

# Modern Realities of the “Jurisdictional Maze” in Indian Country: Case Studies on Methamphetamines Use and the Pressures to Ensure Homeland Security

By Elizabeth Ann Kronk and Heather Dawn Thompson

Because legal jurisdiction in Indian country can involve three separate actors—the tribe, the federal government, and potentially the state government—the laws governing which entity has authority in various situations can become confusing, amounting to a “jurisdictional maze.” Problems that arise from modern developments, such as increased use of methamphetamine (meth) and the pressures of ensuring homeland security, become exacerbated when combined with the often perplexing realities of jurisdiction in Indian country.

## Use of Methamphetamine: An Emerging Epidemic

“I can bring you more misery than words can tell.  
Come take my hand, let me lead you to hell.”  
— Author Unknown<sup>1</sup>

### The Problem

The illegal use of meth is a national problem that has had a disproportionate impact on inhabitants of Indian country. In comparison to other groups within the United States, American Indians use meth at a substantially higher rate. For example, 1.7 percent of American Indians/Alaskan Natives have used meth in the past year, compared to only 0.1 percent of African-Americans, 0.2 percent of Asian-Americans, 0.5 percent of Hispanics, and 0.7 percent of Caucasians.<sup>2</sup> Beyond the high rate of meth use among American Indians, Alaskan Natives, and Native Hawaiians nationwide, individual Indian tribes have been struggling with the impact of meth use on their communities. For example, on the San Carlos Apache Reservation in Arizona, in 2004, 64 out of 256 babies—25 percent—were born to meth-addicted mothers, and this number increased in 2005.<sup>3</sup> In addition, “[a]ccording to workers in the Social Service programs for the tribes, meth plays a large role in 65 percent of all cases involving child neglect and placement of children in foster care.”<sup>4</sup> In fact, the problem of meth use in Indian country has become so pervasive that 74 percent of the 96 Indian law enforcement agencies nationwide that responded to the National Methamphetamine Initiative Survey conducted by the Bureau of Indian Affairs indicated that “methamphetamine poses the greatest threat to the members of the communities they serviced.”<sup>5</sup>

Indian country has been disproportionately impacted by meth use for a myriad of reasons. Some have suggested that Indians’ historical struggles with addiction and poverty make individual Indians more susceptible to meth addiction. Moreover, government resources and programs

to combat meth use and addiction have been chronically underfunded. Furthermore, effective law enforcement in Indian country is hampered by the limited number of law enforcement officials and large geographic areas that make up many Indian reservations. According to the National Native American Law Enforcement Association, in Indian country, the ratio of law enforcement officials to residents is typically 2 officials to 1,000 residents. Large geographic areas exacerbate this problem. “For example, ... the Pine Ridge Reservation in South Dakota has 88 sworn [tribal officers to serve 41,000 residents on 2.1 million acres. This equates to a ratio of 1 officer per 24,400 acres of land.”<sup>6</sup>

The problem of the high level of meth use in Indian country is further aggravated by the legal web that often entangles law enforcement there. Jurisdiction for dealing with meth-related crimes in Indian country can be split among the tribes, the federal government, and possibly the state government. Furthermore, as a result of the Supreme Court’s *Oliphant* ruling, tribes do not have criminal jurisdiction over violations of the law committed by non-Indians on Indian territory. Given that nearly 70 percent of crimes in Indian country involve a non-Indian, tribes often find themselves unable to deal with crime in the most effective manner possible because of *Oliphant*. Tribes are further hampered from effectively addressing meth use, because the Indian Civil Rights Act limits tribal courts to imposing one-year sentences and/or fines up to \$5,000. Because meth addicts can often take over a year to recover, the act’s restrictions further limit tribes’ ability to combat meth use in Indian country.

Most of the methamphetamines consumed in the United States are produced by traffickers either from Mexico or affiliated with Mexico. Mexican drug-trafficking organizations view Indian reservations located at the U.S.-Mexican border—such as the Tohono O’odham Indian Reservation in Arizona, which shares a 70-mile border with Mexico—as corridors for the movement of illegal drugs. Primarily as a consequence of the jurisdictional obstacles previously described, meth dealers have specifically targeted Indian country as a profitable market and a relatively easy route for transporting their goods. For example, Jesus Martin Sagaste-Cruz of Mexico, a convicted distributor of more than 100 pounds of meth, developed a business plan for the expansion of his organization’s meth sales into Indian country because he believed that members of his drug ring would not stand out there. His plan included encouraging male members of the drug ring to develop romantic relationships with and even marry Indi-

an women. Sagaste-Cruz's business plan included a goal to spread his sale of meth to the Rosebud, Pine Ridge, Yankton, and Santee Sioux Reservations. By targeting Indian reservations, Sagaste-Cruz sought to exploit jurisdictional loopholes in Indian country.

### **Federal Solutions to the Problem**

The federal government and tribal governments have taken steps to respond to the growing epidemic of meth use in Indian country. The federal government has initiated measures at the national level that should help tribes battle meth use in their jurisdictions. In March 2006, the Combat Methamphetamine Epidemic Act of 2005 went into effect. The act requires all regulated sellers of over-the-counter medications containing pseudoephedrine, ephedrine, and phenylpropanolamine—all of which are substances used to produce meth—to place those medications behind a counter or in a locked box. In addition, the act requires all consumers to show proper identification and sign a logbook for each purchase and also limits the number of daily and monthly sales of these products. It is anticipated that the requirements of the act will combine to make it more difficult for local producers of meth to obtain the substances they need to make meth. The act also created three new programs designed to provide grants for efforts to control the use of meth, but, unfortunately, tribes were not included. Sens. John McCain (R-Ariz.) and Jeff Bingaman (D-N.M.) and Reps. Tom Udall (D-N.M.) and Dale Kildee (D-Mich.) currently have legislative bills pending that would correct this oversight.

Other measures have come from the executive branch. President George W. Bush released the 2006 Synthetic Drug Control Strategy, which focuses on meth use. The President's strategy proposes to reduce the use of meth and the number of domestic meth laboratories significantly over the next three years. Moreover, the U.S. Department of Housing and Urban Development adopted regulations that would prohibit an individual convicted of drug-related criminal activity for the manufacture or production of meth from living in federally-assisted housing.

The federal government has also taken actions more directly targeted to address the meth problem in Indian country. The President's Synthetic Drug Control Strategy recognized the importance of working with tribal authorities to combat the meth problem and specifically called for increased training for tribal law enforcement officers to improve their awareness of meth use and meth laboratories. In fact, the White House has created a federal interagency task force to coordinate the federal response to meth abuse in Indian country.

On March 29, 2006, Attorney General Alberto Gonzales fulfilled the President's commitment in part when he announced funding for the Methamphetamine Investigation Training for Tribal Law Enforcement program. The money will fund a course that will provide tribal law enforcement officers with training on how to conduct successful and safe investigations into the use and production of meth. Congress is also aware of the problem caused by meth use in Indian country: On April 5, 2006, the Senate Com-

mittee on Indian Affairs held an oversight hearing on the problem of meth in Indian country.

In addition, several federal districts have welcomed the opportunity to enter into partnerships with tribes to improve efforts to combat meth use in Indian country. For example, the U.S. Attorney's Office for the District of Arizona worked with the Bureau of Indian Affairs, the Federal Bureau of Investigation, and the Drug Enforcement Administration's Phoenix Field Division to develop an initiative that addresses the threat of meth use in Indian country. The proposed initiative focuses on training, education, enforcement, and prosecution of suspects accused of meth-related crimes. The U.S. attorney for the District of Arizona has also announced a zero-tolerance policy for drug dealers, including meth dealers.

Furthermore, the U.S. Attorney's Office for the District of Arizona is conducting quarterly meetings with the local tribes to discuss problems associated with violent crimes, drug trafficking, and gang violence. The purpose of these meetings is to improve communication between the U.S. attorney's office and the tribes, to increase the number of prosecutions, and to use available resources more efficiently.

### **Tribal Solutions to the Problem**

In addition to the efforts undertaken by the federal government, tribes have also been actively engaged in developing solutions to the emerging meth epidemic in Indian country. Several tribes have developed provisions in their tribal codes that criminalize the illegal possession, use, or distribution of meth. For example, in February 2005, the Navajo Nation amended the Navajo Nation Controlled Substances Act of 2004 to include meth on the list of banned controlled substances. Similarly, the Uniform Controlled Substances Act of the Confederated Tribes of Siletz includes stimulants, such as meth, in its Schedule II of substances with a high hazard potential that are illegal on the reservation.

The Washoe Tribe of Nevada and California has developed a two-pronged attack to combat the meth problem on its reservation. First, the tribe has adopted a Meth Zero Tolerance Task Force Strategic Plan, called "Strong Heart and Strong Families," specifically designed to address the problem within the Washoe Tribe in a culturally sensitive manner. The Washoe Tribe entered into a Law Enforcement Aid Agreement with Douglas County and Carson City, both within the state of Nevada. The document states the following: "The purpose of this Agreement is to improve the cooperation, efficiency and effectiveness of law enforcement ... against methamphetamine sales or manufacturing activities or crimes or maintaining a premises where methamphetamine is used."<sup>7</sup> The agreement allows the tribal, county, and city law enforcement officers to work together in the same territory when investigating and enforcing meth-related crimes under certain circumstances. Such an agreement will certainly assist in addressing some of the jurisdictional obstacles to effective law enforcement in Indian country that have been previously discussed.

Tribes continue to come up with innovative solutions to the meth problem in Indian country. The Chippewa Cree Tribe of Montana, the Flandreau Santee Sioux Tribe of South Dakota, the Fort Peck and Sioux Tribes of Montana, the Lummi Nation of Washington, the Washoe Tribe of Nevada and California, and the Yakima Nation of Washington have all used funds available through the Department of Justice to create drug courts to address meth problems.<sup>8</sup> Initial research suggests that drug courts are better situated to handle meth addicts, because drug courts typically engage in closer supervision over addicts and drug court judges can sentence individuals to longer periods of treatment.

Other tribes have taken more extreme measures to protect their communities from the meth epidemic. For example, the Lummi Nation of Washington allows its tribal judges to banish people from the tribal reservation under certain circumstances. This solution is often seen as a last-ditch effort, however, because banishment permanently separates individuals from their homes, communities, and possibly even their families. Many tribes are also dealing with the meth problem in traditional ways. For example, the Chippewa-Cree tribe on the Rocky Boy Reservation in Montana created an Elders Court, in which young offenders must spend time with tribal elders, where they learn their language and traditions as a form of healing.

### **Moving Forward**

Despite the innovative efforts undertaken by the federal government and tribes to address the meth problem in Indian country, more still needs to be done. The National Congress of American Indians (NCAI), the country's oldest and largest representative congress of tribal governments, issued a "Call to Action" to address the meth problem in Indian country. As part of its Call to Action, NCAI would like to see the following improvements:

- centralized coordination of resources needed to combat the use of meth resources in federal Indian country,
- creation of federal agency tribal liaisons,
- an increase in programmatic funding to support tribal efforts directly,
- an increase in funding for tribal courts,
- renewal and expansion of the Community Oriented Policing Services program to Indian country,
- availability of all Justice Department and Office of Justice Programs meth-related grants to tribes,
- maintenance of funds for National American Indian Housing Council Methamphetamine training,
- prevention of Indian Health Service funding from falling even further behind the amount needed,
- passage of the Indian Health Care Improvement Act, and
- cooperative law enforcement agreements that allow tribes to serve as full partners in the fight against meth.

Acceptance and implementation of NCAI's proposals will help curb the meth problem in Indian country and will,

one hopes, eradicate meth use through the Seventh Generation.

### **Homeland Security in Indian Country**

As independent sovereign governments, tribes have the same responsibility for the public safety and security of their community as does any government. Not only does this duty include the more traditional concepts of public safety, such as law enforcement (including enforcement of laws related to methamphetamine), but it also relates to areas that have been more recently defined as homeland security. Homeland security is a broad and encompassing term, which generally refers to the public safety tasks of preparing for and developing emergency management systems to respond to external threats, such as nuclear and biological accidents, terrorist acts, illegal immigration, and drug smuggling.

Nearly 40 Indian tribes are located on or near the U.S. borders with Mexico and Canada. Hundreds of other tribal governments are the only major governmental presence in rural and isolated locations, and they serve as the first and often only responders for their Indian and non-Indian communities. Tribal governments, therefore, have broad responsibilities when dealing with emergencies and serving as first responders. They also have extensive responsibilities along the border that have immigration and smuggling implications. All of these tasks are integral aspects of ensuring homeland security.

### **Protection of Critical Infrastructure**

In addition to preparing for the protection of the people within the tribe's jurisdiction, tribal officials need to take into account vital infrastructure located on and near tribal lands, including national communications network systems, highway and rail lines, dams, power transmission stations and relays, oil and natural gas pipelines, and military defense facilities and operations. Examples of these critical facilities include the following: Several Minuteman missile launch facilities, a strategic element of the federal homeland security system, are located within the exterior borders of the Fort Berthold Indian Reservation in North Dakota. Tribal police officers have patrolled these areas for decades and occasionally respond to incidents of trespassing. The Grand Coulee Dam, the largest U.S. facility producing electric power, is situated within the Colville Indian Reservation in the state of Washington. The Mde-wakanton Dakota of the Prairie Island Indian Community in Minnesota is bordered by a nuclear power reactor. Tribal officials take their responsibilities to protect these facilities as well as their communities from accidents at these facilities very seriously. Unfortunately, however, state and local governments are not always aware of the tribe's responsibility or of the complicated situation caused by joint jurisdiction and responsibility. For example, the nuclear reactor near Prairie Island was built without consultation with tribal officials and only recently have they been invited to participate in emergency response exercises that the utility and federal and state governments have been conducting since 1980.

## First Response Capabilities

In many tribal jurisdictions, tribal emergency responders are the only emergency response entity that serves both tribal and nontribal members of the community. The tribe's emergency responders—including firefighters, law enforcement officers, and medical personnel—often provide the primary (and sometimes the only) first response to an emergency because of the remoteness of the location (and often proximity to the U.S. international border). In fact, a number of tribes now have their own Departments of Homeland Security or Emergency Responsiveness. In addition to preparing for basic first responder duties, tribes also prepare their communities for incidents such as outbreaks of pandemics.

In recent years, some tribal economies have risen to a level that enables tribal governments to support public safety efforts for their non-Indian surrounding communities. These tribes have built significant emergency management infrastructure and have highly trained personnel available. The tribes have constructed and upgraded transportation routes; they have purchased police, fire, and emergency medical service vehicles as well as state-of-the-art equipment; and they have provided services to tribal and nontribal surrounding jurisdictions. However, many tribes without the necessary basic resources still lack an emergency management infrastructure.

## Protecting International Borders from Drug Smugglers and Illegal Immigrants

The approximately 40 tribes living on or near U.S. international borders struggle with a number of increased public safety problems and concerns, not unlike the problems faced by the border states. For the past decade, there has been an increase in illegal immigration and drug smuggling into more remote areas, which often turn out to be Indian reservations. In light of their limited resources, tribal law enforcement officers and tribal communities have found it difficult to address the substantial increase in the flow of people and drugs and the subsequent increase in crime and property damage that often results. Nevertheless, overall success of the United States' national border strategy may ultimately hinge on the ability to protect the U.S. borders in Indian country, one of the more vulnerable areas along the border, both because of historical underfunding of law enforcement resources as well as the inefficient and complex jurisdictional situation previously discussed.<sup>9</sup>

As an example of a creative response to difficult jurisdictional issues and in response to the need to protect the U.S. border in Indian country, the Tohono O'odham Nation in Arizona created a unique program in partnership with the federal government. In order to respect the tribe's right to protect its own boundaries, but still provide federal assistance for patrolling the border and combating drug smuggling, the Tohono O'odham Nation and the U.S. Customs and Border Protection created an Indian-only border enforcement unit, named the Shadow Wolves. Composed primarily of members of the Tohono O'odham Nation and other Indian tribes, the Shadow Wolves are

uniquely situated not only to know about and protect the land in the area but also to use their traditional tracking skills and to know and respect the people in the community.

## The Western Hemisphere Travel Initiative and Tribal Governments

As of January 2007, travelers are required to carry a passport for nearly all air travel outside the continental United States, Alaska, and Hawaii; after January 2008, travelers will be required to carry a passport for all border crossings. This looming deadline has dramatic and negative consequences for a number of tribes. Because tribes pre-existed the founding of the United States and the creation of its international borders, many tribes and communities were split in two when U.S. borders were formed. Therefore, these tribes have tribal family members living on both sides of the U.S. international border. This bifurcation of tribal families created years of difficulties with border crossings for sacred ceremonies and family visits. As a result, many tribes have rights, such as special treaties or legislation, related to border crossing for their tribal members, and these rights are now in jeopardy. This fact is compounded by the requirement for tribal members to obtain a passport issued by the U.S. government. Tribes are seeking a solution to these problems that would not only meet federal homeland security concerns but also respect their treaty rights and their right to issue their own tribal identification.

## The U.S. Department of Homeland Security and Tribal Governments

The U.S. Department of Homeland Security (DHS) was created in the wake of the Sept. 11 attacks to integrate and streamline national efforts to ensure homeland security. Unfortunately for tribes, the model DHS chose for monitoring and implementing the national strategy was to operate through state governments. All funds for federal homeland security and emergency management planning are funneled through this state-focused structure. Because tribes are independent nations with a government-to-government relationship with the federal government, they exist largely outside of the state government structure. Historically, there has been animosity between state and tribal governments, with states typically leading the legal and legislative charge to disempower and often dismantle tribal governments.

As a result of this often contentious relationship with state governments, tribes have experienced difficulty integrating themselves into the national homeland security planning and funding structure that is controlled by the states. States often do not include tribal leaders in the development of homeland security plans. This fact is particularly startling, because many states have more than 20 tribes within their boundaries and a few states have more than 100 tribes.

The result for many tribes has been poor coordination among the different jurisdictions, poor communication regarding interoperability, and little or no access to DHS

funds. Many states, for example, include tribal populations, land bases, and risk assessments in their requests to DHS for funding, but they do not then share the allocated portion of the funds with tribal governments. Some states, such as Arizona, work well with the tribal governments that are within their borders, but many other states, such as California, have not provided any DHS funding to tribal governments. As another example, Connecticut is withholding grants specifically allocated to tribes in that state until tribal governments sign unrelated restrictive agreements of interest to the state government.

Tribal governments have been concerned for some time that they have not been fully integrated into the Department of Homeland Security's system. The current structure not only goes against the basic nature of tribal sovereignty and the relationship between the tribal government and the federal government but also has been ineffective from a practical standpoint. Consequently, tribal governments have been advocating for a direct relationship with DHS and a direct funding path for tribes.

Accordingly, problems arising in both the context of meth use and homeland security in Indian country are examples of how the jurisdictional maze in Indian country cripples effective law enforcement. In order to address these and other problems in Indian country, the current jurisdictions framework should be reformed. **TFL**

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## **EXAM** *continued from page 27*

the state's history of legal, social, and cultural relationships involving Indians and non-Indians. In addition, negative experiences in the past can be acknowledged, thereby providing an opportunity to correct or move beyond unproductive offensive events. Positive experiences can also be invoked as a way to strengthen the argument and demonstrate effective prior relations.

Advocacy efforts must point to the interface connecting Indian law, the tribal governments, and the interests of the state and explicitly identify the benefits that will accrue to the state and the state's citizens who are not Indians. Indian law must be considered an appropriate fit as part of the laws affect-

ing public and private decisions, not as remote "sub-specialty" law. To strengthen the advocates' position, lawyers and legal organizations that are not directly involved in Indian law but have affinity interests need to be included in the effort. For example, natural resources and environmental law are areas that have intersecting interests with Indian law. Other public-interest groups that advocate for persons affected by Indian law can also be allies; for example, organizations that advocate for children continuously note that attorneys need knowledge of the Indian Child Welfare Act in order to provide competent legal services to Indian clients.

Persuading decision-makers that testing attorney's

## **Endnotes**

<sup>1</sup>Taken from a poem entitled "I Am Meth," which was distributed during the Drug-Endangered Children Conference sponsored by the state of Michigan in Lansing, Mich., Aug. 1–2, 2006. The poem is attributed to an Indian girl who was in jail and addicted to methamphetamine.

<sup>2</sup>National Congress of American Indians, "Methamphetamine in Indian Country: An American Problem Uniquely Affecting Indian Country" (November 2006) (citing Substance Abuse and Mental Health Services Administration, Office of Applied Studies, (Sept. 16, 2005)). *See also* National Survey on Drug Use and Health Report: "Methamphetamine Use, Abuse, and Dependence," 2002, 2003, and 2004.

<sup>3</sup>Kathleen W. Kitcheyan, Chair of the San Carlos Apache Tribe, Testimony Before the U.S. Senate Committee on Indian Affairs (April 5, 2006).

<sup>4</sup>Ivan D. Posey, Chair of the Eastern Shoshone Business Council, Testimony Before the U.S. Senate Committee on Indian Affairs (April 5, 2006).

<sup>5</sup>New Mexico Investigative Support Center, National Methamphetamine Initiative Survey, "The Status of the Methamphetamine Threat and Impact on Indian Lands" (April 12, 2006) (prepared for the Bureau of Indian Affairs, Department of Law Enforcement Services).

<sup>6</sup>Matthew H. Mead, U.S. attorney for the District of Wyoming, Testimony Before the U.S. Senate Committee on Indian Affairs (April 5, 2006).

<sup>7</sup>Tribal Law Enforcement Aid Agreement Between the Washoe Tribe of Nevada and California, the County of Douglas, and Carson City, Nevada, 1 (June 1, 2006).

<sup>8</sup>Matthew H. Mead, *supra*, note 6.

<sup>9</sup>*See*, generally, U.S. General Accountability Office, "Border Security Agencies Need to Better Coordinate Their Strategies and Operations on Federal Lands," Report No. GAO-04-590 (June 2004); *see also* *Border Security and the Southwest Border: Background, Legislation, and Issues*, CRS Report to Congress, Order Code RL33106 (Sept. 28, 2005).