebrate the two-year anniversary of restoration of criminal jurisdiction to Indian tribes over non-Indians in domestic violence crimes. "Women are the sacred part of traditions in Indian country," said Lt. Governor Monica Antone. "I thank and commend the agencies that work together to allow justice to protect our Native women, daughters, and granddaughters who are survivors and give them hope."

The institute centered on the sharing of lessons from Indian tribes participating in the Inter-tribal Working Group and those tribes already prosecuting non-Indians for domestic violence crimes within tribal court. Alfred Urbina, Pascua Yaqui Tribal Attorney General, shared the tribe's approach to VAWA implementation, "When you talk about non-Indian crime on reservations and contact with non-Indians, the Pascua Yaqui's first contact with non-Indians was in 1533 with the Spaniards. That was obviously a long time ago. We have been warring and protecting our community, our homeland, and our people over hundreds of years. This is consistent with our history. It is not something

that we relied on other people to do for us—protecting our people, our women, our children, our water. So this new law is not unfamiliar for our tribal council. And this is how our council approached it when they thought about implementing this law. The thinking is that it is our responsibility to protect our people, not the federal government, not Arizona, and not anybody else."

The institute also shared lessons and information connected to the implementation of Special Domestic Violence Criminal Jurisdiction (SDVCJ) under VAWA 2013 and its intersections with the Tribal Law and Order Act, domestic violence advocacy, and culture and community.

"While justice may be slow to arrive for Native women, sharing of information and best practices, and active participation in the evolution of law and justice systems help to strengthen the capacity of tribes to safeguard Native women and children by increasing our focus on being better, smarter, and more effective in our response," said Dorma Sahneyah, NIWRC Program Specialist.

Below: "It is an honor to travel on behalf of VAWA when we are the voice to help a survivor of sexual abuse, or the survivor of domestic violence," Monica Antone, Lt. Governor, Gila River Indian Community.



Photo Credit: Ashley Pasqual

Clockwise, from right: 1. Rebecca Howlette, NCAI Fellow (right), shares lessons learned by the Inter-tribal Working Group since restoration of SDVCJ over non-Indians on March 7, 2013. Also pictured are Rose Quilt, NIWRC Program Specialist (center), and Lt. Governor Antone (left). 2. Rebecca Howlette, NCAI Fellow, prepares to share lessons learned by the Inter-tribal Working Group since restoration of SDVCJ over non-Indians on March 7, 2013. 3. The significance of the information shared during the institute was indicated by participation of the attendees during the sessions over the three days. 4. Pascua Yaqui Attorney General Alfred Urbina (left) and Chief Prosecutor Oscar "OJ" Flores (right) join Dorma Sahneyah, NIWRC Program Specialist, following their presentation on the importance of prosecuting non-Indians perpetrators on their reservation.



Tribal Domestic Violence and Sexual Assault Leadership Institute September 24-26, 2015, Washington, D.C.

For the last three years, the National Indigenous Women's Resource Center has organized a leadership institute for the tribal coalitions funded under the Office on Violence Against Women Tribal Domestic Violence and Sexual Assault Coalition Grant Program. "It was an honor to coordinate and organize this year's leadership institute," said Rose Quilt, NIWRC Program Specialist. "The theme of this year's institute was "Women of Resistance . . . Moving in Solidarity to End Violence Against Women. Appropriately, this year's theme was a quote from Tillie Black Bear who is consider the grandmother of the battered women's movement."

The leadership institute focuses on issues of law and policy and occurs once a year. The agenda for this year's institute included a range of emerging legal and policy issues impacting the safety of Native women on a national level. "In a one-year period, many new issues emerge that not only impact the safety of Native women but also the sovereignty of Indian nations to protect women and all tribal citizens," said Dorma Sahneyah, NIWRC Program Specialist.

The September 2015 institute agenda included urgent topics presented by those active in the national movement to increase safety for Native women and defend the sovereignty of Indian tribes (pictured).



September 25, 2015, Tribal Coalition Leadership Institute participants



Human Trafficking—Understanding the Connections Between Domestic Violence, Sexual Assault, and Sex Trafficking, by Bonnie Clairmont, Tribal Law and Policy Institute, and Victoria Sweat, National Council Juvenile and Family Court Judges





Left: *How Indian Tribes Access Victim Compensation and Victim Assistance Funding*, by Virginia Davis, Staff Attorney, National Congress of American Indians

Top-Left: *Overview of the National Domestic Violence Hotline and Envisioning a Movement Inclusive of a National Native Domestic Violence Hotline*, by Rob Valente and Wade Treichler of the National Hotline, and Tang Cheam, Technology Director, NIWRC

Top-Right: *OVC's American Indian / Alaska Native SANE-SART Initiative: Recommendations to the Attorney General*, by Professor Sarah Deer, William Mitchell College of Law

Above: *Curriculum Development: An Indigenous Approach*, by Jax Agtuca, NIWRC Consultant, and Lynn Hootch, Joann Horn, and Priscilla Kameroff of the Yup'ik Women's Coalition

Eastern Band of Cherokee Indians Prosecutes First Non-Enrolled Member Under VAWA

By Scott McKie

John Michael Arkansas, 55, was convicted on Tuesday, July 21 in the Cherokee Court for one count of special domestic violence for violating a domestic violence protective order, pursuant to the newly enacted Cherokee Code Section 14-40.1(c)(2) and was sentenced to 75 days imprisonment, suspended for one year. He was placed on Supervised Probation and ordered to pay a special fine of \$1,000 in addition to \$600 in restitution to the victim of the offense.

The sentence, issued by the Honorable Kirk G. Saunooke, Cherokee Court Judge, was the first Cherokee Court conviction under the tribal provisions of the reauthorized Federal Violence Against Women Act of 2013 ("VAWA 13") which enables the Eastern Band of Cherokee Indians (EBCI) to prosecute non-Native perpetrators for certain crimes of domestic violence occurring on Cherokee lands.

Tribal Prosecutor Jason Smith stated, "I want to thank Assistant Tribal Prosecutor Justin Eason, Cherokee Police Officer Wahnetah Toineeta, and domestic violence advocate Iva Key for their hard work and dedication to this case and to fighting domestic violence which made this outcome a possibility. It is critical in this system that domestic violence protective orders be followed and enforced, regardless of the identity of the perpetrator. This case proves that the Eastern Band of Cherokee Indians can and will prosecute *all* perpetrators of domestic violence offenses occurring within their lands."

On June 8, in Ordinance No. 526, the tribe implemented the tribal jurisdictional provisions of VAWA 13 which authorized the prosecution of cases involving non-Native perpetrators of domestic violence. The significance of this implementation is that Cherokee will now be able to punish non-Native perpetrators in the Cherokee Court for the commission of certain domestic violence crimes against Native victims on EBCI lands. This work was the culmination of several years of effort by the Office of the Tribal Prosecutor, the Cherokee Court, the Principal Chief and Tribal Council.

The EBCI is one of only seven tribes nationwide that have enacted the special criminal jurisdictional provisions of VAWA 13 and one of only four tribes that have obtained convictions against non-Native perpetrator.

Smith concluded, "This recognition by the federal government in VAWA 13 of the inherent sovereignty of Native tribes to punish all perpetrators of crimes occurring within their boundaries is an important first step in returning full criminal jurisdiction to tribal governments. However, I understand in discussions with some of the other tribes who have implemented VAWA 13 that the continued limitations on criminal jurisdiction have created situations where justice remains elusive. Particularly in domestic violence cases involving child abuse and maltreatment, because of the limitations that remain in the VAWA 13 tribal provisions, tribes remain unable to prosecute non-Native perpetrators of domestic violence for acts committed against or involving child victims. While VAWA 13 and its previous versions have created several specific federal domestic violence crimes available for prosecution in Federal Court, there remain gaps when child victims are involved. In those situations, we are forced to push for prosecution in federal or state courts or are left without recourse where those gaps exist. I am hopeful that as we continue to successfully implement the provisions of VAWA 13, we will gain support for future amendments which will remedy these gaps affecting child victims."

The specific provisions of the Cherokee Code which were added pursuant to VAWA 13 can be found in Section 14-40.1(c), is accessible online at www.municode.com or through the Cherokee Tribal Operations Program 359-7021.

(Reprinted with permission from the Cherokee One Feather. Originally published July 24, 2015.)

Victims of Crime Act Update

Providing Services and Justice to Native Victims of Crime



Above: Panel discussion on Increasing Access to Resources during the Tribal Leadership Summit hosted by Uniting Three Fires Against Violence tribal coalition. Pictured Debi Cain, MI Domestic Violence and Sexual Violence Prevention and Treatment Board, Leslie O'Reilly, MI Crime Victims Services Commission, and Lori Jump, Executive Director of Uniting Three Fires Against Violence."

Last year, Congress disbursed \$2.3 billion, the highest amount ever, from the Crime Victims Fund (CVF), which is the nation's primary funding source for crime victim services, programs, and compensation. Indian tribes, however, continue to be largely left out of the programs funded by the CVF, even though tribal communities experience the highest crime victimization rates in the country.

NCAI is calling upon Congress to take action to ensure crime victims in tribal communities are not left out of the life-saving services funded by the CVF again this year and in the future. NCAI is asking Congress to:

- Support the language in the Senate Commerce, Justice, Science (CJS) bill that would direct \$52 million from the CVF to tribal communities this year.
- Support the SURVIVE Act, S. 1704, which would create a stable 5% allocation of CVF disbursements for a grant program for tribal governments to provide crime victim services for the next 10 years.

The Crime Victims Fund

Congress created the CVF in 1984 based on the idea that money that the government collects from criminals should be used to help those victimized by crime. Fines paid by convicted federal criminal offenders finance the Fund, not taxpayer dollars. Despite significant increases in collections, Congress has imposed a cap on how much is available from the CVF for crime victim

services and compensation for the past 15 years. In recent years, distributions from the CVF have been about \$700 million. Collections, however, reached as high as \$2.8 billion in 2013, leaving a balance in the fund of over \$13 billion. There has been significant pressure on Congress to make more of this money available for crime victims, and Congress significantly increased the distributions for FY 2015 to \$2.3 billion. Distributions are expected to be similarly high in FY 2016. The House CJS bill sets the level at \$2.7 billion, while the Senate CJS bill sets it at \$2.6 billion.

The Need for a Tribal Crime Victims Program

American Indian and Alaska Natives experience the highest crime victimization rates in the country. Native people are 2.5 times more likely to experience violent crime than other Americans. Approximately 34% of American Indian and Alaska Native women are raped and 61% are assaulted in their lifetimes. Due to exposure to violence, rates of post-traumatic stress disorder among Native children match rates among Iraq and Afghanistan war veterans. Despite the devastating impact of criminal victimization in tribal communities, Indian tribes have largely been left out of the CVF, which is the federal government's principle means of providing resources for crime victims.

Unlike state and territorial governments, who receive an annual formula distribution from the CVF, Indian

tribes are only able to access CVF funds via pass-through grants from the states or by competing for very limited resources administered by the Department of Justice. According to DOJ, from 2010–2014, state governments passed through 0.5% of available funds to programs serving tribal victims—less than \$2.5 million annually nationwide. This leaves a significant unmet need in most tribal communities. In 2013—the year with the highest number of state subgrants to date—more than 60% of states with Indian tribes did not make any subgrants. Of the 16 states that did pass through money to tribal victim service programs, all but one passed through less than 5% of the states' available VOCA funds.

The SURVIVE Act

In July of this year, the Senate Committee on Indian Affairs unanimously approved S. 1704, the Securing Urgent Resources Vital to Indian Victim Empowerment Act, or "SURVIVE Act." The bill would create a new grant program at the Bureau of Indian Affairs for crime

victims services. Funding for the program would come from a 5% allocation from the CVF for the next 10 years. NCAI has sent a letter to Senators Barrasso and Tester requesting that the new program be made permanent rather than expiring after 10 years.

The SURVIVE Act is unlikely to pass in time to make a difference for FY 2016 funding. Senate appropriators, however, have included language in the Senate CJS appropriations bill that would direct \$52 million from the CVF to tribal governments. The House CJS bill did not include an allocation for tribal governments, and NCAI has asked appropriators to adopt the Senate language in conference. We encourage members of Congress to support efforts to include Indian tribes in the CVF through authorizing language like the SURVIVE Act and to support appropriations language that ensures tribal victims are not left behind again this year.

For more information, please contact NCAI Senior Policy Advisor Virginia Davis at vdavis@ncai.org.

Congratulations to "Jax" on Receiving an 20/20 Vision Award from the American Bar Association's Commission on Domestic and Sexual Violence



August 1, 2015, Chicago - Congratulations to the Editor of *Restoration*, Jacqueline "Jax" Agtuca, one of the recipients of the 20/20 Vision Awards by the American Bar Association's Commission on Domestic and Sexual Violence. "The 20/20 Vision Award is well deserved for her contributions to building a national movement and mobilizing the legal profession against domestic and sexual violence by advancing VAWA."

—Lucy Simpson,
Executive Director,
NIWRC

Opinion of Craig Richardson, Alaska Attorney General, Supports Enforcement of Tribal Protection Orders

On July 30, 2015, another step forward was made in support of the sovereignty of Alaska Native Villages. An opinion published by the State of Alaska Attorney General Craig Richards clarified that a tribal protection order does not need to be registered with the state court system before a state trooper or other state officer can enforce it.

“This opinion concludes that a tribal protection order does not need to be registered with the court system before a state trooper or other officer can enforce it. The protection order will be immediately enforceable if it meets the criteria outlined in the federal Violence Against Women Act (VAWA).”

The confusion over the status of tribal protection orders arose because of a conflict between federal and Alaska state law. VAWA clearly provides that states

cannot require registration before enforcement and directs the state to enforce orders from other jurisdictions—in this case, tribes—as though they were issued by a state court. However, Alaska state law requires that protection orders issued by other jurisdictions must be registered with the Alaska court system before officers can enforce them. This would include tribal protection orders.

The Attorney General’s Office opinion determined that federal law preempts in this case. This means that the tribal court issuing the protection order must have jurisdiction and provided due process. Also, the purpose of the order must be for “the protection of victims of domestic violence, sexual assault, dating violence, or stalking,” or the prevention of violent or threatening acts against another person.

In a letter to tribal leaders, Attorney General Richardson referencing the opinion stated, “[T]hat so long as a tribal protection order complies with VAWA, state and local law enforcement can, and in fact must, enforce it, regardless of whether it has been registered. Although court registration is still beneficial to ensure the protection order is listed on the statewide database, officers should arrest offenders who violate tribal protection orders in the same way they would arrest offenders of state protection orders. The focus should always be on protection of the victim.”

The full opinion of the Alaska State Attorney General Craig Richardson is available at: http://law.alaska.gov/pdf/opinions/opinions_2015/15-005_AN2013102606.pdf.

Department of Justice Announces Tribal Access Program (TAP) to Enhance Tribal Access to National Crime Information Databases

The Department of Justice is launching an initial phase of the Tribal Access Program for National Crime Information (TAP) to provide federally recognized tribes access to national crime information databases for both civil and criminal purposes. TAP will allow tribes to more effectively serve and protect their communities by ensuring the exchange of critical data. This initial phase of TAP was announced at a meeting with tribes held during the 2015 Department of Justice/FBI Criminal Justice Information Services (CJIS) Division Tribal Conference in Tulsa, Oklahoma.

“Federal criminal databases hold critical information that can solve crimes, and keep police officers and communities safe,” said Deputy Attorney General Sally Quillian Yates. “The Tribal Access Program is a step forward to providing tribes the access they need to protect their communities, keep guns from falling into the wrong hands, assist victims, and prevent

domestic and sexual violence. Empowering tribal law enforcement with information strengthens public safety and is a key element in our ongoing strategy to build safe and healthy communities in Indian country.”

Section 905(a) of VAWA 2005 amended the federal code to require the Attorney General to permit Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into, and obtain information from, federal criminal information databases. This amendment permitting Indian law enforcement agencies the ability to access and enter information into federal criminal information databases was a tremendous step forward in creating safety for Indian women.

Passage of the Tribal Law and Order Act of 2010 amended the law once more to provide that



“the Attorney General shall ensure that tribal law enforcement officials that meet applicable federal or state requirements be permitted access to national crime information databases.” This again confirmed Congress’ intent that tribal law enforcement be granted full access to federal criminal information databases. Under the TLOA amendment, Congress broadened tribal access beyond the four crimes specified under VAWA 2005.

Tribal law enforcement access to federal criminal databases is a foundational element of an effective law enforcement response to tribal victims of domestic violence, sexual assault, and other VAWA-related crimes. The National Crime Information Center (NCIC) maintains 21 national data files many of which are directly related to the emergency response of tribal law enforcement to assist victims. Law enforcement responding to a domestic violence incident with NCIC access can verify a protection order, whether the suspect is a convicted sex offender in violation of registration requirements, is prohibited from possessing firearms, has an outstanding warrant, or is in violation of terms of parole. In addition to enhancing the immediate response of law enforcement by providing essential information to alert tribal justice officials of an individual’s status, tribal entries of certain

misdemeanor domestic violence convictions could trigger federal felony charges such as the Federal Tribal Habitual Offender. Lastly, actual full access by tribal law enforcement to NCIC is essential to the safety of officers whose daily duties often place them in dangerous situations.

Not only is access to NCIC files essential, but also critical to the safety of Native women is the ability to enter tribal court information. Often perpetrators of domestic violence travel from one tribe to another. The ability to alert other Indian tribes of an abuser’s violence, convictions, and other lifesaving information requires the capability to not only obtain but also to enter information into federal criminal databases.

In response to concerns raised during annual USDOJ VAWA consultations about the lack of implementation of Section 905(a), the USDOJ reviewed the lack of access issue. Based on its finding that certain Indian tribes wanted and did not have access to the NCIC, a pilot project was launched to assist tribes. Under the pilot project, 22 Indian tribes were identified as needing assistance obtaining NCIC access, and the USDOJ worked with each tribe to obtain access through DOJ. In many states, access through the state system either was not available to tribes, or was



Opposite Page/Above: *We expect to use this program fully just like any other governmental and law enforcement agency with the goal of safety for our community.” –Michelle Demmert, Reservation Attorney for the Tulalip Tribes, and member of the SDVJ-ITWG working group.*

partially granted if a tribe agreed to waive its sovereign immunity. The USDOJ provided an alternative means of access through the federal system called the Justice Telecommunications System (JUST). The launching of the new and welcomed TAP builds on this prior effort.

“The FBI is pleased to participate in this initiative,” said Executive Assistant Director Amy Hess of the FBI’s Science and Technology Branch. “This will be a positive step for the tribal agencies to receive valuable criminal information and also for those same tribal agencies to submit criminal information at the national level. Through this partnership, information becomes richer and communities can become safer.”

TAP will support tribes in analyzing their needs for national crime information and help provide appropriate solutions, including a state-of-the-art biometric / biographic computer workstation with capabilities to process finger and palm prints, take mugshots and submit records to national databases, as well as the ability to access CJIS systems for criminal and civil purposes through the Department of Justice. TAP will also provide specialized training and assistance for participating tribes.

In the initial phase of the TAP program, the biometric / biographic workstations will be deployed to 10 federally recognized tribes who will provide user feedback. This phase will focus on assisting tribes that have law enforcement agencies, while in the future the department will seek to address needs of

the remaining tribes and find a long-term solution. The department will continue to work with Congress for additional funding to more broadly deploy the program.

Departments of Justice and Interior Working Group

In 2014, the Departments of Justice and the Interior (DOI) formed a working group to assess the impact of the JUST pilot projects and identify long-term sustainable solutions that address both criminal and civil needs of tribes. The outcome of this collaboration was the TAP, as well as an additional program announced by the DOI’s Bureau of Indian Affairs (BIA) that provides tribes with national crime information prior to making child placement decisions in emergency circumstances. Under the BIA program, social service agencies of federally recognized tribes will be able to view criminal history information accessed through BIA’s Office of Justice Services who will conduct name-based checks in situations where parents are unable to care for their children.

“It is extremely important that Indian tribes discuss NCIC access and the implementation of the new TAP program. Successful implementation of TAP will require careful attention to detail from the tribal perspective,” said Michelle Demmert, Reservation Attorney for the Tulalip Tribes, and member of the SDVJ-ITWG working group. “We expect to use this program fully just like any other governmental and law enforcement agency with the goal of safety for our community.”

NIWRC Unites with Indian Tribes to Oppose Dollar General's Attempt to Strip Tribal Governments of their Inherent Civil Jurisdiction to Protect Their Women and Children

On October 22, 2015 the National Indigenous Women's Resource Center (NIWRC) filed its *amicus* brief calling on the Supreme Court to uphold the right of Native women and children to seek justice in their Tribal Government's court when they are sexually assaulted on their tribal lands.

"NIWRC's mission is to end violence against Native women," stated NIWRC Board President Cherrah Giles. "NIWRC recognizes, however, that safety is not possible when tribal governments are stripped of the jurisdiction necessary to protect their women and children." NIWRC filed its *amicus* brief in the Supreme Court to preserve the inherent sovereign authority of American Indian Nations to protect their women and children living on tribal lands.

The Dollar General Corporation is asking the Supreme Court to deny the Mississippi Band of Choctaw Tribal Court's jurisdiction over a civil case for damages concerning the sexual assault of a tribal child that occurred on tribal land. The parents of the child, also tribal members, filed a civil tort case to hold the corporation liable for a sexual assault committed against their thirteen year old child by the store manager. At the time of the sexual assault the child was a student intern in the Tribe's Youth Opportunity Program and assigned to the Dollar General store. The child claimed the sexual assault happened during store hours by the store manager and direct supervisor, a non-Indian. While Dollar General signed a long term lease with the tribe, applied and received a tribal business license, and agreed to participate in the tribe's Youth Opportunity Program, it claims the Tribal Court does not have jurisdiction over this case because Dollar General is a non-Indian corporation.

NIWRC amicus brief calls on Supreme Court to uphold the right of a tribal youth's parents to seek a civil remedy in their Tribe's Court for the sexual assault their son suffered in non-Indian hands on tribal lands

A Supreme Court opinion stripping tribal courts of civil jurisdiction in cases brought against non-Indians would be far-reaching and devastating for Native women and children. "At a time when the national conversation is about protecting victims of sexual assault, our brief is particularly important," said NIWRC Executive Director Lucy Simpson. "Relief for the crimes of sexual assault are seldom available to Native women and children, so we are compelled to call on the Court to affirm their rights within their tribal courts to civil relief and protection. One in three Native women will be raped in her lifetime, and six in ten will be physically assaulted," said Simpson.

"This epidemic of violence is fueled by reality that few rape cases are ever prosecuted. From 2005 to 2010 for Indian country cases federal prosecutors declined almost 52 percent of violent crimes and 67 percent of the cases declined were sexual abuse or related matters. The only option for any justice when a case is declined for criminal prosecution is a civil case."

"Civil jurisdiction over non-Indians is essential because the majority of the perpetrators of violence against Native women and children are non-Native," stated Wendy Schlater, NIWRC Board Member. "If the Supreme Court decides tribal courts may no longer exercise their inherent civil jurisdiction over non-Indians on tribal lands, our governments will lose one of the most fundamental functions they perform to protect their women and children."

"Just like people everywhere tribal members go to the court where they live," said NIWRC Board Member Leanne Guy. "*Dollar General* would force Native women to drive hours away from their homes and where the assault occurred to the nearest state court. A citizen of my nation, Navajo Nation, living in Kayenta, Arizona, would have to travel 173.1 miles (2 hours 48 minutes) to the nearest state court for Arizona's Navajo County, located in Holbrook, Arizona, or the second nearest state court in Navajo County, located in Show Low, Arizona—220.2 miles (3 hours 36 minutes). An average person cannot pay the added expenses like gas or hotel to make these trips. Let alone take time off from work needed to drive to a state court?"

"Requiring Native women and children who have been sexually assaulted on their own tribal lands to leave those lands and travel to file their claims simply because the individual who assaulted them is not Native would offend the most basic values of our post-colonial American democracy," stated NIWRC's attorney, Mary Kathryn Nagle, a Partner at Pipestem Law Firm PC and Counsel of Record for the NIWRC amicus brief. "Changing the law so that tribal governments can only exercise civil jurisdiction in instances where the perpetrator has expressed consent would render their profound lack of consent a legal nullity. Native women and children *do not* consent to be sexually assaulted on their own lands."

NIWRC joins the NCAI and more than 400 Indian Nations, Tribal Courts, Native history and law scholars, and national and local domestic violence and sexual assault organizations in asking the United States Supreme Court to uphold its prior precedents and confirm the inherent authority of Indian nations to

Members of the Pipestem Law Firm (PC) join hundreds nationally to say "Shame on Dollar General. From left to right, Joe Keene, Mary Kathryn Nagle, and Abi Fain.



exercise civil jurisdiction over non-Indians who abuse and assault Native women and children on tribal lands. The Supreme Court previously affirmed the inherent

authority of tribes to exercise civil jurisdiction over non-Indian conduct on tribal lands in its 1981 decision, *Montana v. United States*, 450 U.S. 544.

Tribal Leadership Summits Prepare for VAWA 2015 Annual Consultation

The tenth annual VAWA consultation will be held on November 4, 2015, at Squaxin Island, Washington. In preparation for the annual consultation, tribal coalitions hosted tribal leadership summits and webinars in various regions across the country, including in Michigan, Oklahoma, New Mexico, Alaska, and California. The outcomes of these summits reflect specific concerns and recommendations of the Indian tribes within these regions. The following highlights of the tribal leadership summit organized by Uniting Three Fires Against Violence held September 16-17, 2015, in Michigan reflect the preparation underway.

"We have done so much and come so far in protecting our people," said Jennifer McLeod, in opening the tribal leaders summit organized by the Uniting Three Fires Against Violence. "The work that we are doing to protect women is remarkable, especially when I think about how it was when I was a little girl compared to how it is now. As tribal leaders, we have had to work hard to even be allowed to exercise our sovereign right to protect our own people on our own land. We have

had to wait for permission to act against those people who are not of our nation who are inflicting violence on our people. That is a big step for all tribal people in this country."

The annual government-to-government consultation is the first statutory mandate within the Safety for Indian Women Title of VAWA. At the annual consultation, Indian tribes and the United States through the Departments of Justice, Interior, and Health and Human Services engage in a national process to increase the safety of Native women. The tribal preparations for the 2015 consultation have resulted in a list of continuing and newly emerging issues. Tribal and regional preparation for the 2015 consultation is essential to the effort to raise issues that act as barriers to the safety of Native women.

Michigan's Native American Domestic Violence and Sexual Assault Coalition (906) 253-9775
<http://unitingthreefiresagainstviolence.org>



Above: "The Uniting Three Fires Against Violence tribal coalition was honored to organize the Tribal Leadership Summit to help leadership prepare for the VAWA annual consultation." –Lori Jump, Executive Director (right). Also pictured coalition staff members Rachel Carr, Policy Specialist; Hali McKelvie, Community Outreach Specialist; and Kaylynn Cairns, Training Coordinator (right to left).

Bottom, Opposite Page: "This tribal summit process is very helpful as a place where we can discuss issues and prepare for the consultation. We appreciate all of the information and discussion on issues of concern to the safety of Native women." –Elizabeth Cook, Staff Attorney, Nottawaseppi Huron Band of the Potawatomi (center). Also pictured team members Fred Jacko, Tribal Court Administrator and Meg Fairchild, Behavioral Health Clinician and Social Services Manager (right).

Left: "Megwich to the Creator and to all of you for the work that you have done for VAWA." –Jennifer McLeod, Council Member, Sault Ste. Marie Tribe of Chippewa Indians

Right: "We are very concerned about the possible impact of the Dollar General case on the civil authority of Indian tribes to protect women. It is also very concerning that the Michigan Attorney General signed onto the Oklahoma Attorney General's amicus brief filed in support of Dollar General's attack on tribal sovereignty. We plan to speak to him. This is an issue that USDOJ should support tribes on." –Frank Medacco, Council Member, Little River Band of Ottawa Indians



Safety for Native Women: VAWA and American Indian Tribes

Thousands of Copies Distributed Nationwide

Published in October 2014, *Safety for Native Women: VAWA and American Indian Tribes* provides the perspective of the tribal grassroots movement on the significance of VAWA to increasing the safety of Native women. It serves as a helpful resource for all those concerned and working to end violence against Native women at the tribal, state, national, or international levels.

"Deborah Parker, Tulalip Tribal leader, and I had the privilege of giving a copy to numerous Department of Justice employees, including Attorney General Loretta Lynch! As I handed the book to Attorney General Lynch, we spoke about one of the key issues of her administration—human trafficking. She stated how she has learned about the horrifying numbers of Native women being trafficked in Alaska and how she hopes to make a positive impact to this population. In addition, we gave NIWRC tribal VAWA books to White House staffers, one of whom stated, 'I already bought this book from Amazon!' Those who received the book were greatly appreciative and looked forward to reading it.

We also gave copies to staff in the Senate Judiciary, the majority and minority members from the Senate Select Committee on Indian Affairs, and many others. This informative book, written from a unique perspective that for the first time in one collection explains the connection of colonization, domestic violence, and federal trust responsibilities, should be on every tribal government attorney's bookshelf with numerous tabs, underlines, and notes in the margins. It is a very useful inspiration—to remind us how we got here, as a reference tool for code drafting, and for other informational purposes."

—Michelle Demmert, Reservation Attorney, Tulalip Indian Tribes

The tribal VAWA book is also now used as a reference for tribal leaders and was used at various tribal leadership summits as a resource to prepare for the 2015 annual VAWA consultation.

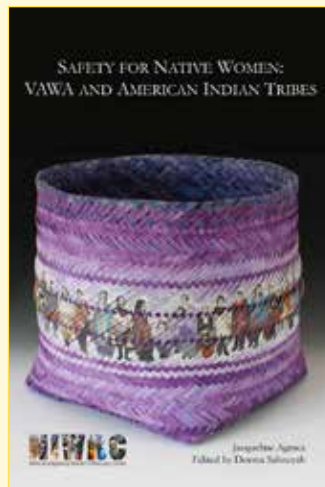
Since its release in October 2014, distribution has reached over 2,000, and the book continues to receive praise. It is widely used as a desktop reference by advocates, criminal justice personnel, and movement organizers. In August, the Coalition of Advocates provided it as a resource to participants of their annual conference.

"Safety for Native Women is a well-crafted mix of personal voices and stark facts that opened my eyes and heart to the profound and enduring struggle against violence done to and within Native communities since the time of colonization. This book is an informative and moving account both of progress made and barriers yet to be broken." —Sarah Smith, Senior Program Attorney, National Council of Juvenile and Family Court Judges

The tribal VAWA book is a powerful presentation of the impact of the colonization of American Indian tribes on

the safety of Native women. "Through this resource book, we hope to increase the awareness of the tribal provisions and shed light on unaddressed legal barriers to the safety of Native women," said Lucy Simpson, Executive Director of NIWRC.

"The story of the U.S. response to violence against indigenous women is one that must be heard by non-Native and Native policymakers alike. This is an important book, and a critical contribution to the evolution of the movement to end violence against women," added Rebecca Henry, Deputy Chief Counsel of the Commission on Domestic Violence and Sexual Assault at the America Bar Association.



Paperback \$19.99
Kindle \$9.99

All proceeds support NIWRC efforts to increase the safety of Native women.

Orders:
<http://goo.gl/EHpp57>

United States Supreme Court to Hear Oral Arguments: Dollar General Corporation v. Mississippi Band of Choctaw Indians

**National Rally to Support Safety for Native Women and Sovereignty for Indian Tribes
December 7, 2015, 8-11 AM
Sidewalk of the Supreme Court of the United States, Washington, DC**

Despite the fact that its store supervisor sexually assaulted a 13-year-old tribal member assigned to Dollar General under a tribal youth opportunity program, Dollar General is now fighting the Mississippi Band of Choctaw Indians' right to protect its own citizens on tribal lands. Shockingly, Dollar General's attack on tribal sovereignty has made it all the way to the Supreme Court. If the Supreme Court rules in Dollar General's favor, the case could strip Indian tribes of their authority to protect Native women and children on tribal lands from similar assaults.

A Call to Action!

Walk in Support of Safety for Native Women on December 7!

On December 7, the Supreme Court will hear oral arguments in the Dollar General case. The National Indigenous Women's Resource Center (NIWRC) and the Monument Quilt Project will join together in front of the Supreme Court carrying quilt squares of the Monument Quilt. "NIWRC and the Monument Quilt Project will walk in support of safety for Native women and sovereignty of Indian nations," said Cherrah Giles, Board President, NIWRC. "We ask everyone to join our effort to oppose Dollar General. Non-Indian corporations and sex predators must be held accountable. Race should not be a license to prey on Native women and children."

"We invite those concerned about justice and safety of Native women to create a quilt square to share their support for justice and stories of survival," said Rebecca Nagle, Co-director of FORCE Monument Quilt Project. "Contribute your quilt square to the growing Monument Quilt. Let us walk together on December 7 and call on the Supreme Court for justice for Native women and children."



Join Us! Tell the Supreme Court "Shame on Dollar General!"

All quilt squares received opposing the Dollar General's case will be carried on the day of the oral argument in solidarity with the national movement to end violence against American Indian and Alaska Native women. Advocates, survivors, tribal leaders, national allies, and others will carry the quilt squares as they walk in front of the Supreme Court calling for safety for Native women.

Mail your quilt square by December 1, 2015, to:
FORCE: Upsetting Rape Culture, Shame on Dollar General Campaign
2315 Homewood Ave., Baltimore, MD 21218

Please add a note stating the quilt square is being made to support Native women in the "Dollar General case."

The Monument Quilt

The Monument Quilt is a crowd-sourced collection of thousands of stories from survivors of rape and abuse. By stitching our stories together, we are creating and demanding public space to heal. The Monument Quilt is a platform to not only tell our stories, but work together to forever change how Americans respond to rape. We are creating a new culture where survivors are publicly supported rather than publicly shamed. For more information, visit www.themonumentquilt.org.

The most common trauma of women remains confined to the sphere of private life, without formal recognition or restitution from the community. There is no public monument for rape survivors.
—Judith Herman, *Trauma and Recovery*

How to Make a Quilt Square?

That's easy! Learn how to make a quilt square:
<https://themonumentquilt.org/make-a-quilt-square/>

How to host a workshop:
<https://themonumentquilt.org/workshops/>

For more information, contact:
Rebecca Nagle
443-722-0929
rebecca.nagle@gmail.com
Co-director of FORCE upsettingrapeculture.com, themonumentquilt.org



Eight Indian Tribes Implementing Special Jurisdiction: Non-Indian Abusers Commit a Pattern of Abuse

Tribes across the country can now exercise Special Domestic Violence Criminal Jurisdiction (SDVCJ) over non-Indians under VAWA 2013. Indian tribes no longer need the approval of the Department of Justice but must comply with the VAWA 2013's statutory requirements to exercise such jurisdiction.

Starting February 2014, three Indian tribes—the Confederated Tribes of the Umatilla Indian Reservation (Oregon), the Pascua Yaqui Tribe (Arizona), and the Tulalip Tribes (Washington)—began exercising SDVCJ over non-Indians. Two other Indian tribes received approval to exercise such jurisdiction on an accelerated basis under a pilot program in March 2015. And since the end of the statute's two-year waiting period on March 7, 2015, three additional Indian tribes have opted to exercise special jurisdiction.


"When Congress and the administration ask why is the crime rate so high in Indian country, they need look no further than the archaic system."

—Indian Law and Order Commission 2013 Report to Congress

These Indian tribes are now exercising their sovereign authority to investigate, prosecute, convict, and sentence non-Indians who commit crimes of domestic violence, dating violence, or violate a protection order. The preparations to implement SDVCJ and comply with the requirements of the VAWA are comprehensive, including updating tribal codes, enhancing procedures and policies, preparing tribal court systems and police officers, and working with the respective tribal communities to understand the special jurisdiction statute.

The Indian tribes exercising special jurisdiction over non-Indians have learned many lessons from their daily experience to exercise jurisdiction over non-Indians and protect Native women. These lessons include the importance of increasing awareness of domestic violence and sexual assault within the tribe through various efforts to reach tribal members.

The experience of implementing jurisdiction over non-Indians has also reaffirmed our understanding that the domestic violence committed by non-Indian suspects



"In addition to the decision to implement special jurisdiction, we had several other pieces of legislation to consider. The first was our victims' rights act passed in March 2015. The next was personal protection orders, no contact orders, and violation of protection orders legislation passed in May 2015. These are just some examples of our efforts."

—Donna Budnick,
Legislative Services Attorney,
Little Traverse Bay Bands
of Odawa Indians,
Tribal Leadership Summit,
September 16, 2015

is not a single incident but a pattern of abuse. The non-Indians arrested by the original three pilot tribes clearly commit a pattern of violence against their victims and have multiple contacts with tribal law enforcement.

"We had to get organized in how our tribe would proceed and also gain community support. This included a Red Shawl Project to increase community awareness of domestic violence and sexual assault. It also included information tables at all the community events, health fairs, human services summit, and many other events. We made every effort to reach out to the community."



—Stacey Ettawageshik, Domestic Violence Coordinator, Little Traverse Bay Bands of Odawa Indians (second from right). Also pictured are other members of the tribal VAWA team, including (left to right) Donna Budnick, Legislative Services Attorney; Winnay Wemigwase, Tribal Council Member; Deleta Gasco, Domestic Violence Health Educator; and Celestine Petoskey, Advocate.



"Fifteen of the defendants charged have had 84 tribal law enforcement contacts from our law enforcement agency. That means 84 times, counting the VAWA incidents, our tribal law enforcement has gone out to their residences," shared Oscar Flores, Pascua Yaqui Chief Prosecutor. "These 15 defendants were involved in some sort of investigation, and because VAWA at the time was not in place they were taken to the edge of the reservations and told to leave and never come back. Well they came back 83 more times. So while many thought these crimes were not occurring, they are occurring but were not reported. And our tribal numbers do not reflect any incidents these defendants may have had with state law enforcement under state jurisdiction."

VAWA 2013 IMPLEMENTATION UPDATE: Special Domestic Violence Criminal Jurisdiction

As of September 1, 2015, eight tribes have implemented special domestic violence criminal jurisdiction (SDVCJ) over non-Indians under VAWA 2013 (see reverse for a description of the VAWA requirements). Together, they have made 42 SDVCJ arrests, resulting in 18 guilty pleas, 5 referrals for federal prosecution, 1 acquittal by jury, 12 dismissals, with 6 cases pending. None of the SDVCJ non-Indian defendants have appealed to federal court. A brief summary of the exercise of this jurisdiction by each of the implementing tribes is below.

- **Pascua Yaqui Tribe (AZ).** The Pascua Yaqui Tribe began exercising SDVCJ on February 20, 2014, as part of the DOJ Pilot Project. As of September 1, they have had 21 SDVCJ arrests involving 16 separate offenders resulting in 6 guilty pleas, 4 referrals for federal prosecution, 1 acquittal by jury, and 10 dismissals. Pascua Yaqui reports that since they began implementing SDVCJ, cases involving non-Indians make up 25% of the tribes domestic violence caseload.
- **Tulalip Tribes of Washington.** The Tulalip Tribes began exercising SDVCJ on February 20, 2014, as part of the DOJ Pilot Project. As of September 1, they have had 11 SDVCJ arrests involving 9 defendants resulting in 6 guilty pleas, 1 referral for federal prosecution, 2 dismissals, with 2 cases pending.
- **Confederated Tribes of the Umatilla Reservation (OR).** The Umatilla Tribes began exercising SDVCJ on February 20, 2014, as part of the DOJ Pilot Project. As of September 1, they have had 6 SDVCJ arrests resulting in 4 guilty pleas, with 2 cases pending.
- **Sisseton Wahpeton Oyate (SD/ND).** The Sisseton Wahpeton Oyate was authorized to exercise SDVCJ on March 6, 2015 as part of the DOJ Pilot Project. As of September 1, they have had 1 SDVCJ arrest and the case is pending.
- **Assiniboine & Sioux Tribes of the Ft. Peck Reservation (MT).** The Assiniboine & Sioux Tribes were authorized to exercise SDVCJ on March 6, 2015, as part of the DOJ Pilot Project. As of September 1, they have had no SDVCJ arrests.
- **Little Traverse Bay Bands of Odawa Indians (MI).** The Little Traverse Bay Bands of Odawa Indians began exercising SDVCJ on March 7, 2015. As of September 1, they have had no SDVCJ arrests.
- **Seminole Tribe of Oklahoma.** The Seminole Tribe began exercising SDVCJ in July 2015. As of September 1, they have had no SDVCJ arrests.
- **Eastern Band of Cherokee Indians (NC).** The Eastern Band of Cherokee began exercising SDVCJ in July 2015. As of September 1, they have had 3 SDVCJ arrests resulting in 2 guilty pleas with 1 case pending.

Nearly 40 additional tribes have participated in the Inter-Tribal Working Group on Special Domestic Violence Criminal Jurisdiction (ITWG) and are in varying stages of preparing to implement SDVCJ. Twenty tribes report that they expect to implement SDVCJ in the next year. For more information about the ITWG and implementation of SDVCJ, visit www.ncai.org/tribal-vaawa.

VAWA 2013 IMPLEMENTATION UPDATE: Special Domestic Violence Criminal Jurisdiction

On **March 7, 2015**, tribes across the country could begin exercising criminal jurisdiction over non-Indians so long as all of the statutory requirements of VAWA 2013 are met.

VAWA 2013 authorizes participating tribes to exercise “special domestic violence criminal jurisdiction” (SDVCJ) over non-Indian defendants for acts of domestic violence or dating violence; and violations of certain protection orders.

However:

- the victim must be Indian;
- the crime must take place in the Indian country of the participating tribe; and
- the non-Indian defendant must have “sufficient ties to the Indian tribe,” which could include either:
 - residing in the Indian country of the participating tribe;
 - being employed in the Indian country of the participating tribe; or
 - being a spouse, intimate partner, or dating partner of a tribal member, or an Indian who resides in the Indian country of the participating tribe.

In addition to existing Indian Civil Rights Act requirements, the tribe must offer certain Due Process Protections, many of which mirror the due process protections required to exercise the enhanced sentencing provisions of the Tribal Law and Order Act (TLOA) of 2010:

VAWA Due Process Requirements

Defendants are provided with effective assistance of counsel equal to at least that guaranteed in the U.S. Constitution.

Tribal government provides to an indigent defendant a defense attorney licensed to practice by any jurisdiction in the United States.

Defense attorney is licensed by a jurisdiction that applies appropriate licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys.

Judges presiding over criminal proceedings involving non-Indian defendants have sufficient legal training to preside over criminal trial and be licensed to practice law by any jurisdiction in the United States.

The tribe’s criminal law, rules of evidence, and rules of criminal procedure are made available to the public prior to charging the defendant.

Tribal court maintains a record of the criminal proceeding, including an audio or other recording.

Tribal court provides the defendant the right to a trial by an impartial jury.

Tribal court ensures that the jury reflects a fair cross section of the community.

Tribal court ensures that juries are drawn from sources that do not systematically exclude any distinctive group in the community, including non-Indians.

Tribal court ensures that a defendant is “timely notified” of his/her rights and responsibilities.

Tribal court ensures that a defendant is notified of their right to file “a petition for a writ of *habeas corpus* in a court of the United States.”

Tribal court provides “all other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of the participating tribe to exercise special domestic violence criminal jurisdiction over the defendant.”

VAWA 2013 and the Tulalip Tribes' Jurisdiction Over Crimes of Domestic Violence Update on Tribal Implementation of Special Jurisdiction Over Non-Indians



The Tulalip (pronounced Tuh'-lay-lup) Tribes is a federally-recognized Indian tribe located on the Tulalip Reservation in the mid-Puget Sound area north of Everett, Washington, bordered on the east by Interstate 5 and the city of Marysville. The Tulalip Reservation exterior boundaries enclose a land-base of 22,000 acres, with approximately 15,000 acres in federal trust status. Our reservation is rich with natural resources: marine waters, tidelands, freshwater creeks and lakes, wetlands, forests, and developable land. The Tulalip Reservation was reserved for the use and benefit

of Indian tribes and bands signatory to the Treaty of Point Elliott of January 22, 1855. Its boundaries were established by the 1855 Treaty and by Executive Order of President U.S. Grant dated December 23, 1873. It was created to provide a permanent home for the Snohomish, Snoqualmie, Skagit, Suiattle, Samish, and Stillaguamish Tribes and allied bands living in the region. Today, we have 4,533 enrolled tribal members and approximately 2,500 of these members reside on the reservation.

Tulalip Justice System

The Tulalip Tribal Court supports the Tribes' vision—"together we create a healthy and culturally vibrant community"—in its practice of judicial excellence. The Tulalip Tribes has always provided a forum for tribal members to resolve issues. Some of the first issues heard by the court involved fishing, employment, and child welfare cases. The Tribal Court has grown substantially since that time. In 2001, the Tribe requested and received retrocession over reservation lands from the state of Washington. The Tribes expanded its police department the same year. In 2003, the Tribes developed an institutional relationship with the University of Washington School of Law Native American Law Center for the Tribal Court Defense Clinic, which is designed to provide representation to low-income Tulalip tribal members charged with crimes on the reservation. The Clinic is funded in part through Tulalip casino-derived revenue.

Key Stats of SDVCJ Cases Since February 20, 2014

11 cases, with 9 defendants, age range: 21-35; race: 3 Caucasian, 2 African American, 3 Hispanic, and 1 non-enrolled Canadian Indian. 6 defendants have children in common with the victim of the crime. Defendants have had a combined number of 109 contacts with Tulalip Tribal Law Enforcement since 2008. Information about the victims: 7 girlfriends, 1 spouse, and 1 ex-spouse. During 6 of the incidents, children were present; 5 children were victims of crime.

Outcomes

6 pled guilty, 2 pre-trial, 2 dismissed, and 1 transferred to federal court. Of the crimes in which children were victims of crime, only 1 case will be prosecuted because underlying crime was transferred to federal court. State has not taken action on other 4 crimes in which children were victims.

Denise was assaulted and raped by the father of her children (a non-Indian) one night. This incident, the latest in a long history of violence, resulted in charges of rape and assault first-degree filed by the Tribes in Tulalip Tribal Court pursuant to SDVCJ. Defendant almost immediately violated an order for protection. The couple's 8-year-old son also disclosed abuse by his father. Defendant pled guilty to the assault. We could not proceed on the rape because it was not "violent" per the current definition, and we could not even file on the child's victimization, because of the limits of SDVCJ. Victim and her son are doing well, free from the violence.

Collaborative Relationships

Tulalip collaborated with the federal government and other tribal organizations which proved to be invaluable in this effort. We worked with the Intertribal Working Group, which consisted of tribal attorneys, judges, council member, the National Congress of American Indian (NCAI), the National Council of Juvenile and Family Court Judges and Tribal Law and Policy Institute, and the Department of Justice. We promote continuing this type of collaboration and cooperation for future expansion of laws and programs.

Costs to Tulalip

Tulalip absorbed all costs using its tribal revenues. Congress authorized up to \$25 million to implement this program through 2018, but Congress has yet to appropriate any of those funds.

Key SDVCJ Requirements, Tulalip Tribal Laws and Readiness (Tribal Retrocession in 2001)

- General Application of ICRA 25 USC 1304 (d) (1) (Rights of the defendant) (code implementation 2002)
- Jury Drawn from Fair Cross Section 25 USC 1304 (d) (code implementation 2002)
- Notice of Right to Habeas Corpus and Petition for Stay of Detention 25 USC 1304 (e) (3) (code implementation 2002)
- Rights to Counsel 25 USC 1302 (c) (code implementation 2002)
- Qualifications of Judges 25 USC 1302 (c) (code implementation 2002)



- Recording of Proceedings 25 USC 1302 (c) (since inception of court)
- Publication of Laws 25 USC 1302 (c) (online 2010, before that available through Court, Law Schools, etc.)

Next Steps

- Authority to charge crimes against child victims and other attendant crimes
- Authority to charge stranger rape
- Reauthorize, expand, and make permanent Bureau of Prisons Pilot Project (approved in TLOA)
- Implement the NCIC-TAP Program as a "Permanent Program" and create an ITWG for this purpose
- Full funding for all aspects of implementation

"Indian tribes implementing VAWA Special Jurisdiction met with Department of Justice and White House Officials on Tuesday, October 6, to commemorate Domestic Violence Awareness Month in Washington D.C. Prosecutors from the Pascua Yaqui Tribe and the Tulalip Tribe described their experience and challenges implementing the Violence Against Women Act, Special Domestic Violence Jurisdiction, prosecuting non-Indian perpetrators for acts of violence against Native women. They described their partnership with federal officials and explained that there is much work to be done. Tribes are seeking funding to help improve their justice systems so that they can properly respond to the needs of their communities and victims. It was an honor to speak to Attorney General Loretta Lynch, who spoke passionately about protecting Indian women."

—Alfred Urbina,
Attorney General,
Pascua Yaqui Indian Tribe

NCAI Launches Technical Assistance Website

As of March 7, 2015, Indian tribes are able to prosecute non-Indians who abuse Indian women on tribal lands for the first time since the *Oliphant v. Suquamish* decision. Importantly, there are a number of due process requirements that must first be met. NCAI has developed a website to assist tribes as they implement the new law: <http://www.ncai.org/tribal-vaawa>.

The website includes various resources, such as:

- A tribal code development checklist, which offers a quick guide to the due process requirements.
- Information from the Intertribal Technical-Assistance Working Group (ITWG), which is a collaboration of 42 tribes sharing information and advice on how to best implement VAWA, combat domestic violence, recognize victims' rights and safety needs, and safeguard defendants' rights.
- Materials from the five tribes that have been participating in a DOJ Pilot Project that allowed them to begin exercising jurisdiction over non-Indians last year. These materials offer useful examples of how the pilot tribes have modified tribal code language and constructed jury pools for VAWA cases.
- A "Practical Guide to Implementing VAWA and TLOA" developed by the Pascua Yaqui Tribe. http://www.ncai.org/tribal-vaawa/getting-started/Practical_Guide_to_Implementing_VAWA_TLOA_letter_revision_3.pdf
- Information from past webinars on a variety of VAWA implementation topics, including: jury pools and selection, defendants' rights, protection orders, and victims' rights.
- Finally, the website will track any VAWA updates and upcoming events.

In addition, several free technical assistance resources are available—for example:

- The ITWG technical assistance team is available to review draft tribal codes, policies, or procedures you may be developing to implement the law. The team would be happy to look over your proposed changes to help make sure they fully comply with all of VAWA's statutory requirements.



- The Center for Jury Studies continues to be available to help address specific questions about VAWA's jury requirements and the logistics of creating a jury pool system that complies with VAWA. NCAI would be happy to connect you with them.
- Once you have implemented the law, the technical assistance providers and attorneys from the pilot tribes are available to help address issues that may come up with the investigation or prosecution of individual cases.
- The Tribal Law and Policy Institute has developed a "Tribal Legal Code Resource: Tribal Laws Implementing TLOA Enhanced Sentencing and VAWA Enhanced Jurisdiction" that offers guidance on drafting and revising tribal codes to implement TLOA and VAWA.



National
Congress of
American
Indians

All tribes seeking to implement SDVCJ are also encouraged to join the Intertribal Technical-Assistance Working Group (ITWG). Please contact tribal-vaawa@ncai.org for more information or with any questions, or Virginia Davis, Senior Policy Advisor, at vdavis@ncai.org.

Tenth Annual VAWA Government-to-Government Consultation

Squaxin Island, Shelton, Washington–November 4, 2015

In 2003, the national movement joined together to reauthorize VAWA 2005 to include a specific title for Native women: Title IX Safety for Indian Women. Enactment of this Title represented a historic turning point in the commitment of the United States to respond to violence committed against Indian women. It clarified that the “legal relationship of the United States to Indian tribes creates a federal trust responsibility to assist tribal governments in safeguarding the lives of Indian women.” The Title mandated that the U.S. Department of Justice conduct an annual consultation with Indian nations on issues concerning the safety of Indian women. Preparations are underway for the tenth annual consultation to be held November 4, 2015, at Squaxin Island, in Shelton, Washington. While much progress has been achieved, much more remains to be done.

Consultation is a safeguard on the implementation of VAWA to strengthen the ability of tribal governments to increase the safety of women. A national consultation is the vehicle for the highest level of accountability and policy discussion between the United States and Indian nations as governments. This interaction on a nation-to-nation basis allows the governments to discuss critical issues that on the broadest level impact the safety of Indian women.

During the past nine annual consultations, tribal leaders have raised their concerns and presented the recommendations of their respective governments and communities. The response of the United States has dramatically improved since 2009 in the conducting of the consultation, the development of the report, and also the update on the status of the DOJ’s response to the recommendations received from tribal leaders, including advance notice of the consultation and access to the summary report of the concerns and recommendations of tribal leaders.

Tribal Leaders’ Preparation, Briefing, and Caucus

In preparation for each annual consultation since 2006, the NCAI Task Force and NCAI staff have coordinated development of briefing materials and organized a caucus for tribal leaders the day before the annual consultation. These caucuses are intended to provide tribal leaders a briefing and opportunity to discuss important outstanding issues concerning the safety of Indian women. In addition, tribal leaders are provided an overview of issues to consider in their preparation for the annual consultation. Over the last nine years, tribal leaders have engaged the DOJ and HHS leadership in dialogue on the most serious roadblocks

*September 16, 2015 –Lorraine Edmo, OVV
Deputy Director Tribal Affairs, attends the
Uniting Three Fires Tribal Leadership Summit*



to the safety of Native women and on issues impacting the ability of Indian tribes to protect women.

While the consultation process substantially improved under the leadership of the Obama administration and former Attorney General Holder, addressing the barriers to the safety of Native women is an ongoing and continuous process. Concerns and recommendations of Indian tribes to be addressed at consultation are provided here to assist Indian tribes in preparation for the 2015 annual consultation. The NCAI Task Force encourages all tribes to consider including the following points at the November 4th consultation and in their written testimony. Following the Squaxin Island consultation, a summary of the concerns and recommendations raised by tribal leaders will be provided to the DOJ, HHS, and the White House. We hope this information will assist you in preparing for the 2015 tenth annual consultation at Squaxin Island.

- Enhancing the safety of American Indian and Alaska Native women from domestic violence, dating violence, sexual assault, stalking, and sex trafficking
- Strengthening the federal response to the crimes of domestic violence, dating violence, sexual assault, and stalking
- Administering grant funds appropriated for tribal governments and programs created to benefit tribal governments by the original VAWA and subsequent legislation

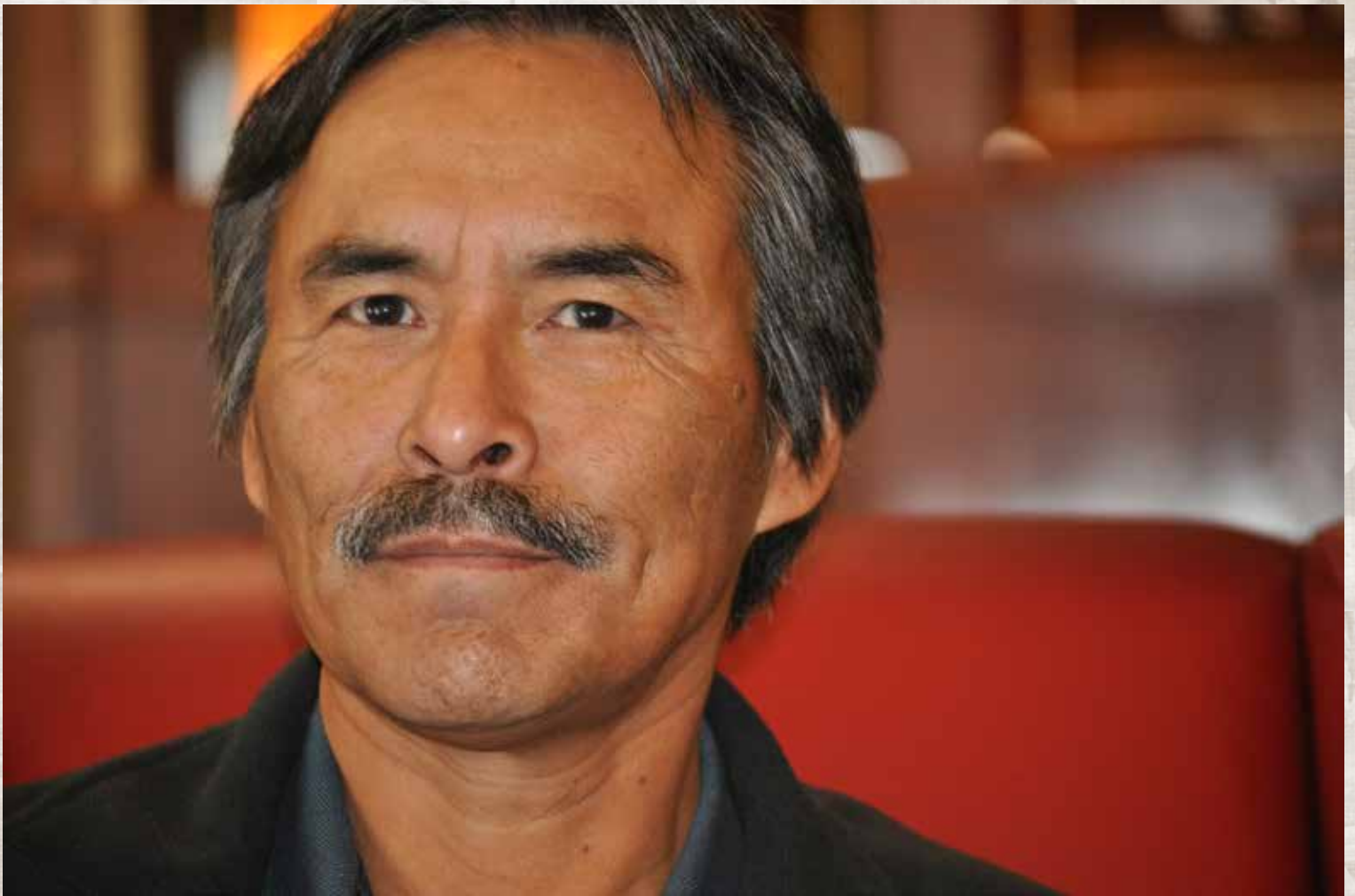
In past years, the federal departments of the DOJ and HHS have released framing papers addressing specific issues and posing related questions for Indian tribes to address at the VAWA consultation. These framing papers are inquiries by the federal departments, and a response is optional. Each Indian tribe determines the concerns and recommendations to be raised during the annual consultation.

VAWA Annual Tribal Consultation Topics

Tribal leaders are not limited in terms of concerns and recommendations to be raised at the annual VAWA tribal consultation; however, certain subjects are statutorily mandated. The VAWA 2005 (as amended in VAWA 2013) consultation statute set forth three general topics, requiring the Attorney General, and federal partners, to solicit recommendations from Indian tribes concerning the following:

The testimony from tribal leaders and designated representatives of Indian tribes given at the annual consultation is summarized in a statutorily mandated report to Congress each year. Past concerns and recommendations presented by tribal leaders orally or in writing at these annual consultations can be found at <http://www.justice.gov/ovw/tribal-consultation>.





2015 Annual VAWA Consultation Concerns and Recommendations

Provided below is a summary overview of concerns and recommendations made by tribal leaders and the NCAI over the last year and during the 2014 consultation in Rapid City.

VAWA Implementation

- In the two and a half years since passage of §904 of VAWA, which established a framework for tribal governments to exercise criminal jurisdiction over non-Indians, we have learned several important lessons. First, the experience of the first tribes to implement the law demonstrates that implementation of §904 of VAWA can end impunity for non-Indian batterers in tribal communities. Unfortunately, only eight tribes have implemented the law to date. Many other tribes say they would like to implement the law, but are unable to do so without additional resources. At last year's consultation, **we urged DOJ/DOI/HHS to provide additional resources to tribes on an ongoing basis for VAWA implementation.** This has not yet happened, although we thank the Administration
- The implementing tribes also report that the law must be expanded to fulfill its potential. Currently, even where the law has been implemented, tribal prosecutors are limited in their authority and cannot charge an offender who simultaneously abuses or endangers his children; or who commits a drug or alcohol offense or property crime; or who physically or sexually assaults someone other than an intimate partner. **We urge DOJ to support an amendment to §904 that would enable tribal prosecutors to charge the full range of crimes that arise in the context of domestic violence, sexual assault, or family violence.**

for including \$5 million for VAWA implementation in the President's budget request. DOJ recently released a framing paper seeking input from tribal governments about whether DOJ should create a separate purpose area in CTAS for implementation of the VAWA criminal jurisdiction provision. DOJ proposed taking money from the Grants to Tribal Governments program for this purpose. We will be discussing this proposal at the upcoming NCAI Task Force meeting.

Tribal Access to Federal Databases.

- VAWA 2005 §905(a), enacted over 10 years ago, mandated that the Attorney General grant tribal law enforcement access to enter and obtain information from federal criminal databases in cases of domestic violence, dating violence, sexual assault, and stalking. Too many tribes continue to experience barriers accessing the federal criminal databases. Tribal law enforcement agencies must have direct access to federal criminal databases to ensure the safety of Native women, particularly if the Habitual Offender and Firearms Provisions are to have any teeth. **Addressing challenges for tribes to enter and obtain information from NCIC must continue to be a priority for DOJ.**
- The recent press release announcing the DOJ Tribal Access Program for National Crime Information (TAP) is a step forward in the effort to create access for Indian tribes to the federal databases. **We urge DOJ to better build and sustain the program beyond the initial pilot phase to provide the necessary resources and tribally relevant training, developed in collaboration with Indian tribes and tribal consortiums, to Indian tribes opting to participate in TAP.**
- The TAP has the potential to fulfill the mandate under VAWA 2005 §905(a) to provide Indian tribes access to NCIC if it becomes permanent and open to all Indian tribes. **We urge the DOJ to fully implement TAP as a permanent program in partnership with Indian tribes by development of an intertribal workgroup similar to the Special Domestic Violence Working Group to enhance delivery to tribal governments and provide ongoing improvements while keeping all interested tribes informed of the delivery of this program; identify which component of DOJ is responsible for implementation of TAP (§905(a)) and provide Indian tribes with contact information for the component; develop DOJ guidelines for the implementation of TAP (§905(a)) and provide the guidelines to Indian tribes; and issue a statement to Indian tribes that the system is now available for tribal law enforcement to access and enter information into the federal databases under §905(b).**

Family Violence Prevention and Services Act Reauthorization

- Family Violence Prevention and Services Act (FVPSA) continues to be the federal government's only funding source dedicated to supporting lifesaving services provided by domestic violence programs/shelters. While some FVPSA funding stream set-asides are for tribes, most are allocated to state governments, some U.S. territories, and state and U.S. territorial domestic violence coalitions. FVPSA excludes Tribal Domestic Violence Coalitions entirely.
- FVPSA expires in 2015. **We urge the federal government to support reauthorization of FVPSA in 2015 to include amendments that would increase tribal access to critical FVPSA funds.**

Victims of Crime Act Funding

- The Victims of Crime Act (VOCA) is the largest source of federal funding for crime victims. Currently, the fund contains more than \$10 billion, which is funded through fines collected in federal criminal cases. Unfortunately, Indian tribes are largely shut out of this funding stream. Consistent with NCAI Resolution ANC 014-048, **we ask DOJ to advocate for an increase in the VOCA funding cap and to support the tribal effort to create a 10% allocation in VOCA funding for tribal governments. In addition, we urge DOJ to support the SURVIVE Act, S. 1704, which would create a stable 5% allocation of CVF disbursements for a grant program for tribal governments to provide crime victim services for the next 10 years.**

Safety for Alaska Native Women

- DOJ's support for repeal of the Alaska Special Rule included in VAWA 2013 is appreciated. We thank DOJ for the July 28, 2014, letter from Associate Attorney General Tony West to the Alaska Attorney General reminding him of the state's obligation to give full faith and credit to tribal court orders of protection. **We urge DOJ to follow up on this issue with the state and ensure that these lifesaving tribal court protection orders are enforced. We encourage DOJ to continue to actively support the efforts of Alaska Native villages to enhance their response to violence against women and full implementation of VAWA.**

Bureau of Prisons Pilot Program

- The Federal Bureau of Prisons Tribal Prisoner Pilot Program gives tribes the option to send violent offenders to federal corrections facilities. This Pilot Program expired in November 2014. **We urge DOJ to advocate with Congress to make this Pilot Program permanent.**

DOJ Grant Funding

- For the past several years, DOJ has requested a flexible 7% tribal set-aside across Office of Justice Programs (OJP) grant programs. While the set-aside has not been included in congressional appropriations, Congress has given OJP the increased flexibility it requested. **We are concerned, however, that OJP has not initiated consultation with tribal governments about how to best implement the flexibility the Administration has repeatedly requested and, as a result, will continue to be unprepared to move forward with significant changes in future years.**

Grants to Tribal Governments Program

- VAWA 2005 statutorily combined tribal set-asides from seven grant programs into a single program, the Grants to Indian Tribal Governments Programs (GITGP). The purpose of the single grant program is to enhance the response of Indian tribal governments to address domestic violence, sexual assault, dating violence, stalking, and sex trafficking. The establishment of this program is an important step forward in streamlining access of Indian tribes to critical funding, but a number of concerns have been raised about the implementation of the grant program. **We urge the Office on Violence Against Women (OVW) to implement the following recommendations:**

1. The GITGP should receive the highest priority in the OVW schedule for grant making and award schedule. The lack of adequate resources available to tribal governments is well documented. Indian tribes lack the resources to maintain programs during gaps in access to continuation funding. Start-up and shutdown of tribal programs due to administrative issues is a tragic result of tribal programs not being prioritized by the OVW.
2. Pre-solicitation workshops should be conducted for Indian tribes needing assistance in completing the application process.
3. Award date and access to funds should occur at the same time.

4. Administrative requirements not applicable to Indian tribes should be removed.
5. All technical assistance and training offered by OVW that Indian tribes are required to attend must be designed to specifically address the unique legal and jurisdictional circumstances of Indian tribes.
6. All training and technical assistance awards should be to organizations having expertise in working with Indian tribal governments and also expertise in addressing violence against Indian women, specifically domestic violence, sexual assault, stalking, dating violence, and sex trafficking as required under VAWA.
7. Eligibility for the GITGP should be open to all tribes, regardless of whether they have an existing GITGP grant, so long as the tribe is proposing significantly different activities.

The Disappeared—Response to Missing and Murdered Native Women

- Since 2003, tribal leaders have raised the inadequate response of law enforcement agencies to missing persons reports of Native women that are often abduction, rape, and domestic violence homicide cases. **We urge DOJ to establish a high-level working group to develop and institute a training protocol and alert system to increase the current response in such cases.**

Grave Concern for the Impact of Extractive Industries Within the Bakken Region upon the Safety of Native Women

- The concerns for the increased danger to the safety of Native women created by the oil industry within the Bakken region and on other tribal lands have been expressed continuously during annual consultation. **We encourage DOJ to continue and increase support for Indian tribes to respond to this crisis.**

Implementation of the Consultation Mandate

- VAWA requires that the DOJ conduct an annual consultation on violence against Native women. We urge DOJ to implement the following recommendations:
 1. Immediately set the schedule for scoping calls to allow the opportunity for all tribal governments to participate in the preparatory call.
 2. Allocate no more than one quarter of the total



time of the consultation to presentations, and allow three quarters of the time for statements and questions by tribal governments.

3. DOJ components charged with the responsibility for investigating or prosecuting perpetrators of violence crimes against Indian women should attend the annual consultation; of particular importance are the Office of the Attorney General, the United States Attorney; the Federal Bureau of Investigations; and representatives from the Departments of Health and Human Services and the Department of Interior.
4. Prior to the consultation, OVW post on its website a complete report on the amount of tribal set-aside funds; grant awards allocated from tribal set-aside funds; any remaining tribal rollover funds not allocated; and why the funds were not allocated.
5. Prepare an action plan for DOJ components to address the concerns and recommendations made during the consultation by Indian tribes.

Tribal Registry

- VAWA requires that the DOJ establish a national tribal order of protection and sexual offender registry. This registry is extremely important because the majority of Indian tribes cannot directly enter into or access information from federal databases regarding orders of protection or sex offender convictions but are dependent on state systems. Congress authorized and has appropriated almost \$4 million to establish this national system. The statute mandates that the Director of OVW issue a solicitation and enter into a contract to create and maintain this national tribal registry. We urge OVW to implement the following recommendations:
 1. The Director of OVW comply with the statute, release the solicitation, and award a contract for the creation of the national tribal registry.
 2. The Director provide an update on the status of this statute during the annual consultation.



An Overview of the VAWA 2005 and 2013 Title IX. Safety for Indian Women DOJ's Response to VAWA Mandates

Government-to-Government Relations. To assure proper governmental relations between the United States and Indian Nations regarding implementation of VAWA 2005, the Title statutorily established the Deputy Director for Tribal Affairs. Further, it explicitly required that the Department of Justice and Department of Health and Human Services conduct annual consultations with Indian tribes on statutorily defined categories.

Annual Consultation Mandate. This mandate was intended to provide a forum on a government-to-government level where tribal leaders could meet annually with the United States to raise concerns and make representation to enhance the safety of Native women. Specifically the Tribal Title mandated the USDOJ Attorney General and Secretary of Health and Human Services conduct the consultation. In 2015, almost 10 years later, the consultation is an institutionalized forum for review of concerns and recommendations for enhancing the safety of Indian women. *In this regard, USDOJ receives commendation for this effort.*

Position of OVW Deputy Director for Tribal Affairs.

The Deputy, under the guidance of the Director, holds the authority to conduct broad intergovernmental policy work to implement VAWA amendments and tribal enhancements. The establishment of this position is based upon the longstanding policy of a government-to-government relationship between Indian tribes and the United States. During past consultations, concern has been raised regarding the actual authority granted to the Deputy Director to implement the statutory mandate of the position. Further, Indian tribes have continuously raised concern regarding the lack of support staff for the tribal deputy and also the understaffing of the tribal unit. ***In this regard, increased support for the Deputy Director for Tribal Affairs is recognized as improved, as is the recognition that the staffing level of the tribal unit has improved from one to three program managers.***

Federal Code Amendments. The Tribal Title of 2013 and 2005 made historic amendments to federal code amendments including: the Indian Civil Rights Act, Federal Assault Statutes, Firearms Possession Prohibitions to include tribal court convictions; the Indian Law Enforcement Reform Act to include misdemeanor arrest authority; the federal code to create a Domestic Assault by an Habitual Offender; and the Federal Criminal Information Databases to provide Indian nations access to enter and obtain information. ***In this regard, USDOJ has taken steps to implement each provision and is commended for efforts.***

Research and Information Access. VAWA 2005, as amended by 2013, provides for a national baseline study on rates of violence against Indian women by the National Institute of Justice (NIJ); a Centers for Disease Control and Prevention (CDC) study on the costs of injury to Indian women due to violence. ***In this regard, NIJ is commended for its efforts to implement this provision. The cost of injury study has not receive an Congressional appropriation.***

In addition, the Tribal Title authorized a national tribal sex offender and protection order registry to enhance the ability of tribal governments and law enforcement agencies to deal with violence against Indian women on tribal lands. ***In this regard, USDOJ has only taken minimal steps to implement the tribal registries mandate. The lack of action is unacceptable given the strong support of Congress as demonstrated by the initial annual appropriations for four years. These Congressional appropriations ended due to the lack of implementation of the provision and failure to expend the funds.***

Increased Resources. VAWA 2005, as amended by VAWA 2013, created the Grants to Indian Tribal Governments Program lifting programmatic restrictions to allow Indian tribes to determine the appropriate governmental strategies according to their respective forms of governance. It also clarified that Indian tribes are not required to provide a match for the federal funds. VAWA 2013 expanded the purpose areas to include sex trafficking, services to address the needs of youth under VAWA, and the development and promotion of legislation and polices that enhance best practices for responding to violent crimes against Indian women under the VAWA crimes. ***In this regard, USDOJ has acted to implement and improve the administration of the Grants to Indian Tribal Governments Program; and while ongoing recommendations exist, USDOJ is commended for its actions.***

Annual Consultation: Why Attendance of Indian Tribes Is Urgent

"The annual consultation was established under VAWA 2005 as a mandate to safeguard the successful implementation of the Safety for Native Women Title," said Dorma Sahneyah, NIWRC Policy Director. "In the drafting of the 2005 Tribal Title, consultation was viewed as essential to achieving the purposes of the Title to strengthen the authority and resources available to Indian tribes to safeguard the lives of Native women."

The consultation mandate was established as a checkpoint where once a year Indian tribes and the USDOJ would review progress on past concerns and also discuss new issues regarding violence against Native women. "The concept was that constant accountability barriers to safety and justice could be removed," said Juana Majel, Co-Chair of the NCAI Task Force. "We wanted to establish a national process to year-by-year increase the safety of Native women. The mandated reports from the consultation serve as the watermarks of our progress."

It is well recognized that without this statutory mandate the federal departments and Indian tribes would not have engaged over the last nine years to identify the barriers and recommendations to increasing the safety of Native women. As Juana Majel stated, "It is not a process of blame but one where we identify and address the real, often institutionalized, barriers to the safety of Native women. The solutions to these barriers most often rest on restoring and strengthening the sovereignty of Indian tribes."



"VAWA 2013 established a mandate upon states to consult with Indian tribes in the development and implementation of state STOP formula grant plans. This will be of particular concern during this year's consultation," said Juana Majel, Co-Chair, NCAI Task Force on Violence Against Native Women.

Tribal Title, Section 903 Tribal Consultation Mandate

The Tribal Consultation Mandate is found in Title IX, Safety for Indian Women §903. It specifically directs the Attorney General to conduct an annual consultation with Indian tribal governments concerning the federal administration of tribal funds and programs established under the Violence Against Women Acts of 1994 and 2000. During such consultations, the Attorney General and Secretary of HHS are required to solicit recommendations from Indian tribes concerning three specific areas:

- (1) Administering tribal funds and programs
- (2) Enhancing the safety of Indian women from domestic violence, dating violence, sexual assault, and stalking
- (3) Strengthening the federal response to such violent crimes

VAWA 2013 Amendments to Consultation Mandate Increase Accountability

The historic amendments of VAWA 2013 further strengthened this mandate and confirmed that the inclusion of a separate annual consultation continues to be essential to the implementation of VAWA within Indian tribes. This interaction on a nation-to-nation basis has allowed tribal governments and the United States to discuss matters that at the broadest level impact the safety of Indian women, and to propose strategies to address these issues. The VAWA 2013 tribal amendments were the result of the concerns raised during the consultation process since 2006.

Over the last eight years, tribal leaders have engaged the leadership of the USDOJ to address the most serious roadblocks to the safety of Native women and the ability of Indian tribes to protect women.



VAWA 2013 Annual VAWA Consultation Mandate Amendments

- The Attorney General provides 120 days' notice to Indian tribes of the date, time, and location of the annual consultation.
- The Secretary of Interior attends the annual consultation.
- The Attorney General submits to Congress an annual report that:
 - Contains the recommendations made by Indian tribes during the year covered by the report
 - Describes actions taken during the year to respond to recommendations made during the year or a previous year
 - Describes how the Attorney General will work in coordination and collaboration with Indian tribes, the Secretary of Health and Human Services, and the Secretary of the Interior to address the recommendations
- Sex trafficking is added to the list of items to be addressed at the consultation.



GOVERNMENT TO GOVERNMENT
ANNUAL TRIBAL CONSULTATION
ON VIOLENCE AGAINST WOMEN

November 4, 2015
10th Annual Government to Government
Annual Tribal Consultation on Violence Against Women

For registration information go to:
<http://ovwconsultation.org>

VAWA Litigation Update

Restoration is excited to launch a new section of the magazine dedicated to briefing tribal leaders, advocates, and readers on emerging VAWA-related litigation. This new section recognizes that as victories are won to increase the safety of Native women, we will also face challenges to these gains. What Tillie Black Bear called “work in the trenches” now takes on a new dimension of defending the gains made in the continuous effort to remove barriers to Native women and enhance the response of Indian tribes in their efforts to protect Native women.

We welcome this new section by offering an update on two important cases. The first update is on the Dollar General case, now under review in the Supreme Court, that challenges the civil authority of Indian tribes in a tort case brought by the parents of a tribal youth sexually assaulted by an employee of a non-Indian corporation on tribal land.

The second update is on the Bryant case, a Ninth Circuit case, that found that because Bryant’s tribal court convictions for domestic abuse “were uncounseled and at least one resulted in a term of imprisonment,” it would violate the Sixth Amendment to allow the tribal court convictions to establish habitual offender status under the Safety for Indian Women Title, VAWA 2005, Habitual Offender Statute. NIWRC has filed an amicus brief in the Dollar General case and is considering filing a brief in the Bryant case.

Dollar General v. Mississippi Band of Choctaw Indians **(United States Supreme Court)**

This fall, the United States Supreme Court will decide whether the Mississippi Band of Choctaw Tribal Court has civil jurisdiction over a tort case concerning the conduct of a non-Indian corporation whose employee sexually assaulted a young tribal member.

The outcome of this case will affect all federally recognized tribes. If the Supreme Court concludes that the Mississippi Band of Choctaw Tribal Court has the inherent sovereignty to exercise this jurisdiction, current tribal sovereignty will be preserved. However, if the Supreme Court concludes that Mississippi Band of Choctaw cannot exercise this jurisdiction, all tribal nations could be stripped of their inherent civil authority to adjudicate tort disputes arising from sexual assaults committed by non-Indians on tribal lands. We cannot afford to let that happen.

The facts of this case involve a non-Indian-perpetrated sexual assault against a tribal member on tribal lands. Dollar General, the defendant in this case, leases its store from the tribe on tribal trust land. Dollar General agreed to participate in a tribally operated youth job-



training program. In the summer of 2003, during this program, a young tribal member employed at the store was sexually assaulted by the Dollar General Store Manager during the course of the youth’s employment. Following his assault, the tribal member and his parents sued Dollar General in Tribal Court, seeking monetary compensation for pain and suffering to cover the youth’s medical and trauma recovery expenses.

Dollar General has argued the Mississippi Band of Choctaw Tribal Court lacks jurisdiction because Dollar General is a non-Indian corporation. Dollar General circumvented the Tribal Court by filing a collateral challenge in the United States District Court (federal court) to the tribe’s jurisdiction. After both the District Court and the Fifth Circuit Court of Appeals ruled in favor of the tribe concluding that the Tribal Court had proper jurisdiction, Dollar General filed an appeal with the United States Supreme Court.

Dollar General filed its opening brief with the Supreme Court on August 31, 2015, arguing that it is unconstitutional for tribes to exercise any kind of jurisdiction over non-Indians because tribal courts are unsophisticated, biased, and incapable of fairly rendering justice. Likewise, Dollar General’s *Amici* have argued that tribal governments may only exercise civil

What Are the Facts of the Dollar General Case?

- The store where the sexual assault occurred is located on tribal trust land.
- The Mississippi Band of Choctaw leased the store to Dollar General, a non-Indian corporation.
- Dollar General agreed to participate in a tribally operated youth job-training program.
- The Dollar General Store Manager sexually assaulted a young tribal member who participated in the job-training program during the course of his employment.
- Following his assault, the tribal member and his parents sued Dollar General in Tribal Court, seeking monetary compensation for pain and suffering to cover the youth's medical and trauma recovery expenses.
- Dollar General has argued the Mississippi Band of Choctaw Tribal Court lacks jurisdiction because Dollar General is a non-Indian corporation.
- Dollar General circumvented the Tribal Court by filing a collateral challenge in the United States District Court (federal court) to the tribe's jurisdiction. After both the District Court and the Fifth Circuit Court of Appeals ruled in favor of the tribe concluding that the Tribal Court had proper jurisdiction, Dollar General filed an appeal with the United States Supreme Court.
- Dollar General filed its opening brief with the Supreme Court on August 31, 2015, arguing that it is unconstitutional for tribes to exercise any kind of jurisdiction over non-Indians because tribal courts are unsophisticated, biased, and incapable of fairly rendering justice.
- Ironically, had Dollar General allowed the case to proceed in Tribal Court where it was initially filed, the judge presiding over the case would have been a white male licensed to practice law in the State of Mississippi (Judge Jeff Webb or Judge Christopher Collins).
- Copies of the cert petition, brief in opposition, and United States amicus brief are available on the Native American Rights Fund Project webpage (http://sct.narf.org/caseindexes/dollar_general_v_choctaw.html).

Timeline of the Dollar General Case Before the Supreme Court

- **August 31, 2015:** Dollar General brief filed.
 - **September 7, 2015:** Amicus briefs in support of Dollar General filed.
 - **October 15, 2015:** Mississippi Band of Choctaw Indians brief filed.
 - **October 22, 2015:** Amicus briefs in support of Mississippi Band of Choctaw Indians filed (including the brief from NIWRC).
 - **December 7, 2015:** Oral argument in the United States Supreme Court.
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jurisdiction over non-Indians where the non-Indian has given "clear and unequivocal consent" to tribal jurisdiction. Nowhere do Dollar General and its *Amici* consider the rights of the youth—who never gave consent to be assaulted—or his tribal government, which has the inherent right to ensure his safety on tribal lands.

NIWRC filed an amicus brief that agrees with the Mississippi Choctaw Band of Indians' brief on the merits: tribal courts have jurisdiction to adjudicate civil disputes arising from assaults committed against their members on tribal lands. NIWRC's brief, however, focused on the link between tribal court civil jurisdiction and a tribe's ability to ensure the safety of

Native women and children residing on tribal lands. NIWRC's brief was authored and submitted by Mary Kathryn Nagle (Counsel of Record), Pipestem Law Firm PC; and Sarah Deer, Professor of Law, William Mitchell College of Law. Over 75 Native and non-Native organizations including tribal and state coalitions, domestic violence shelters, national organizations and other advocacy programs joined this effort and signed onto the NIWRC brief.

Because rates of non-Indian-perpetrated sexual assault and domestic violence against tribal members on tribal lands are incredibly high, it is critical that tribes maintain their authority to adjudicate civil tort disputes brought by survivors in tribal courts against non-

Indians. A conclusion by the Supreme Court that the tribe does not have jurisdiction in the present case would close yet another possibility for justice for Native survivors and negatively impact inherent tribal sovereignty.

***United States of America v. Bryant* (Ninth Circuit Court of Appeals)**

In *United States of America v. Bryant*, the Ninth Circuit Court of Appeals held that tribal court convictions must comply with the Sixth Amendment right to appointed counsel in order to “count” for purposes of 18 U.S.C. § 117, the federal “habitual offender” statute. Congress passed 18 U.S.C. § 117 in 2006. That statute makes it a federal crime to commit a domestic assault in Indian country, if the perpetrator has at least two prior domestic violence convictions—including convictions in “Indian tribal court proceedings.”

Michael Bryant, Jr., is a citizen of the Northern Cheyenne Nation in Montana with an extensive history of petty crime and domestic violence. His tribal court criminal record contains nearly 100 various prior offenses including at least eight prior domestic abuse convictions. He was charged in this case with two counts of felony domestic assault by a habitual offender, a violation of 18 U.S.C. § 117(a).

A three-judge panel on the Ninth Circuit, however, found that because Bryant’s tribal court convictions for domestic abuse “were uncounseled and at least one resulted in a term of imprisonment” (*United States v. Bryant*, No. 12-30177, slip op. at 3 (9th Cir. Sept. 30, 2014)), it would violate the Sixth Amendment to allow the tribal court convictions to establish habitual offender status under § 117(a).

Neither this statute nor the Indian Civil Rights Act include a requirement that his tribal court convictions must have been counseled, and tribal courts often do not—and cannot—provide appointed counsel. Requiring that tribal court defendants receive appointed counsel in order for their domestic violence convictions to “count” all but eliminates § 117(a) in the context of domestic violence.

The United States (the party prosecuting the case) sought a rehearing en banc before the entire Ninth Circuit Court of Appeals. On July 6, 2015, a sharply



divided Ninth Circuit denied the United States’ request for rehearing. The United States will now more than likely file a petition seeking a writ of *certiorari* in the United States Supreme Court.

Because the conclusion that § 117(a)'s habitual offender status cannot apply to tribal court convictions without counsel threatens the safety, health, and welfare of Native women survivors of domestic violence, NIWRC may file an amicus brief in support of the United States’ petition.



NIWRC Partners with Pipestem Law to Establish the VAWA Sovereignty Initiative

The National Indigenous Women’s Resource Center and Pipestem Law have joined forces to establish the VAWA Sovereignty Initiative, a project focusing on the defense of the constitutionality and functionality of all VAWA tribal provisions. The VAWA Sovereignty Initiative is the NIWRC’s next step forward in defending the 2013 VAWA reauthorization and other important advancements in federal law and policy related to the protection of Native women and children.

“An important mission of NIWRC is to restore safety to Native women by upholding the sovereignty of Indian tribes and Alaska Native villages,” said NIWRC Board President Cherrah Giles. “We hope that through the VAWA Sovereignty Initiative we will be ready to bring additional substantive expertise to the movement toward safer Native communities and protect the legal and policy gains we have achieved through VAWA. And, if needed, NIWRC will continue to engage directly in litigation in VAWA-related cases.”

The NIWRC played a leadership role in the 2013 VAWA reauthorization by increasing public awareness of the legal barriers Native women face to access the justice system. “One of the most challenging battles during the 2013 reauthorization was the fight to restore the inherent authority of tribal governments to exercise criminal jurisdiction over all persons who commit domestic and dating crimes against Native women,” said Lucy Simpson,

NIWRC Executive Director. “Defending this provision and the other tribal amendments in VAWA is absolutely essential.”

The VAWA 2005 and 2013 reauthorizations opened the door to many lifesaving provisions for the safety of Native women. “As with all Native sovereignty, there will be those who will challenge these lifesaving provisions,” said Carmen O’Leary, NIWRC



board member. "In 2008, the *Plains Commerce Bank* case challenged the civil jurisdiction of our tribe over a non-Indian bank. The movement was concerned that a negative opinion might prevent Native women from obtaining restraining orders against non-Indian abusers in tribal court and filed an amicus brief. Now we again face a threat to tribal civil jurisdiction in the *Dollar General* case. We need to prepare for future challenges."

Pipestem Law agreed to prepare an amicus brief for NIWRC in the pending *Dollar General* case before the U.S. Supreme Court in coordination with the Tribal Supreme Court Project, and to date ____ other organizations with women and children protection missions have agreed to join. Through this joint effort it became clear that a need existed for an ongoing VAWA litigation project. "We have worked closely with Mary Kathryn Nagle who recently joined Pipestem Law in 2013. Mary Kathryn is an astute litigation attorney and also a nationally acclaimed playwright who wrote *Sliver of a Full Moon*. Many of us know and have worked with Wilson Pipestem over the years both individually and as NIWRC," commented Lucy Simpson, who attended

Stanford University with Wilson. "It was only natural that the NIWRC board was very excited with the proposal from Pipestem Law to partner on this initiative."

"The outcome of these federal cases will have a direct impact on the ability of tribal governments to protect Native women," said Wilson Pipestem. "Recognizing the consequences of such VAWA-related litigation, we are excited to partner with NIWRC on the VAWA Sovereignty Initiative to preserve the legality, functionality, and constitutionality of all VAWA tribal provisions."

"Under the direction of the NIWRC, we will keep a close watch on all litigation that relates to the tribal provisions of VAWA, as well as any litigation related to tribal criminal or civil jurisdiction over non-Indians. We will be prepared to engage directly in litigation on behalf of the NIWRC if necessary," said Mary Kathryn Nagle. "It is an exciting new step I hope will not only increase the safety of Native women but also the sovereignty of Indian nations."



My Name Is Tillie Black Bear

The following article is the second of three parts that *Restoration* will print over the coming year. The three-part series is from an interview with Tillie Black Bear on her life journey and the national movement she helped organize over the span of almost four decades, 1977–2014. Through her words, we can further understand why Tillie described the safety for Native women’s movement as a “movement of resistance,” and why the safety of Native women is linked to strengthening the sovereignty of Indian nations.

Birth of a National Movement

I grew up in a time when the healing ceremonies had to be held in secret. When I was in the eighth grade, I can remember being home when they were having a ceremony at night. Sentries were posted a block or two away looking out for the Catholic priests or the police. I grew up in that era. My family was one of those that went underground with the traditional ways—traditional spiritual practices. I started to practice those old ways, and today I call myself a recovering Catholic. Just like a recovering alcoholic, I still find myself in church sometimes for weddings, baptisms, or confirmations.

The Call: Joining the Battered Women’s Movement

After I got my master’s, I went home with my two daughters. I had gotten into a relationship with a man who was very abusive. I was already working at Cangleska University as Dean of Student Services; I had my own home, and I was always very independent. Yet I got involved with a man who was abusive.

It took me probably about two years to leave that relationship. I was fortunate that he was from another reservation. If it wasn’t for the strength that came from my family and my children, I probably would have stayed in that relationship a lot longer. My cousins kept talking to

me and my aunts kept talking to me, and I eventually left the relationship. After that, I was really involved in my family again and everything was centered around my family.

I decided to leave the reservation for a while and went to university for my doctoral studies. While working on my doctorate in counseling I got a call from my friend Faith Spotted Eagle who was president/chair of the White Buffalo Calf Woman Society. Dialogue had started about White Buffalo Calf around 1976, and the organization was formed in December 1977. Faith asked if I would go to Washington, DC, to represent White Buffalo Calf Woman Society. The U.S. Civil Rights Commission was having a



two-day symposium on what they called "wife battering," and she asked if I would talk about the short-term needs of victims. I agreed to go because I just came out of an abusive relationship. I had survived.

At that time, getting involved with this issue was a risk, especially for married women. People really didn't understand and thought women were working in this area because they were in an abusive relationship.

I didn't know a whole lot about anything. When I went to Washington, DC, the thing that really impressed me was how huge the bathrooms were, and the amount of cement that was used all over. I couldn't believe how they used that cement. One other thing that really impressed me was the environment, space that seemed so unnecessary I thought.

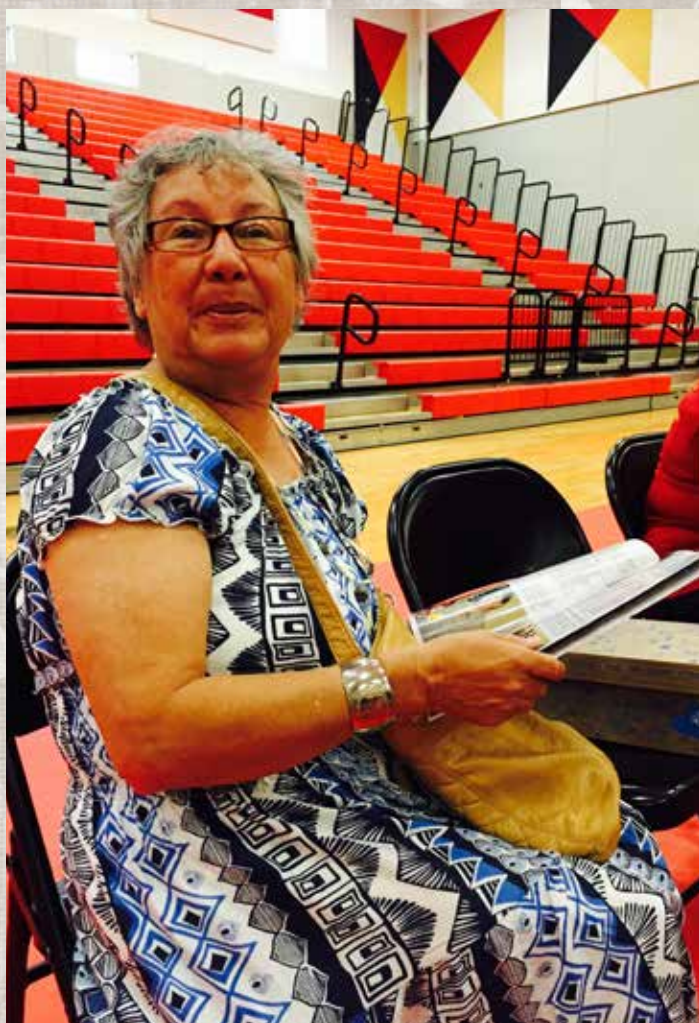
I was at the hearings for two days and there were probably close to 300 people there, mostly women.

And I gave our presentation. Women gathered in the bathrooms and talked about a need for a national voice for the issue of battering. Being the only Native woman there, I kind of fell into this. I guess I was there at the right time, so to speak. At the end of those two days, a loose-knit organization called the "steering committee" was formed with about 20 women who were self-nominated and wanted to be part of organizing around this issue on a national level. So I became involved at that point on a national level.

When I went back to South Dakota, Senator Cranston from California introduced a lot of legislation in August 1978. He reintroduced it in 1979, but it just never got anywhere in Congress. After that January trip in spring of 1978, hearings were being held in Washington, DC. I went to the Indian desk and I asked if I could get tickets to those hearings. Then I went back to South Dakota to find someone to fund me.

So I went to the tribe and found a couple of organizations that would give me the plane fare. I just used my own money for food. Someone would get a motel room and six, seven, eight women all just bunked together. We didn't know who we were sleeping with most of the time [laughs]. Around the end of March during the hearings, we had a meeting in a hotel room. [One of the women said], "I think we all need to go back to our states, where we come from, and if we don't have a network or a coalition, we need to create one; we need to develop one." I looked at them and said, "You want me to go back to South Dakota? You know, South Dakota is pretty racist! I'm Indian! Can't you see that?" It was like, "Oh, you can do it." So I went back.

At the university town I attended a meeting of the South Dakota commission on women. I sat there listening to them, until Loila Hunking, who was chair of that commission, asked, "Is there a



reason why you're here? Is there something that we could help you with?" And I said, "Yeah, I'm supposed to help create this organization, a coalition on this issue." But I said that I had no resources; I was in graduate school; and I was pretty *mishica*, meaning "pretty poor." They said, "Well, [you] could use our mailing; you just have to find a place."

I got in touch with White Buffalo Calf at Rosebud and said, "Will you host this meeting? Find us a place." And so they did find a place: the BIA dorms. Then we sent out all these flyers. Those of us involved in White Buffalo Calf at that point were doing these mini workshops—maybe two workshops altogether. We didn't know what we were doing. And we had no idea how many women would show up from throughout the state. That morning, at the end of June, we all got there about eight, and pretty soon women started showing. We had 77 women come in that day

to meet on the issue of battering. At the end of the day, we formed the South Dakota Coalition Against Domestic Violence. Then we started the work. I think seven of those women agreed to work on the incorporation, bylaws—all those things that go with developing an organization. We met all over the state. We hitched rides to here and there. Got free meeting spaces at some church basement or somewhere throughout the state—we did that.

At the same time, I think it was in April, we formed the National Coalition Against Domestic Violence (NCADV). One woman from Portland said it was real easy to get incorporated in Oregon, so I drove all the way to Portland and took my daughters with me and stayed at different YWCAs, or somewhere free, or at minimum cost.

In 1980, we did the first national conference in Washington, DC,

out of the 4-H building. Twenty of us arrived a day early, worked all day, walked around tables putting inserts into booklets. We expected maybe 200, but more like 400 women showed up. We began to do that work on a national level. I stayed involved with NCADV the first four years. Then I went back to the reservation and started developing things at Rosebud.

I've been involved with the South Dakota Coalition since its inception. I'm still involved yet today. It's a very viable organization. One of the things that we've been able to do with the South Dakota Coalition is what we call parallel development, which means that tribal women in South Dakota who belong to the coalition have access to leadership. We have an office for Native women and an office for just the women at large. We have co-directors; we have one reservation-based and one in the larger cities. Some of the work evolved [both] on a national level and a state level.



Celebrating Tillie Black Bear, 1946-2014

"Today is the anniversary of my Ina's passing. I know today will be a beautiful day. It started at midnight last night when I sang to her and said my prayers. Ina always said that she was a spirit on a human journey, and one year ago she started her spiritual journey. You can feel her presence still here today. Ina always told me she would be more help on the other side, that she would be able to protect us and help watch over all women and children. It has been a stressful honor this past year to get things ready, to make sure we have enough of everything. Ina always said don't stress about things. People will bring things, and I am seeing that this morning. I am so thankful for all our family and friends, all of her masks who have been here, and all the people who traveled here."

—Connie Black Bear-BrushBreaker

"Today is the first-year anniversary and memorial dinner for our maske, our mentor, our friend. We have had several honoring ceremonies throughout the year for her, for all she did, for all the women and all the children she helped. Today we honor Tillie again. And it is a way the family can also say thank you for all the love that was shown to us, for our loss, for our loved one Tillie. It is an honor to have made it this far."

—Roxanne Sazue,
Chairwoman, Crow Creek Sioux Indian Tribe

"Tillie was an unci to the movement, especially to the La Jolla Band of Luiseno Indians Avellaka Program. She helped in the creation of the program and helped organize the women locally. The work that she shared with us will carry on for many more generations. Tillie will always have a special role in our hearts because of her leadership, her loving spirit, and passion for safety for Native women."

—Wendy Schlater,
Executive Director, Avellaka Program,
La Jolla Band of Luiseno Indians

Meanwhile at Rosebud, one of the things we wanted was to name our organization after the sacred legend of the White Buffalo Calf Woman and her prophecy. We asked the family that takes care of the sacred pipe that was brought to the people by White Buffalo Calf Woman if we could use the sacred name in our work. It was around 1977 and we certainly didn't know the whole legend or the impact that the White Buffalo Calf

Woman would have not only on our work, but on the issues of violence against women. Since then, we've made sure that we learned the story. We stay in touch with the family all the time, and help the family in any way that we can.

Part 3 to be continued in February 2016.

Sliver of a Full Moon in Cherokee, September 2015

The Cherokee elders and wise ones say that we have always been here. We will always be here. It is believed that we were given our home here in these mountains by the Creator. Since it was He who gave it to us, only He could take it from us. So did I ever think of leaving Cherokee? No. Not once. I will never leave my home.

Billie Jo Rich, in response to the question of why she didn't leave her home to seek justice in state court.

One hundred seventy-seven years ago, the majority of our Nation began a long journey to Indian Territory, or what is now known as Oklahoma. Men, women, and children were forced at gunpoint to leave behind their homes, their possessions, and everything they had ever known. Many perished along the path, now known as the Trail of Tears.

Some, however, stayed behind. Some hid in the mountains where the soldiers could not find them. Others escaped and managed to make their way back home to the mountains, where their families still live today. Today, they are known as the Eastern Cherokee, and their government is the Eastern Band of Cherokee Indians.

At the invitation of Chairwoman Terri Henry (Eastern Band of Cherokee Indians), we brought the play to Tri-Council, an annual meeting where the Tribal Councils for all three sovereign Cherokee tribal governments come together and consider issues that affect all Cherokee people (Cherokee Nation, United Keetoowah Band, and the Eastern Band of Cherokee Indians).

For the first time since the forced removal and Trail of Tears, all three sovereign governments met in Red Clay, Tennessee—the location of the very last Council meeting before removal. The Tri-Council meeting was the culmination of a week's worth of events, with the performance of *Sliver of a Full Moon* at the very beginning. It was a momentous occasion. When Billie Jo Rich took the stage to tell the story

of her grandfather, Waya Gadoga, her story took on a whole new dimension. I watched as the audience connected with her explanation of how her grandfather escaped the soldiers to return to his home in the mountains. We have performed the play in six different locations, but this was the first time we brought the play to a tribal community that has *never left*.

Sliver of a Full Moon is about many things. It tells a story of survival. It's about community, law, and the preservation of sovereignty. But when we performed the play in Cherokee, North Carolina, this past August, preservation of sovereignty wasn't just on stage—it surrounded us.



The play was a powerful success and received a standing ovation. Following the performance, Chairwoman Henry honored three individuals whose work and dedication to the movement was instrumental to the reauthorization of VAWA in 2013 with the tribal jurisdiction provision: Jacqueline ("Jax") Agtuca—for her work organizing and supporting the

national movement for the safety of Native women with the National Indigenous Women's Resource Center; Kim Teehee—for her work securing the support of the White House when she served as President Obama's Senior Advisor on Native American Affairs; and Wilson Pipestem—who lobbied on behalf of the Eastern Band of Cherokee Indians and many other tribes in support of VAWA 2013.



Chairwoman Henry also honored the role that grassroots efforts played in the passage of VAWA 2013 noting that although the play focuses on the national movement, "what is not often known or discussed are the local efforts committed to keeping our Cherokee women safe." In the program for the play, she highlighted all that the Qualla Women's Justice Alliance (QWJA) undertook to support the restoration of tribal jurisdiction.

"With the formation of QWJA, our Cherokee women organized at the grassroots level to strengthen the tribal justice response to violence against Cherokee women, and our tribal leaders have participated nationally to create change in the law through passage of the Tribal Law and Order Act of 2010 and the Violence Against Women Act of 2013," Chairwoman Henry explained.

This performance of the play featured several local, talented Cherokee actors, including Joey Owle, Lori Sanders, Yona Wade, and Philenia Walkingstick. The performance was directed by Cherokee Nation citizen Betsy Richards, and starred Cherokee Nation citizen Candice Byrd as Deborah Parker. Kenneth Ruthardt returned to the stage as Tom Cole, and Jason Grasl once again portrayed Dennis Whitehawk. Lily Gladstone played the indomitable Chairwoman Terri Henry. Lisa Brunner and Diane Millich stepped forward to share their stories, alongside Billie Jo Rich, and Melissa Brady returned to offer her songs and powerful words in support of her fellow survivors.

Sliver of a Full Moon will be performed next
at Harvard University on November 19, 2015.
www.sliverofafullmoon.org

International Update

By Jana L. Walker, Karla E. General, and Christopher T. Foley, Attorneys, Indian Law Resource Center

WORLD CONFERENCE ON INDIGENOUS PEOPLES FOLLOW-UP

The Outcome Document adopted by the United Nations General Assembly during the 2014 World Conference on Indigenous Peoples contains four key decisions to implement the Declaration on the Rights of Indigenous Peoples:

- Develop a permanent body in the UN system that will monitor and encourage implementation of the Declaration.
- Consider options for tribal and other indigenous governments to participate in UN meetings on a permanent basis.
- Address violence against indigenous women.
- Respect places sacred to indigenous nations and peoples.

Over 150 indigenous nations and organizations supported these decisions. With the continued support of many tribal nations, Native women's and other indigenous organizations, and tribal coalitions, work to carry out these commitments—especially



to respond to the epidemic of violence against indigenous women—is underway in UN offices in New York and Geneva.

June 15–July 3: Human Rights Council, 29th Session, Geneva

On June 19, the Human Rights Council held its annual full-day discussion on the rights of women and received the annual report from the Special Rapporteur on violence against women, its causes

and consequences. The Council also confirmed a new Special Rapporteur on violence against women, Dubravka Simonovic from Croatia, to a three-year term. Ms. Simonovic is a former member of the Committee on the Elimination of Discrimination Against Women.

The Indian Law Resource Center (Center) traveled to Geneva to address the Council in person, to raise awareness and advocate





with individual countries and UN actors, and to participate in a side event hosted by the United States on violence against indigenous women. To inform the Council and to advance implementation of the World Conference Outcome Document, the Center, National Congress of American Indians (NCAI), and Native American Rights Fund (NARF) filed two joint written statements calling attention to the epidemic of violence against Native women in the United States, recommending that the Council hold a panel on violence against indigenous women and girls at a session in 2016, and urging specific measures in the UN to combat violence against indigenous women worldwide. These were the only statements offered on the issue of violence against indigenous women during these sessions. The statements were supported by the Alliance of Tribal Coalitions to End Violence; California Association of Tribal Governments; Central Council of Tlingit and Haida Indian Tribes of Alaska; Mending the Sacred Hoop; National Indigenous Women's Resource Center; Strong Hearted Native Women's Coalition, Inc.; Uniting Three Fires Against Violence; and WomenSpirit Coalition. Further information, including video of the oral statements, is available at: <http://indianlaw.org/content/center-delivers-recommendations-un-human-rights-council-stop-violence-against-indigenous-wom>.

July 22: Economic and Social Council, New York

On July 22, the Economic and Social Council (ECOSOC) met in New York to consider the Secretary-General's report on progress in implementing the Outcome Document of the World Conference. The Secretary-General heads the UN Secretariat and is the *de facto* leader of the UN. As requested by the Outcome Document, the Secretary-General's

report offers recommendations to achieve an implementing body for the UN Declaration and to enable the participation of indigenous peoples' representatives and institutions at the UN. The Center, NCAI, NARF, and the Ewiaapaayp Band of Kumeyaay Indians made a joint oral statement responding to the report—the only such statement by a non-state actor at this meeting. The Third Committee of the General Assembly will consider the Secretary-General's report in late October and may make some key decisions on the question of participation. More information on the ECOSOC meeting is available at: <http://indianlaw.org/content/joint-statement-ecosoc-supports-secretary-generals-report-follow-world-conference-indigenous>.

July 20-24: Expert Mechanism on the Rights of Indigenous Peoples, 8th Session, Geneva

The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) met in Geneva on July 20-24 to begin a review of its mandate, with a goal of improving it to better implement, monitor, and achieve the ends of the UN Declaration. EMRIP also considered development of a UN System-wide Action Plan to achieve the ends of the UN Declaration, another measure called for in the Outcome Document. The Center, in partnership with NCAI and NARF, offered proposals urging swift development of an effective implementing and monitoring body, development of new rules to enable the participation of indigenous governments in the UN, and actions to combat violence against indigenous women. EMRIP's report of the session includes our recommendation that the Human Rights Council hold a panel on violence against indigenous women and girls at a session in September 2016, and also supports our call for the effective participation of indigenous peoples during



the review of EMRIP's mandate. More information, including our statements, is available at: <http://www.indianlaw.org/content/EMRIP>.

LOOKING AHEAD

Universal Periodic Review

Following on the United States' Universal Periodic Review (UPR) held by the Human Rights Council on May 11, the *Report of the Working Group on the Universal Periodic Review* has now been released. The report includes a list of recommendations made by UN member states for actions by the United States to improve its human rights compliance. Among these are recommendations urging the United States to take actions on violence against indigenous women, including ensuring remedies to women and prosecution of perpetrators (¶¶ 176.256, 176.257); to implement

the Declaration on the Rights of Indigenous Peoples (¶¶ 176.322, 176.323); to respond to questions about self-determination in Alaska (¶ 176.325); and to ratify and implement the Convention on the Elimination of Discrimination Against Women (e.g., ¶¶ 176.29 through 176.42). These recommendations generally address matters raised in the September 2014 stakeholder report that was jointly submitted by the Center, NCAI, the National Indigenous Women's Resource Center, and Clan Star, Inc., and supported by the Yup'ik Women's Coalition, the Emmonak Women's Shelter, and the Emmonak Village.

The Human Rights Council is expected to adopt the Working Group's report on September 24 in Geneva, and the United States will announce its response to these recommendations at that time, if not earlier. The United States

may affirmatively accept specific recommendations; otherwise under the UPR process, they will be considered “noted.” The *Draft Report* is available at: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Pages/ListReports.aspx>. Other related documents are at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/USSession9.aspx>.

September 14–October 2: Human Rights Council, 30th Session, Geneva

The Human Rights Council will hold its 30th Session from September 14–October 2. In addition to consideration of the United States’ UPR report, the session will include a half-day discussion on “Integration of Gender Perspective” on September 15, and the Council’s annual half-day discussion of the rights of indigenous peoples on September 22. On the morning of September 22, the Special Rapporteur on the rights of indigenous peoples and the Expert Mechanism on the rights of indigenous peoples will report to the Council. The Special Rapporteur’s report is a study on the situation of indigenous women globally, focusing on common themes and patterns experienced by indigenous women worldwide. The report (A/HRC/30/41) is available at: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Pages/ListReports.aspx>. The Center, with NCAI, NARF, the National Indigenous Women’s Resource Center, and Clan Star, Inc., jointly submitted information to inform the report.

The website for the session can be found at: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Pages/30RegularSession.aspx>.

October: The UN General Assembly, New York

The UN General Assembly will meet in October at UN Headquarters in New York to consider resolutions and reports of the Human Rights Council and the Secretary-General’s report. It also may make decisions about the procedure and timeline for developing the implementing body for the UN Declaration and for establishing new rules to enable the participation of indigenous governments in the UN.

March 14–24, 2016: The Commission on the Status of Women, 60th Session, New York

The Commission on the Status of Women’s 60th Session will be held at UN Headquarters in New York on March 14–24, 2016. The session’s review theme is “[t]he elimination and prevention of all forms of violence against women and girls.” The priority theme is “[w]omen’s empowerment and its link to sustainable development.” The Center, NIWRC, and others continue to urge the Commission to take action on the World Conference Outcome Document’s call to “consider the issue of the empowerment of indigenous women” by designating it as an emerging issue for this session. No decision has yet been made. Written statements by NGOs in consultative status with ECOSOC will be accepted between October 1 and 16. The sign-up for oral statements will occur in January or February 2016. More information is at: <http://www.unwomen.org/en/csw/csw60-2016>.

DRAFT AMERICAN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

The Organization of American States (OAS) is a regional intergovernmental human rights organization of 35 member countries of the Americas including the United States. Since 1989, the OAS has worked to negotiate a draft American Declaration on the Rights of Indigenous Peoples. The American Declaration will be a regional human rights instrument that can be used by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights to promote and protect the specific rights of indigenous peoples. It is expected to improve on the UN Declaration with a stronger and more thorough treatment of treaties, gender equality, situations of armed conflict, and indigenous peoples in voluntary isolation, all areas of critical importance in the Americas. Despite some progress during the four negotiation sessions held in 2015, more work remains before indigenous peoples and states can agree to a negotiated text. In June, the OAS General Assembly authorized work on the draft Declaration to continue in 2016.



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RESTORATION OF SOVEREIGNTY & SAFETY MAGAZINE, 2003-2015

Twelve years ago during the reauthorization process of the Violence Against Women Act, several national organizations came together to take a stand for the safety of Native women: Sacred Circle National Resource Center to End Violence Against Native Women, Clan Star, Inc., the National Congress of American Indians, and the National Task Force to End Sexual and Domestic Violence. It was recognized that to fully participate in the national movement to create the changes needed to increase safety for Native women, broad communication was essential. The *Restoration of Sovereignty & Safety* magazine emerged to fulfill this task.

The *Restoration of Sovereignty & Safety* magazine is a publication dedicated to informing tribal leadership and communities of emerging issues impacting the safety of American Indian and Alaska Native women. The name of the magazine, *Restoration of Sovereignty & Safety*, reflects the grassroots strategy of the Task Force that by strengthening the sovereignty of Indian nations to hold perpetrators accountable the safety of Native women will be restored. The magazine is a joint project of the National Congress of American Indians Task Force on Violence Against Women and the National Indigenous Women's Resource Center. It is produced and made available during national NCAI conventions and the annual USDOJ Tribal Consultation on VAWA.

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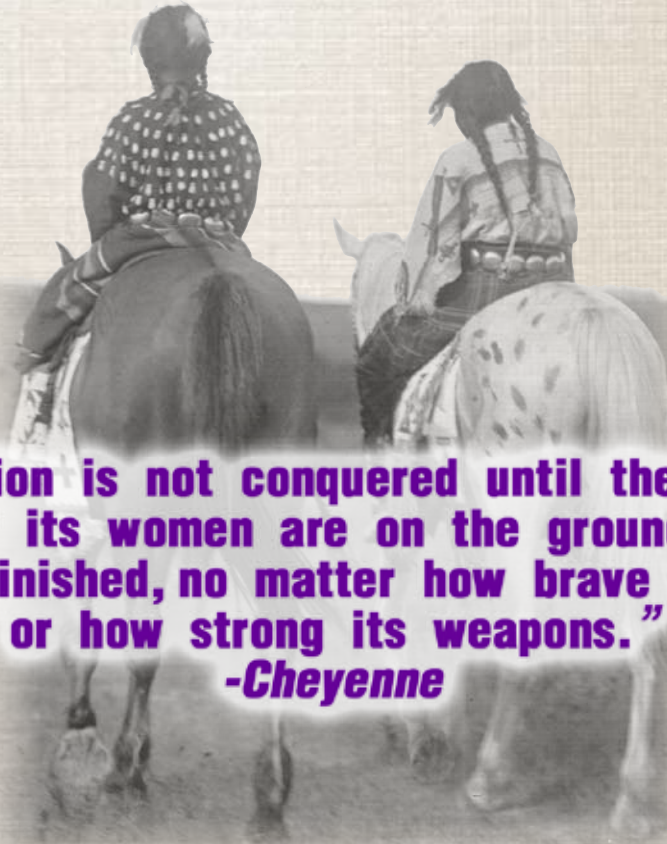
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Restoration
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**“A Nation is not conquered until the hearts
of its women are on the ground.
Then it is finished, no matter how brave its warriors
or how strong its weapons.”
-Cheyenne**

Violence Against Women Is Not Our Tradition





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