

FORMER US ATTORNEYS DISCUSS MOST PRESSING ISSUES IN INDIAN COUNTRY

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Brendan Johnson and Timothy Purdon made it their mission while serving as U.S. attorneys for South Dakota and North Dakota, respectively, to work with American Indian tribes and improve public safety on some of the country's largest Indian reservations.

Johnson, who served as the U.S. attorney in South Dakota from 2009 to 2015, is credited with designing a community prosecution strategy that helped increase prosecutions in Indian country by 90 percent. Purdon, who served from 2010 to 2015, meanwhile, designed an anti-violence strategy on North Dakota's reservations that helped increase prosecutions district-wide by 80 percent.

Now, the two lawyers are heading to private practice with the Minneapolis-based Robins Kaplan. Johnson has opened an office in Sioux Falls, South Dakota, while Purdon is opening an office in Bismarck, North Dakota. They say they plan to continue their efforts working closely with tribal communities.

Being a U.S. attorney seems like a really prestigious position. Why did you decide to go to private practice?

Johnson: Serving as U.S. Attorney was a great honor, and I am immensely proud of what the Justice Department has accomplished in Indian country during the Obama administration. We worked with, not against, tribes to promote tribal sovereignty.

In South Dakota, I was particularly proud that we stood with the tribes on issues including the Violence Against Women Act (VAWA), [Indian Child Welfare Act] ICWA, voting rights, and preventing the disestablishment of the Yankton Sioux Reservation. But there are more fights that need to be fought on behalf of tribal sovereignty. There is a need for strong attorneys in private practice who will stand shoulder-to-shoulder with tribes across the country. That's what Tim and I intend to do in private practice.

Purdon: When you become U.S. Attorney, you serve as a nominee of the President of the United States and so you know that the job is not going to be forever. When I started I set several goals for myself and the Office, the most important of which was reshaping the way the North Dakota U.S. Attorney's Office contributes to the public safety of the reservations that we serve. We did this through the adoption of our Anti-Violence Strategy for Reservation Communities (AVS) which we put into place in 2011. While the initial implementation of the AVS certainly has not solved these issues on the reservations in North Dakota, we have made real, measurable progress during my term. Given this, I felt that the time was right for me to take the next step in my career by joining Robins Kaplan with Brendan to continue our service to the people of Indian country by building an incisive, relentless team to help tribes deal with their most complex problems and disputes.

What did you learn during your time as a U.S. attorney and how will that help you as you transition back to private practice?

Johnson: Tim and I learned that the odds are often stacked against the tribes. Local governments and major corporations can afford to hire some of the best attorneys in the country to advocate against the interests of tribes. We want to rewrite those odds.

Purdon: I learned a great deal about how the Department of Justice and other agencies like the

Department of Interior and the Bureau of Indian Affairs work. I have a much greater understanding of how policies and personalities drive hard decisions in Washington than I did before. It is my belief that I am going to be able to leverage this understanding of how the federal government works in Indian country on behalf of tribes and tribal entities.

What will you be doing in your new role?

Johnson: Robins Kaplan has a long history of taking on high-stakes litigation, often on the side that others might consider to be an “under-dog.” This includes successful litigation against big tobacco and pharmaceutical companies. Tim and I felt that this firm had the right values, as well as the assets and experience already in place, to assist tribes, and that’s what we want to do in private practice.

Purdon: Brendan and I now have a long history of managing complex criminal investigations and high stakes civil litigation from both the defense and plaintiff counsel’s table. This experience uniquely positions us to rewrite the odds for tribes and tribal entities that are caught up in complex disputes with powerful outside forces.

You worked a lot with Native American tribes as a U.S. attorney. In your opinion, how important is it for the federal government to work with American Indian tribes? How can that relationship improve?

Johnson: The federal government needs to appreciate that the best ideas for strengthening tribal communities don’t come out of Washington D.C., they come directly from the tribes. I think the Obama Administration has done great work in Indian country, but we need to make sure that those changes are sustainable and not reversed by the next administration. Tim and I intend to be watchdogs in private practice to make sure that progress is not halted.

Purdon: I believe that when the history of Attorney General Eric Holder’s Department of Justice is written that one of its biggest achievements will be the prioritizing of public safety in Indian country as a top-tier priority, the deployment of additional DOJ talent and resources to address that issue, and the

measurable results of that effort. From the passage of TLOA and the re-authorization of VAWA with the restored tribal court domestic violence jurisdiction to the marked increase in the number of Indian country violent crime cases brought by U.S. Attorney’s Offices across the country; from the important work of DOJ’s Task Force on American Indian and Alaska Native Children Exposed to Violence to the unprecedented levels of communication, cooperation, and collaboration between U.S. Attorney’s Offices and the tribes they serve, the initial progress that Brendan and I helped lead has been historic. I agree that what is important now is that these gains remain in place; that DOJ’s commitment to Indian country public safety remain the norm, the regular way of doing business.

What did you learn about Indian country while a U.S. attorney?

Johnson: I had the opportunity to work the night-shift with the Rosebud Police Department, participate in a sweat in Pine Ridge, visit with elders in Crow Creek and high school students on the Standing Rock Reservation. I consider my friends in Indian country to be my relatives, and each one of those relationships taught me something new. Perhaps most importantly, I learned about the trust responsibilities of our government, and how too often those responsibilities are not upheld.

Purdon: One specific memory stands out for me. I will never forget the day that I learned that you have to listen in order to understand that the generational trauma suffered by American Indian people is not ancient history, but that it is real, recent, and raw. I remember being with Attorney General Eric Holder and Brendan at a town hall meeting on the Pine Ridge Reservation in the summer of 2012. As the meeting was beginning to break up, an elder in a wheel chair was brought up to the front and he began to speak to the Attorney General in Lakota. He spoke for several minutes. When he was done, his son translated his remarks. He related to the Attorney General that the elder’s grandfather had been a signatory of the Fort Laramie Treaty of 1868 and repeated in English the elders concerns about conditions on Pine Ridge. I was struck by the history of the moment, but also by how personal this man’s concerns were and how absolutely raw his grievances were. It was important that the

Attorney General of the United States heard this man, and he was only able to do so because he was physically there to listen.

What are the most pressing issues for Indian country in the Dakotas? How are the issues being addressed?

Johnson: As United States Attorney, I stated that, frankly, South Dakota has a pretty sorry history when it comes to civil rights. I believe that to be true, and not enough is being done to address that history and move forward. I do believe, however, that the U.S. Attorney's Office and the Obama administration are making a difference in South Dakota. Over the past six years, the U.S. Attorney's Office in South Dakota met regularly with tribal leaders and enacted many of their ideas. This includes making tribal prosecutors Special Assistant U.S. Attorneys so they can prosecute non-Indians in federal court, and a Tribal Diversion program to keep more Native American youth out of the federal system.

Purdon: My core belief as U.S. Attorney was that we cannot expect American Indian people to overcome decades and decades of isolation and poverty until, first and foremost, they feel safe in their homes and communities. We have made some solid first steps at improving public safety in Indian country in North Dakota. But, these problems are centuries in the making. It will take years and years of continued work to get where we need to be: to lower rates of violence against women, to lower rates of alcohol and drug abuse, to a greater feeling of safety and security on the streets and neighborhoods in places like Cannonball and St. Michael, White Shield and Belcourt. We have taken the first few steps, but the journey is a long one.

What do you hope to see in the future in Indian country?

Johnson: I believe that tribes can increase their sovereignty through their court systems by implementing the Tribal Law and Order Act and the Violence Against Women Act. But that legislation is just a starting point. Tribes need to have greater control over their own future. I think that will happen, and I'm very optimistic about Indian country after working with incredibly talented Native American

professionals within Indian country and the Obama administration.

Purdon: I am anxious to see the continued strengthening and growth of tribal court systems. TLOA and VAWA provide powerful incentives for tribes to invest in their court systems. As these tribal court systems mature and develop, this will have marked impact on public safety and, over time, can serve to spur economic development as investment will flow to places where strong court systems enforce the rule of law. My work with the VAWA Implementation Inter-tribal Working Group (ITWG) has given me great hope for the future of tribal courts. The talented American Indian lawyers and court professionals who I worked with at ITWG are forging ahead to implement TLOA and VAWA in their home communities and are building strong sustainable court systems in that process.

Anything else you'd like to add about your time as U.S. attorney, the transition to private practice or Native Americans?

Johnson: I've heard too many public figures end their career by saying that they wished they had devoted more of their time to tribal issues. I didn't want those to be my final words, so in South Dakota working with tribes has been the priority. I'm proud of the progress that we made but also realistic that much more needs to be done. My hope is that by returning to private practice, Tim and I can have an even greater impact by working with tribes across the United States.

Purdon: My time as U.S. Attorney was the best time of my life and the time I spent in Indian country was the best of that time. I am thankful to the people of Indian country who were willing to partner with me and the U.S. Attorney's Office to work toward the common goal of safer reservations. I look forward to continuing my work with Brendan to be champions for tribes and for the citizens of Indian country in our new role at Robins Kaplan.