



Department of Justice

STATEMENT OF

**GREGORY A. BROWER
UNITED STATES ATTORNEY
DISTRICT OF NEVADA
UNITED STATES DEPARTMENT OF JUSTICE**

BEFORE THE

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

CONCERNING

**“CRIMES ASSOCIATED WITH POLYGAMY: THE NEED FOR A
COORDINATED STATE AND FEDERAL RESPONSE”**

PRESENTED

JULY 24, 2008

Chairman Leahy, Ranking Member Specter, and Members of the Committee, I am Greg Brower, United States Attorney for the District of Nevada. My colleague Brett Tolman, United States Attorney for the District of Utah, and I are very pleased to appear before you today to provide the perspective of the Department of Justice and federal law enforcement in working with issues arising from polygamist communities. My testimony will provide an overview of the tools and resources available to federal law enforcement to address these issues. Mr. Tolman will follow with more detailed information regarding specific efforts being made, primarily in his State and district.

At the outset, let me emphasize what I am sure is already obvious. As federal prosecutors, our oath is to support and defend the Constitution. The very first right enshrined in the Bill of Rights is the right to the free exercise of religion. The United States Department of Justice (the Department) does not target anyone for criminal investigation or prosecution – whether individuals or groups – based on their religious beliefs.

The Department's mission is to target federal criminal conduct wherever it occurs, regardless of the religious beliefs of the criminal, if any. The seminal Supreme Court case on the interplay between laws of general application and the Free Exercise clause was Employment Division of Oregon v. Smith, 494 U.S. 872 (1990). That decision rightly held that when a law is of general application and not targeted at a particular religious practice, the Free Exercise Clause is not implicated, even if the incidental effect of the law is to affect some people's practice of their religion. The issue of polygamy illustrates this point. The practice is illegal in all 50 states, regardless of whether a defendant enters a plural marriage for religious reasons or otherwise.

And with respect to the practice of polygamy itself, I should emphasize that it is usually a matter of State criminal law, and not federal law. Over the history of our country, the laws

defining and defending the institution of marriage have been by design within the province of the states. Polygamy is illegal in all 50 states because of the individual criminal codes of the 50 states, and not because of any federal criminal provision. The Model Penal Code section 230.1 defines the third-degree felony of polygamy as cohabitating with more than one spouse at a time in purported exercise of the right of plural marriage. While polygamy is a State crime, the Department embraces partnerships with State and local law enforcement through information sharing, coordination, and other types of assistance, and will investigate and prosecute federal violations where possible. Thus, ultimately, the role of federal law enforcement in dealing with issues relating to polygamist communities is the same role as in any other context – to investigate and prosecute federal crimes when they occur, again.

Numerous federal laws are potentially implicated by the conduct in which some members of polygamist communities engage, and federal authorities stand ready to investigate and prosecute as circumstances warrant. Title 26 tax crimes are investigated by the Internal Revenue Service (IRS) Criminal Investigations and prosecuted by the United States Attorney's Offices and the Department's Tax Division. The Federal Bureau of Investigation (FBI) has responsibility for investigating a host of other white collar offenses, such as mail, wire, and financial institution fraud, fraud involving federal programs, false claims cases, health care fraud, and computer crimes. The United States Secret Service has broad authority to investigate identity theft and credit card fraud. The United States Postal Inspection Service investigates crimes involving the mails. The United States Marshals Service has and will continue to aid these cases by tracking and capturing fugitives as necessary.

The FBI and the Bureau of Alcohol, Tobacco, Firearms, and Explosives have broad authority to investigate violent federal crimes, including crimes involving weapons and

explosives. The FBI also has jurisdiction over federal criminal civil rights violations. Indeed it is a felony to interfere with another's free exercise of religion by force or threats of force, under 18 U.S.C. § 247. That section also covers attacks on churches or other religious property. Finally, federal criminal law provides for substantial penalties for arson, and for threats communicated by mail, telephone, or Internet.

In addition to the laws noted above, I should also emphasize that federal criminal law affords very powerful tools to deal with sexual predators of children, including underage girls. Title 18, United States Code, Section 2422(b), makes it a felony for a defendant to use the mail or a facility of interstate or foreign commerce, such as telephone lines or the Internet, to lure a child under age 18 to engage in criminal sexual activity. Transporting a child across State lines for the same purpose is also illegal under 18 U.S.C. § 2423(a). Both crimes carry a ten year mandatory minimum sentence, but they are punishable up to life imprisonment. Even using the Internet or other means of interstate communication to transmit identifying information about a young child (for example, name, address, telephone number, e-mail address) for sexual purposes is illegal under 18 U.S.C. § 2425. That crime carries a potential five year penalty.

The Department is deeply committed to the fight against crimes against children, working constantly with federal, state, and local prosecutors and law enforcement offices to increase the investigation and prosecution of all crimes against children. To further this goal, in 2006 the Department developed Project Safe Childhood. As but one of many examples of a typical Project Safe Childhood case, consider the story of Sonny Szeto, who my colleagues in the United States Attorney's Office for the District of Connecticut prosecuted this past year. Szeto was a 23-year-old who lived in New Hampshire and liked to lurk around on the popular Web site MySpace.com trying to meet young girls. In 2006, he succeeded. He met an 11-year-old

Connecticut girl online and struck up a relationship with her, slowly manipulating her and building her trust. Using that foundation, he traveled to Connecticut and persuaded her to have illicit sexual relations with him. A search warrant was later executed on Szeto's home computer, and hundreds of images of child pornography were found. The judge in Connecticut sentenced Szeto to 168 months for using the Internet to persuade the girl to engage in sexual activity, and 120 months for possessing child pornography.

The Szeto case is a model of how the Department's Project Safe Childhood efforts are working nationwide. The case involved highly effective teamwork at all levels of government. The case was investigated by the Connecticut Computer Crimes Task Force and also the FBI, and then prosecuted by the United States Attorney's Office. This is the strategic goal of Project Safe Childhood – to maximize the number of leads generated and investigated by federal, State, and local law enforcement, and then funnel those cases as appropriate to federal prosecution, where federal nationwide investigative tools can be employed and federal felony mandatory minimum sentences can be sought. These prosecutions serve the twin ends of removing individual predators like Szeto from free society where they have access to children and deterring other would-be predators.

In summary, to the extent that the members of polygamist communities are committing federal crimes, whether "white collar" frauds or crimes against children, the Department is committed to working with State and local law enforcement authorities in the relevant jurisdictions to ensure that those crimes are aggressively investigated and prosecuted.

I will now turn it over my colleague from Utah, U.S. Attorney Brett Tolman, who will discuss more specific efforts undertaken by the Department.