

Subject: Draft Third Mandated Report of Child Abuse on the Spirit Lake Reservation

*Updated August 16, 2012

I am submitting this, my Third Mandated Report of Child Abuse on the Spirit Lake Reservation, consistent with the guidelines established by the Attorney General in his April 24, 2012 Decision Memo.

I submitted my first Mandated Report on June 14, 2012, 60 days ago. My second Mandated Report was submitted 30 days ago on July 9, 2012.

I believed, when I submitted that first report that there was high level agreement among the federal, state and tribal leaders to move quickly to protect the children of Spirit Lake . That has not happened. State and federal officials have spoken of providing technical assistance to the existing Tribal Social Services (TSS) staff, most of whom hold temporary positions and are not qualified by either education or experience to serve in the positions they now occupy. It is unlikely that such technical assistance will provide any long term benefit to the citizens of Spirit Lake .

The only progress I have seen in the matters I placed before you 60 days ago is the indictment of the alleged murderer of those two children 15 months ago in their father's home in St. Michael. The US Attorney and the FBI are to be commended for their efforts in this matter.

Based on reports I have received, everything else remains as it was or has become even worse for the children of Spirit Lake . Thirty days ago a two month old infant died at home, alone with no adult supervision. A state CW official wrote to roundly criticize me for her "claimed errors" in my second mandated report. That same state official did not dispute the account of the infant's aunt which appeared a few days later in a local newspaper. That account made essentially the same points I had and stands undisputed as corroboration of my second report.

A similar situation has recently been brought to my attention. A little girl who was placed in on-reservation foster care by the Tribal Court and TSS even though she was not an enrolled member of the Spirit Lake Nation. The foster parents have never been paid for the care they have provided. Now TSS will do nothing for them or for this little girl who is now approaching the age when she should be enrolling in pre-school. The foster parents are not recognized as the child's legal guardians because their responsibility for this child originates with a Tribal Court order and that order is not recognized off-Reservation. As a result these foster parents are unable to sign any of the documents required to get this little girl into pre-school. When the foster parents go to their county social services, they are turned away because the child is "Tribal". No one seems willing or able to help

these foster parents deal with this complex issue.

Families of Spirit Lake tribal employees as well as the employees themselves have been told that if any of them are identified as having spoken to me or any of my sources that they will be fired from their tribal employment. As one reliable source of information has said, "Unless someone can guarantee that nobody will fire them, that nobody will take their kids away and that nobody will burn their house down, they will not come forward to speak with you." This leadership by intimidation that the Tribal Chair and Council are exercising is failing. Despite these threats and the fear they engender, the courageous people of Spirit Lake continue to speak up, telling their stories about the abuses they have experienced and the corruption they have seen.

For example, during the last week an elderly woman who lives in St. Michael , ND called the Spirit Lake police to report there were two very young boys in her back yard engaging in anal sex. When the police arrived they admonished the boys (five and six years of age respectively), telling them they should not be engaging in that kind of activity, told them never to go into this woman's yard again and sent them home. There was no questioning as to where these boys learned about anal sex, whether they had seen adults doing it or whether some older boys or adults had done it to them. These children come from a home where there are 9 minor children living with 4 adult males. Three of the four adults are registered sex offenders. This situation cries for immediate correction.

Who in their right mind would allow one minor child, let alone 9, to live in a home with three registered sex offenders? Can anyone be prosecuted for allowing 9 minor children to be exposed to such potential danger? What is the meaning of child endangerment if this is allowed? If it is not prosecuted? Has the BIA Superintendent approved the placement of these children in this home? Has the Acting Director of TSS approved these placements? I have been told that the Acting Director of TSS neither makes nor implements any decision without first reviewing it with the Tribal Chair and getting the Chair's approval. If this is true, does this mean that the ultimate responsibility for these placements rests with the Tribal Chair?

How many other Spirit Lake children have been exposed to comparable danger as a result of placement in homes with registered sex offenders? I was told a few weeks ago in a brief telephone conversation with the former TSS Director, Mr. Dauphinais, a call initiated by him to me, that he protested these kind of placements to the Tribal Chair, that he felt such placements endangered the children who were being returned to the Reservation without proper investigation and certification of the safety of the homes in which these kids were being placed. Apparently, the Tribal Chair ignored his protests. He said the Tribal Chair had also instructed him to shred TSS documents. He also spoke of the lack of support from the state's CW leadership as he sought to manage this situation so as to minimize the danger to the children being brought back into on-Reservation

placements. It is not clear to me how much of this conversation, which could be characterized as self-serving, is factual.

A few months ago, the Tribal Chair and Council, in the name of Tribal Sovereignty, directed that all descriptions and pictures of Registered Sex Offenders be removed from the bulletin boards on the Reservation. This is a violation of the Sex Offender Registration and Notification provisions of the Adam Walsh Act. Two of the descriptions and pictures removed were of close relatives of the Tribal Chair. It is not clear to me how this action keeps the children of Spirit Lake Nation safe or protects them from abuse.

The following five single paragraph case descriptions are examples of how casually officials at all levels, tribal, state and federal governments appear to treat significant cases of child abuse when the abusers are politically connected. They are also examples of how the courageous people of Spirit Lake are willing to speak out and describe the unheard of abuse and corruption they have been enduring for years.

More than a year ago TSS had the care and custody of several children who had been removed from their mother's custody as a result of a Tribal Court Order resulting from the mother's heavy drinking and abusive treatment of her children. The Court Order specified that the children were not to be returned to the mother until she had successfully completed rehabilitation programs to assist her in controlling her drinking and her violent treatment of these children. She did not complete those rehab programs but the former TSS director ordered her children returned to her. She was recently arrested on the charges of public intoxication, child abuse and resisting arrest and went to trial in Tribal Court. Her sentence of 15 days without any requirement to complete any rehab programs is a measure of how casually the Spirit Lake Tribal Court considers public intoxication and child abuse charges against a woman with a substantial criminal record. The children remain in the care of their mother despite the abuse they suffered at her hands.

Several years ago an enrolled tribal member and father mercilessly beat his daughter who at the time was less than two years old. The child's grandmother took her to the hospital where she was admitted and remained for several days. A BIA Criminal Investigator (BIACI) went to the hospital to question witnesses and gather evidence. This BIACI who was related to the father who beat his infant daughter was told by several people, including an Assistant US Attorney that this was a conflict for him and that he should leave the investigation to others. The BIACI assured all who spoke with him that he could complete the investigation impartially and that he would file charges against the father. No charges, either tribal or federal, were ever filed in this brutal beating of the infant girl even though the grandmother cooperated with the FBI in its investigation. TSS was never contacted about the beating of this infant by her father.

12 to 18 months ago a two year old little girl was so brutally beaten by her father that she required several days in the hospital for treatment of her injuries. The father was arrested and charged but bonded out of Tribal jail. Tribal Court, shortly thereafter, dropped all charges. The child's mother has been contacting the FBI, ever since this beating on a regular basis, every two or three weeks, to determine when federal charges will be filed against the father. I have been told she keeps receiving the same response, "the investigation is not yet complete". What is the statute of limitations for the filing of federal charges in the brutal beating of a child? It is disturbing to think that the father's status as the nephew of the Tribal Chair has had anything to do with this delay in filing federal charges against the father. But, it is also difficult to avoid when the Tribal prosecutor, it has been reported to me, refuses to file charges against this father who brutally beat his own daughter because he fears he will be fired if he does. Is such threatening behavior consistent with obstruction of justice?

I recently learned of a 5 year old little girl who was removed from an off-Reservation foster home and placed in an on-Reservation home where the foster parents lost their foster care license because the father was convicted of having sex with a minor, a previous foster-child placed in their home in their care. This child was described when in off-Reservation foster care as a beautiful, happy child with long black hair, always singing, riding her bike, constantly asking question about the world around her. Now, I am told that her hair has been shaved off and she is sullen, no longer sings nor rides her bike, speaks seldom and is difficult to understand because she has begun to stutter. Her 9 year old sister has also been placed in the same home. I have been told that neither the Tribal Chair nor Council will approve a transfer of these children to a safer placement, a home without any registered sex offenders present. How can this be allowed by anyone with any concern for the welfare of children? Who will speak for these little girls? Clearly, this calls into question whether the Tribal Chair and Council are working in the best interests of these little girls.

I have also seen published newspaper reports in many ND newspapers, approximately 30 days ago, about how bad conditions on the Spirit Lake Reservation were for children, about the 6 year old who had been raped, about teen-age girls who intentionally got high before they went out on a weekend night because they knew they were going to be gang-raped and because only when high could they deal with the gang rape, and the teen-agers who would ask to be arrested or placed in juvenile detention because they knew they would be safe there.

Based on the last five paragraphs it seems clear that those of us in leadership at the tribal, state and federal government agencies responsible for the safety of children are failing in our responsibilities to protect the children of Spirit Lake from unspeakable abuse.

In my earlier communication I expressed some concern that detailed complaints

with documented substantiation that had been delivered some time ago to the state human services and child welfare leadership, BIA regional leadership in Aberdeen, SD and to the FBI had apparently not been acted upon. I have had an uneasy feeling that such a stratagem may be at play in the handling of the reports I have been making to all of you since I have not heard of any progress in rectifying the situations giving rise to these reports of abuse and neglect. I trust that, in time, my uneasy feeling will be allayed by your substantial efforts to protect the children of Spirit Lake. I do, however, also believe the failure of those in responsible positions who received these complaints and documentation must be investigated and held to account for their failures to consider them seriously and to investigate them.

I recently learned of a 5 year old little girl who was removed from an off-Reservation foster home and placed in an on-Reservation home where the foster parents lost their foster care license because the father was convicted of having sex with a minor, a previous foster-child placed in their home in their care. This child was described when in off-Reservation foster care as a beautiful, happy child with long black hair, always singing, riding her bike, constantly asking question about the world around her. Now, her hair has been shaved off and she is sullen, no longer sings nor rides her bike, speaks seldom and is difficult to understand because she has begun to stutter. Her 9 year old sister has also been placed in the same home. I have been told that neither the Tribal Chair nor Council will approve a transfer of these children to a safer placement, a home without any registered sex offenders present. How can anyone with any concern for the welfare of children allow this? Who will speak for these little girls? Clearly, the Tribal Chair and Council do not appear to be working in the best interests of these little girls.

I have also seen published newspaper reports in many ND newspapers approximately 30 days ago about how bad conditions on the Spirit Lake Reservation were for children, about the 6 year old who had been raped, about teen-age girls who intentionally got high before they went out on a weekend night because they knew they were going to be gang-raped and the teen-agers who would ask to be arrested or placed in juvenile detention because they knew they would be safe there.

In my earlier communication I expressed some concern that detailed complaints with documented substantiation that had been delivered some time ago to the state human services and child welfare leadership, BIA regional leadership in Aberdeen , SD and to the FBI had apparently not been acted upon. I have had an uneasy feeling that such a stratagem may be at play in the handling of the reports I have been making to all of you. I trust that, in time, my uneasy feeling will be allayed by your substantial efforts to protect the children of Spirit Lake .

Dr. Martin Luther King, Jr. in a speech in Michigan shortly before he was assassinated said, "Cowardice asks the question 'Is it safe?' Expediency asks

the question 'Is it politic?' Vanity asks the question 'Is it popular?' But conscience asks the question 'Is it right?' And there comes a time when one must take a position that is neither safe, nor politic, nor popular but one must take it because one's conscience tells one that it is right."

As leaders in our respective communities we have an obligation to protect those among us who cannot protect themselves, the young. As leaders we need to speak the truth when dealing with wrongdoing. As leaders we need to confront the evil of the abusers and see that they are removed to a place where they can no longer harm children. As leaders we need to understand that our organization's reputation is nothing when measured against the well-being of a single child.

If we fail in our role as leaders, we will deserve the same condemnation society so correctly applied to those leaders at Penn State and in the Catholic Church who, knowing of the abuse being inflicted on children by their colleagues, did nothing, failing in their basic obligation to protect children.

If the leadership of the Spirit Lake Nation fulfilled their leadership responsibilities to protect children, none of this would be necessary. They have not. Moreover, they have shown no willingness to take the action steps necessary to stop the abuse of children.

If the elected leadership at Spirit Lake will not protect their children, we must. This may not be safe, politic or popular. For us, the only acceptable consensus is that the children of Spirit Lake must be protected from all abuse. After all, that is, in Dr. King's words, the "right" thing to do.

Thomas F. Sullivan
Regional Administrator, ACF, Denver