

District Operational Plan For Indian Country
Eastern District of Wisconsin

James L. Santelle
United States Attorney
Eastern District of Wisconsin

December 15, 2010

I.	Overview of Indian Country in the Eastern District of Wisconsin	1
II.	Operational Plan	1
	A. Communication	1
	1. Charging decisions.....	1
	2. Communication with the community / press releases.	2
	B. Investigation coordination.	2
	1. All Indian Country.....	2
	2. MIR.	4
	3. PL-280 reservations.....	5
	4. Task Forces.	5
	C. Victim Advocacy.....	6
	D. Training.	7
	E. Outreach efforts.	8
	F. Violence Against Women.	9
	1. Sexual Assault.....	9
	2. Domestic Violence	10
III.	Conclusion.....	11

I. Overview of Indian Country in the Eastern District of Wisconsin

Pursuant to the commitment of the Department of Justice to making public safety in tribal communities a top priority, the Office of the United States Attorney in the Eastern District of Wisconsin (USAO) has developed the following district operational plan (DOP) to improve communication, coordinate law enforcement efforts, improve victim advocacy, provide training, and reduce violence against women in Indian Country.

Five federally-recognized tribes are located in the Eastern District of Wisconsin. They are the Menominee Tribe of Wisconsin, the Oneida Tribe of Wisconsin, the Stockbridge-Munsee Band of Mohican Indians, the Sokoagon Chippewa Community-Mole Lake Band, and the Forest County Potawatomi. Crimes occurring on the Menominee Indian Reservation (MIR) are primarily governed by federal and tribal law. Crimes occurring on the lands of the other four tribes are governed by state criminal jurisdiction, pursuant to Public Law 280 (PL-280).

Because the majority of tribal land for each of these tribes is located in the northern part of the district, the Green Bay branch office has primarily responsibility for handling matters that arise in Indian Country. The Green Bay branch office is staffed by three Assistant United States Attorneys, one of whom is the primary Tribal Liaison. The Green Bay office also includes a victim-witness assistant and a legal assistant whose duties include assisting with Indian Country matters.

The USAO also is in the process of hiring an additional Assistant United States Attorney and a victim-witness specialist on the MIR as part of a community prosecution team (CPT). The CPT's goal is to work with tribal leaders to improve public safety on the MIR.

II. Operational Plan

A. Communication

1. Charging decisions

Felony offenses committed on PL-280 lands are and will continue to be referred to the appropriate district attorney's office for prosecution. This is because the tribal courts in the PL-280 jurisdictions do not process any offenses beyond citations. With respect to drug, firearm, and gaming related offenses over which both the state and federal governments have jurisdiction, appropriate efforts will be made to coordinate charging decisions with appropriate district attorney's offices to avoid duplication of efforts or failure to prosecute viable cases. The USAO is aware of the six-year statute of limitations for offenses occurring in the State of Wisconsin (excepting homicide, which has no limitations period). As this coordination is done routinely in both Indian Country and non-Indian Country cases, no particular difficulties are expected.

With respect to felony offenses which occur on the MIR, the USAO is aware of the requirement that Menominee Tribal prosecutors must file charges within sixty days of arrest for non-traffic offenses and within nine months for traffic offenses. Offenders who are not arrested are subject to a three-year statute of limitations, with the exception of crimes against children which may be charged until the child's twenty-fifth birthday.

Effective communication between the USAO and tribal law enforcement will ensure that crimes committed on tribal land which are not prosecuted by the USAO can still be considered for tribal prosecution. The USAO reaffirms its commitment to provide timely notice of its intention to decline a particular case, so that any appropriate tribal prosecution is not compromised.

In the event that a case which has been referred to the USAO is declined, the office will submit a declination in writing to the investigative agency. The specific reasons supporting declination will be deemed "work product" and generally will not be released to the public, in an attempt to avoid premature disclosure of case sensitive information. In the event of a declination and consistent with any federal law limitation, the USAO agrees to coordinate with tribal justice officials regarding release of evidence.

2. Communication with the community / press releases

The USAO historically has issued press releases on significant prosecutions occurring in Indian Country. The USAO will continue to communicate with the public, and in particular tribal communities, by issuing press releases in cases involving tribal lands or members at the time of charging, guilty plea or verdict, and sentencing, and by holding community listening sessions more fully explained below in the community outreach section.

The CPT assigned to the MIR also will communicate with tribal members and leadership by organizing and conducting community outreach and listening sessions to notify the MIR population about the status of federal (and tribal) prosecutions and solicit public comment on and reaction to crime-related issues and concerns. It is anticipated that the involvement of past offenders and crime victims (identified by the CPT) would enhance the effectiveness of the messages.

B. Investigation coordination

1. All Indian Country

Several tribes located in the District have expressed frustration and uncertainty concerning jurisdictional issues, including the ability to arrest non-natives on tribal land and to conduct investigations which transcend reservation borders. Consideration needs to be given to federally deputizing tribal law enforcement officers, thereby authorizing them to enforce federal

laws on a reservation by arresting non-Indian defendants who could be charged with committing a federal crime against Native American victims.

Beyond potential federal deputization, the Tribal Liaison and CPT AUSA will regularly confer with tribal law enforcement and, as needed, other tribal leadership, for purposes of ensuring that public safety needs are being met. These consultations will necessarily involve other federal partners, including the FBI and victim-witness entities. Particular focus will be dedicated to the following areas:

a. General federal offenses

For all Indian country, the USAO pledges to assist and coordinate the investigation of federal crimes of general applicability, including white collar and computer crimes. The USAO recognizes that federal prosecution can impose optimal penalties for this type of criminal conduct. Consistent with the provisions and procedure outlined in the preceding paragraph, the USAO agrees to either charge the most appropriate offense(s) or timely submit a written declination to the investigating law enforcement agency so that a prosecution can be considered in state or tribal courts.

b. Gaming offenses

Responding to requests from several tribal communities for more federal involvement with Indian gaming offenses, the USAO will aggressively prosecute these violations. Charging individuals, particularly casino employees, with casino-related theft will serve a deterrent effect, as well as barring convicted offenders from the gaming industry. Other casino-related crimes, particularly drug dealing and money laundering, will also be aggressively investigated and prosecuted, as discussed below. The USAO recognizes that the presence of gang members at casinos negatively affects the tribal economy and must be carefully monitored and investigated if illegal activity is suspected.

c. SORNA

Included with the passage of the Adam Walsh Act in July 2006, was the Sexual Offender Release Notification Act (SORNA), which prohibits registered sex offenders from entering, leaving, or residing in Indian country without properly registering their address with state and local law enforcement. Officials from the Menominee Tribe of Wisconsin report that an estimated 130 registered sex offenders visit or live on the reservation, some of whom are in violation of their SORNA registration requirements. The USAO recognizes the significant public safety issues created by SORNA offenders and commits to the prosecution of these cases consistent with the USAO's intake guidelines. The USAO also agrees to work with our tribal partners in ensuring the accuracy of sex offender registries.

d. Juvenile offenders

With respect to juvenile offenses, the USAO agrees that the federal prosecution of juvenile offenders under certain circumstances is necessary and warranted. On the MIR, the USAO has pursued criminal charges when some of the most serious federal offenses are committed by juveniles. But the USAO recognizes that most juvenile offenders are best prosecuted through tribal or state court. Irrespective of the prosecuting jurisdiction, the USAO, in conjunction with its law enforcement partners, will take a significant role in the investigation and arrest of juvenile offenders. This reflects the concern expressed by tribal communities that juvenile crime, including gang and drug offenses, substantially undermines public safety. In further recognition of the concern that some juvenile offenders can pose to Indian country, the USAO will communicate with the MIT legislature concerning the ability to “opt in” for waiver of juvenile offenders to federal adult court for certain violent offenses committed by 13 and 14 year old offenders.

2. MIR

Currently the FBI and the Menominee Tribal Police (MTP) jointly investigate felony offenses which occur on the MIR. The FBI resident agency in Green Bay has four agents assigned, one of whose primary responsibility is to work on cases which occur on the MIR. These joint investigations serve as examples of how multiple law enforcement agencies effectively combine resources to achieve justice and public safety.

The USAO recognizes its critical role in keeping Indian country safe through the prosecution of serious, felony violations occurring on the MIR, including prosecution of violations of the Major Crimes Act (18 U.S.C. § 1153) and General Crime Act (18 U.S.C. § 1152). The USAO will review for federal prosecution all such matters referred in writing by either federal or tribal law enforcement. The intake guidelines read as follows:

All Indian Country cases falling under the Major Crimes Act, including murder, manslaughter, aggravated assault, sexual assault, arson, burglary, and robbery should be referred for prosecution unless it is clearly evident from the investigation and after consultation with an Assistant United States Attorney, or Criminal Division Supervisor, that insufficient proof exists to charge the matter. Referrals made pursuant to the General Crimes Act, 18 U.S.C. § 1152, will be reviewed on a case-by-case basis.

In cases which are accepted for prosecution, consistent with Attorney General Holder’s May 19, 2010 memo, the USAO generally will seek to pursue the most serious provable offense. In all cases involving crimes of violence, the USAO will seek detention of charged defendants.

Cases which are not generally referred to the USAO from the MIR include traffic offenses, misdemeanors, and infractions. In those instances, tribal prosecutors retain primary

responsibility for prosecuting offender. The CPT AUSA also will promote prosecutorial and judicial efficiency by ensuring only appropriate cases are referred to the USAO for prosecution and by assisting tribal prosecutors to continue to develop efficiencies in prosecuting cases not referred for federal prosecution.

The USAO, through the CPT, also will explore with tribal leaders whether setting up a Central Violations Bureau citation process for non-violent offenses might make sense.

3. PL-280 reservations

As noted above, four reservations in the Eastern District of Wisconsin generally are governed by Wisconsin criminal law. State felony criminal charges committed on one of these reservations must, in general, be filed within six years of date of commission, with the exception of homicide charges (where there is no statute of limitation) and child sexual assault crime (determined based on age of the child). With respect to drug, firearm, and gaming-related offenses over which the federal government has concurrent jurisdiction, the intake guidelines are the same as for offenses occurring on non-Indian country areas. These guidelines will be shared with our tribal partners.

4. Task Forces

The MTP and other federal and state law enforcement task forces, further described below, enjoy a relationship marked by mutual respect, constant communication, and efficiency.

a. Safe Trails

In 2003, the USAO, MTP, FBI, Wisconsin Department of Justice-Division of Criminal Investigation (DCI), and the surrounding counties' Sheriff's Departments and District Attorney's Offices formed a Menominee Indian Reservation Violent Crime/Safe Trails Task Force (STTF) to combat violent crime and drug trafficking on the MIR. STTF members are deputized federal officers who identify and target for prosecution individuals and groups involved in violent crimes including aggravated assault, child sexual abuse, drug distribution and gang activity. In addition to the STTF, the FBI has and will continue to cross-deputize state agents to assist in the investigation of drug trafficking that occurs on the MIR.

b. NADGI

Indian country is also protected through the efforts of the Native American Drug Gang Initiative Task Force (NADGI). NADGI was created in 2007 to establish a better line of communication and cooperation between federal, state, local, and tribal police departments involved in the investigation of drug and gang cases. There are currently eight tribal police agencies from Wisconsin that make up the NADGI group, including the Menominee, Oneida,

and Stockbridge-Munsee tribes. The Ho-Chunk Nation Police Department is expected to join forces with NADGI in 2011.

NADGI's May 2010 threat assessment report identified ties between gaming facilities, drug dealing, and gang activity. All tribal communities within the district have gaming facilities that have been targeted by criminals, including thefts, drug dealing, and gang activity. The NADGI report also identified crack and powder cocaine as continuing to be a significant drug threat on tribal land, with pharmaceutical drugs constituting the emerging drug of choice and, on several occasions, the cause of drug overdoses.

Tribal public safety interests are served by keeping the gaming facilities crime-free. Some tribal communities have called for an increased federal presence in the prosecution of those jeopardizing the safety of Indian gaming facilities. NADGI law enforcement members are now targeting investigations into these types of criminal activity in hopes of disrupting or dismantling existing criminal enterprises. The USAO agrees to assist in coordinating intelligence to identify common supply routes and associations between drug dealers on the reservations.

Drug and alcohol issues remain a root problem on many reservations including those in the Eastern District of Wisconsin. In particular, prescription drug use and illegal sales appear to be on the rise. Prescription drug overdoses are believed to have contributed to several recent Indian country deaths. A natural byproduct of this abuse is increased violence and property crimes on reservations. To combat this, the USAO commits to prosecuting offenders swiftly but fairly, whether it be those committing prescription fraud and obtaining prescription drugs by committing pharmacy thefts.

All drug, gaming, and gambling cases meeting the USAO's intake guidelines will be accepted for prosecution. The USAO will continue to prosecute drug dealers operating from the MIR and will also seek to prosecute drug organizations operating throughout Indian Country. This prosecution strategy will have a heavy emphasis on the investigation and dismantling of individuals and organizations involved in the distribution of pharmaceutical drugs.

C. Victim Advocacy

The USAO Victim-Witness Unit consists of two individuals located in Milwaukee, one in Green Bay, and future assistance from the CPT specialist. The FBI in Green Bay also employs a Indian County Victim specialist. The federal victim witness staff has a great relationship with the Menominee Tribal Crime Victims Assistance advocates. All federal cases are coordinated between the three programs, so that victims are afforded their rights and services consistently and seamlessly pursuant to 18 U.S.C. § 3771(a) and 42 U.S.C. § 10607. It is anticipated that the new CPT AUSA will also facilitate the work of tribal and federal prosecution and victim-witness staff, on an as-needed basis.

The Victim-Witness Unit provides training opportunities to all tribes in the District on an as-requested basis or through its involvement in coalitions such as NADGI, and Drug Endangered Children (DEC).

The leaders of the Menominee Tribe of Wisconsin are exploring the feasibility of several new programs including an in-house forensic resources including a sexual assault nurse examiner, a child forensic interviewer, and a dedicated facility appropriate to these sensitive investigations. The tribe has requested federal assistance in creating and funding these programs.

Some of the tribes in the district have expressed a desire for more traditional methods of dispute resolution and traditional victim services. The USAO recently received funding from the Office for Victims of Crime to create a model Traditional Healer Advocacy Program on the MIR. The goal of the program is to facilitate the assistance of traditional healers for our crime victims by reimbursing them for travel and compensating them in culturally appropriate ways. The USAO will assist the Menominee with creating a committee of Native American elders and healers, to help guide and administer the program. In response to the success of drug wellness courts with a strong Native American focus, it was expressed that a similar specialized court addressing domestic violence offenses may reduce recidivism and be more beneficial to the victim. The USAO will investigate the possibility of obtaining federal funding to establish such a court.

To date, victims from the MIR generally have not required the services of an interpreter. If this need should arise, the USAO will consult the Menominee Tribe of Wisconsin regarding interpreters. Because the primary jurisdiction for the other tribes lies with the State of Wisconsin, to date, no need for interpreters has arisen with the other tribes. If this need should arise in the future, the USAO will consult the appropriate tribal leadership regarding interpreters.

D. Training

The USAO recognizes that law enforcement training is an ongoing process. Because the USAO is often in the best position to coordinate and provide that training, it has taken a lead role in providing legal updates involving Indian country to law enforcement. Similar to the Victim-Witness Unit, the Law Enforcement Coordinating Committee (LECC) provides training opportunities to all tribes in the District on an as-requested basis or through its involvement in coalitions such as NADGI and the coalition on Drug Endangered Children. Federal, state, and tribal law enforcement have responded favorably to previous training sessions provided by and involving the USAO, including in-services and the Great Lakes Native American Indian Conference, but more training opportunities are needed.

Largely through the efforts of the CPT, the USAO will assess any unmet training needs through direct contact with Indian country law enforcement. The USAO will then provide targeted training and technical assistance on a regular basis to federal, state, and tribal law enforcement on matters involving jurisdiction, emerging crime trends and specialized crime

issues, such as white collar and computer crime, as well as any other topic identified during the assessment process.

In-house USAO training concerning Indian country matters will be conducted on an annual basis by the Tribal Liaison and/or the CPT AUSA. USAO staff assigned to Indian country cases will receive training that covers jurisdictional issues, federal trust responsibility, and consultation principles. The in-house training will also include cultural sensitivity training to raise awareness of unique cultural needs and differences of Native American victims and witnesses.

E. Outreach efforts

The USAO will use community outreach and listening sessions to inform the reservation population about the status of federal prosecution, to educate tribal members about the legal standards that govern the filing of charges, and to ensure that tribal members can assess the fairness and uniformity of any federal prosecutions. Through training and outreach, the USAO will also ensure that tribal communities are informed of pertinent Tribal Law and Order Act 2010 (TLOA) provisions, including those allowing for retrocession and longer jail terms for tribal members.

Outreach efforts will largely be accomplished by the CPT. By strengthening links to the community, promoting partnerships, and encouraging the development of problem solving strategies, the CPT will ensure accountability of the guilty, protection of the innocent, and respect of victim rights. As the USAO's on-reservation representative, the CPT will take a lead role in implementing the DOP and spearheading community awareness. The CPT and tribal counterparts will identify and solve problems, improve public safety, and enhance the quality of reservation life.

In addition, the USAO will assist, whenever possible, in obtaining resources to improve public safety within Indian Country. Most of the tribal communities within the district effectively utilize federal and state grants to improve safety, including successful grants written by the MIT which have been used to develop programs targeting youth development and alcohol and drug treatment, establishing a teen court and wellness court, and combating domestic violence.

The USAO recognizes the importance of federal and other grants in improving public safety within Indian country, and will continue to assist tribal communities with these proposals. For example, relatively low salaries and pension benefits contribute to Tribal law enforcement retention problems. The USAO commits to working with BIA and exploring other funding sources with the goal of obtaining the necessary grants and funding to improve pay and benefits for tribal officers.

Although the USAO recognizes the importance of federal and other grants, grant funding can be limited and programs can be disbanded. The USAO recognizes that our tribal partners often are forced to struggle to fill the gaps created when such cuts occur. The USAO is committed to working with the tribes to attempt to identify ways to address any such gaps.

Community outreach efforts will also include efforts for early intervention and positive adult support directed toward the at-risk youth. Through the CPT, the USAO will emphasize mentoring programs that link at-risk youth with responsible adults (tribal elders) to provide guidance, promote personal and social responsibility, discourage gang involvement, and encourage participation in community service and activities. The USAO will collaborate with other tribal programs involving early intervention and prevention that reduce the impact of risk factors and enhance the influence of protective factors in the lives of youth at greatest risk of alcohol and drug abuse, delinquency, and victimization.

The USAO will create or collaborate with existing programs to reduce the illegal use of tobacco, alcohol, and drugs to decrease truancy and increase healthy child development. The USAO will encourage community-based approaches to crime and justice on tribal land. Successful initiatives will solicit community involvement in the choice, design, and implementation of programs that emphasize prevention and problem-solving. In addition the USAO will continue to attempting to break the cycle of substance abuse and crime can through aggressive testing, treatment, and sanctions of pre-trial and convicted defendants.

Finally, the USAO will call on the Justice Department's Community Relations Service (CRS) to assist with conflict resolution and prevention. The USAO will spearhead discussions with tribal representatives to identify any issues ripe for assistance from the trained CRS mediators.

F. Violence Against Women

Native American women suffer from violent crime at rates far higher than those of other Americans. The USAO recognizes its critical role in the investigation and prosecution of crimes committed against women and children. The USAO recognizes that often the best means to protect such victims is through the swift and tough prosecution of those committing crimes involving sexual assault and domestic violence. Mandatory arrest requirements for domestic violence offenders is one way in which victims are provided protection. The USAO also partners with a variety of other agencies in a multi-disciplinary team designed to assist children who were sexually or physically abused. As more fully explained below, the USAO will continue to aggressively but fairly prosecute crimes involving the sexual and physical assault of women and children.

1. Sexual Assault

On the MIR, the STTF Memorandum of Understanding assigns joint investigatory responsibilities to both the FBI and MTP for sexual assault cases. It also mandates the efficient and effective investigation of such cases. The USAO recognizes and supports the law enforcement requirement to fully investigate all credible reports of sexual assault and domestic violence.

To date, the MTP and FBI have conducted thorough investigations when report of sexual assault and domestic violence are made. On the MIR, these offenses are almost always investigated jointly by MTP and the FBI. The MTF and FBI routinely use sexual assault kits and sexual assault nurse examiners (SANEs) at off-reservation medical centers for both child and adult sexual assault victims. The FBI Laboratory Services and Wisconsin State Crime lab offer DNA and other forensic evidence examination, and, if needed, expert testimony in sexual assault cases. Law enforcement agencies and their respective victim witness units have been and will continue to be sensitive and responsive toward the safety risks of the victim in these type of cases.

To better protect sexual assault victims and ensure for their fair treatment on the MIR, the USAO will also partner with tribal representatives to establish additional services on the MIR to include a SANE nurse, a trained forensic interviewer, and a facility to properly and comfortably conduct child-victim interviews. The MTP and the FBI currently transport victims to Saint Vincent's Hospital in Green Bay and the Theda-Clark Center in Appleton for SANE examines. Forensic interviews are conducted in Neenah. These locations are between fifty and ninety miles from the MIR. If the tribe is successful in locating these investigative resources on the MIR, it will mitigate the impact on the victim and facilitate better evidence-gathering. The USAO will seek to assist the tribe in securing these resources.

The USAO will also continue to support and participate in the highly successful Menominee Tribal Multi-Disciplinary Team (MDT). The MDT's mission is to promote coordination and cooperation among all Tribal, State, and Federal agencies responsible for the investigation, prosecution, and treatment of physical and sexual child abuse and criminal neglect cases on the MIR. The team approach is deemed necessary to conduct effective assessments, investigations, and prosecutions, and to avoid undue trauma to child victims and their families, and to protect the rights of the accused.

2. Domestic Violence

On the MIR, the USAO has and will continue to review for prosecution felony domestic violence charges of aggravated assault (18 U.S.C. § 113), interstate travel to commit domestic violence pursuant to (18 U.S.C. § 2261), and domestic assault by a habitual offender (18 U.S.C. § 117).

The USAO recognizes that often these cases do not arise to the felony level and that misdemeanor prosecutions in tribal or state court are common. When there is a Native American defendant and a Native American victim, the USAO will assist the MTP and the Menominee Tribal Prosecutor's office in the investigation to the extent possible, while recognizing that the federal government does not have the ability to file charges. When there is a non-Indian offender and Indian victim, or an Indian offender and a non-Indian victim, the USAO recognizes that it has jurisdiction under the General Crimes Act and will review any written referral by law enforcement for prosecution consistent with Department of Justice charging and sentencing policy considerations.

Federal law allows for prior tribal domestic violence convictions to count for purposes of charging the federal offense of domestic assault by a habitual offender if the offender had the assistance of counsel in tribal court. Obtaining representation for domestic violence offenders, or at least exploring the ability of tribal defendants to knowingly waive that right, would allow for federal charges to be filed against repeat domestic violence offenders when appropriate. Thus, to better protect Native American women from domestic violence on the MIR, the USAO will collaborate with tribal representatives concerning the feasibility of a tribal defender program in domestic violence cases.

V. Conclusion

The USAO recognizes and embraces its critical role in keeping Indian Country safe. It will continue to aggressively and fairly prosecute violent crime occurring on reservations within the district. The USAO also recognizes that safe and healthy tribal communities do not come solely through reactive law enforcement, but can only be achieved through the proactive efforts and input of all stakeholders.

As a result, the USAO memorializes and details its comprehensive and collaborative approach to Indian country through this District Operational Plan. The plan builds upon existing federal/tribal relationships and lays the foundation to forge new ones. The USAO intends to publicly release this DOP at a tribal summit and to monitor its implementation through regular interaction with tribal leaders.