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FOLDER TITLE:

Indian Country Directive

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- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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Date: 12/18/97 Time: 17:40

IREport finds 'public safety crisis' on reservations

WASHINGTON (AP) American Indians receive less than half the police protection provided to other rural communities and face a 'public safety crisis' because of soaring reservation crime rates, according to a Clinton administration report.

The report proposes doubling the size of reservation police forces and suggests that a Justice Department takeover of Bureau of Indian Affairs police functions could improve safety.

President Clinton has given the Interior and Justice departments until the end of the year to recommend a plan for dealing with reservation crime so he can put it in his 1999 budget. The report was prepared by a team of federal officials, U.S. attorneys and tribal leaders.

'Simply put, many American citizens living on Indian reservations do not receive even the minimum level of law enforcement services taken for granted in non-Indian communities,' the report said.

The report stopped short of endorsing a Justice Department takeover of reservation law enforcement, but said that would ensure better congressional funding and higher standards. It also would bring 'the full array of all DOJ resources to bear on the deplorable condition of Indian country law enforcement,' the report said.

Tribes are deeply divided over the idea, however, and it is losing momentum within the administration, according to a Justice Department official who spoke on condition of anonymity.

Interior Secretary Bruce Babbitt has 'effectively deferred this matter' to his new assistant secretary for Indian affairs, Kevin Gover, who oversees the BIA, the source said. Gover, who has expressed concerns about dismantling the BIA, hasn't been convinced the Justice Department could obtain more money for law enforcement, said spokesman Thomas Sweeney.

Major tribes have come down on either side. Two of the largest, the Navajo Nation and the Oklahoma Cherokees, want the BIA to stay in control of law enforcement, while the Oglala Sioux and many other tribes in the Dakotas favor the Justice Department takeover. Many tribes took no position at all.

'We have 2.3 million acres throughout the reservation,' said Charles Murphy, chairman of the Standing Rock Sioux, who favor the Justice Department plan. 'It would be so much easier for us to get additional law enforcement people.'

Nationwide, there are 1,600 BIA and tribal officers patrolling 56 million acres of Indian land, or 1.3 officers for every 1,000 residents, according to the report. That compares to an average of 2.9 officers per 1,000 residents in small non-Indian communities. On the Navajo reservation, there is fewer than one officer per 1,000 residents.

The report calls for adding 2,047 officers to reservations and increasing the number of criminal investigators from 270 to 496.

The homicide rate on Indian lands has soared 87 percent over the past five years, even as it has dropped 22 percent nationwide. In 1995, the murder rate on the Fort Peck Reservation in Montana was more than twice that of New Orleans, one of the nation's most violent cities, the report said.

APNP-12-18-97 1746EST



Office of the Attorney General
Washington, D. C. 20530

FACSIMILE TRANSMITTAL COVER SHEET

DATE:

January 14, 1998

TO:

Leanne Shumakuro

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COMMENTS:

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

On August 25, 1997, you directed us, working in conjunction with tribal leaders, to analyze law enforcement problems on Indian lands and suggest ways for improving public safety and criminal justice in Indian Country. In response to this Administration's efforts, violent crime is falling in many American cities. However, as you noted, it is rising in Indian Country.¹ Today, federal law enforcement is the primary protection for victims of violent crime in most of Indian Country. Our basic responsibility to preserve public safety for the citizens of Indian Country derives from the unique trust relationship between federal and tribal governments, as well as specific statutory provisions such as the Major Crimes Act that mandate exclusive federal jurisdiction for crimes such as homicides and sex offenses.

To carry out your directive, we formed an experienced, interdepartmental "Executive Committee for Indian Country Law Enforcement Improvement." One third of the 18 Executive Committee members are tribal leaders who represent diverse interests, cultural backgrounds, and geographic areas.²

In order to ensure consideration during the next budget cycle, a short timetable was imposed for completing the attached Report. At the request of the Executive Committee, U.S. Attorneys led an unprecedented series of tribal consultations on Indian Country law enforcement across the country during

¹The FBI reports that the nationwide violent crime rate in 1996 dropped 16 percent below 1992 levels, and murders are down 20 percent. Sadly, for the 1.4 million Indian citizens who live on or near reservations, life has become much more violent during the same time period. Some reservations have murder rates that far exceed cities like New Orleans and our nation's capitol. At the same time, available law enforcement resources in Indian Country actually have been reduced over the last few years.

²More than one-half of the Executive Committee members are enrolled tribal members.

September and October of this year. In the lower 48 states, more than 205 Tribes participated in these consultations.³

As a result of these consultations, the Executive Committee determined that:

- Law enforcement in Indian Country, as presently organized, often fails to meet basic public safety needs.
- Serious and violent crime is rising significantly in many parts of Indian Country -- in stark contrast to national trends.
- The single most glaring problem is a lack of adequate resources in Indian Country. There is a severe shortage of uniformed law enforcement officers, criminal investigators, detention specialists, and administrative personnel. Also, antiquated and inadequate communications and other basic equipment are the norm for many tribal police departments.
- Although the system must change, Indian hiring preferences and contracting/compacting authorities under P.L. 93-638 must be continued under any new structure.
- The current criminal justice system results in poor coordination and delivery of services because of inadequate funding and the fragmented supervision of criminal investigators, uniformed officers, and detention specialists.

We endorse these findings.

After considering numerous possibilities, and the comments and suggestions received from the Tribes, the Executive Committee recommended to us the following options to address the lack of adequate law enforcement in Indian Country:

OPTION A

Consolidate the three major law enforcement programs (criminal investigations, uniformed police, and detention services) under the line and budgetary authority of the Bureau of Indian Affairs (BIA) Office of Law Enforcement Services (OLES). DOJ will assist OLES by expanding the availability of technical assistance and training.

³In addition, an official from DOJ's Office of Tribal Justice met with tribal leaders at the annual Alaska Inter-tribal Council Conference.

OPTION B

Transfer all three major law enforcement programs in BIA to DOJ, maintaining Indian hiring preference and contracting/compacting authority. DOJ will create liaison positions to assure that community accessibility and tribal input on local law enforcement issues and priorities are maintained.

Although the consultation process produced no clear consensus among the Tribes favoring any specific option, it confirmed the serious and growing crime problem in Indian Country. For example, the National Congress of American Indians, representing 210 Tribes, passed a resolution on November 24th that "congratulates President William Jefferson Clinton for recognizing that the federal government has failed to provide adequate support for law enforcement in Indian Country, [and urges] President Clinton to make improving law enforcement in Indian Country a high priority in his second term, specifically by including, in his fiscal year 1999 budget, a substantial increase in funding for law enforcement initiatives in Indian Country."

Consistent with the findings and recommendations of the Executive Committee, we recommend that Indian Country law enforcement should be reorganized and given adequate resources. We further recommend that it remain within the BIA as outlined in OPTION A. The planned reorganization of BIA should address many of the chronic problems resulting from the fragmentation of police and detention services.

There are three prerequisites essential to implementing OPTION A: (1) establish a central line authority over all law enforcement functions under BIA/OLEs; (2) remove funds from the Tribal Priority Allocation (TPA) accounts that are identified for law enforcement purposes in the TPAs; and (3) obtain adequate funding of law enforcement as a distinct line item within the Interior budget.

We favor OPTION A because:

- The BIA is considered the core Indian Agency that works on behalf of Indian people and their lands. Moving law enforcement out of BIA may further fragment the federal relationship with the tribes.
- The BIA currently has contracting/compacting authorities and Indian hiring preference with Tribes, and DOJ must seek legislation to do this.

Page 4

- Consolidation of law enforcement functions within OLES is an essential first step in the implementation of either option. Should BIA be unable to implement the prerequisites necessary for Option A, Option B still could be implemented without a substantial loss of time or resources.

Based on your 1998 budget, the federal government spends about \$130 million on law enforcement and detention in Indian Country. For practical and fiscal reasons, we recommend phasing in increases over four years. The total Indian Country law enforcement enhancement for fiscal year 1999 is projected to be approximately \$182 million. Of this amount, your 1999 budget will include an enhancement of \$25 million for BIA law enforcement. Department of Justice grant monies, however, constitute approximately 80 percent of the \$182 million. Although this will provide an excellent start, additional appropriations over the next three years for BIA law enforcement will be essential to institutionalize critical improvements to public safety. The inadequacies in the current provision of federal law enforcement services in this area are documented in the enclosed report.

Janet Reno
Attorney General

Bruce Babbitt
Secretary of the Interior

Enclosure

INDIAN COUNTRY LAW ENFORCEMENT IMPROVEMENTS

December 2, 1997

Problems with Funding this Initiative Through DOJ Grants

- A. Defeats goal of a coordinated, consolidated, long-term approach to dealing with complex law enforcement problems in Indian Country.
- B. Does not institutionalize the solutions.
- C. Use of grant funds does not allow the Indian Country law enforcement agency (BIA or DOJ) to hire permanent federal employees (including Criminal Investigators), to cover O&M costs, to pay for training needs, or to buy essential equipment such as police cars, radios, etc.
- D. Current restrictions on grant funding would limit use of funds.
 - 1. COPS
 - a. 3-5 years only
 - b. funds salaries only
 - c. COPS MORE also has restrictions
 - d. legislation would be needed to expand allowable uses of funds in Indian Country (for investigators, training, vehicles, equipment, etc.).
 - 2. Correctional Prison Grants.
 - a. construction only
 - b. legislation needed for O&M -- by far the largest cost over time
 - c. grant funds could not be used to build/repair/operate facilities owned or operated by BIA.
- E. Probably Conflicts with Indian Self Determination Act. Currently, Tribes have the option of contracting/compacting for services under 25 U.S.C.A. § 450 et seq. Many services, however, are still provided directly. We cannot use grant money to deploy permanent federal law enforcement officers for the Tribes that cannot (or choose not) to contract.
- F. Political Objections.
 - 1. Tribes will object on two grounds: (1) soft/grant money shows lack of commitment to long term solutions and is inherently disingenuous; and (2) this lack of commitment by the United States (and the relatively small amount of money needed as a percentage of the budget) is a racist policy. Specifically, it is acceptable for violent crime to soar in Indian Country but not elsewhere in the U.S.

2. States (and other non-Indian jurisdictions) will lose grant funds, particularly Prison Grant and Byrne Grants. This would be a very divisive approach at the local level. There are enough problems between the Tribes and local/state jurisdictions now.
3. Congressional appropriators will not be eager to see DOJ money needed for one purpose shifted to another -- especially if it is in another Department.
4. DOJ's overall budget requests may be viewed more critically in the future if we can "afford" to redirect \$200 million away from existing programs.

Funding Proposal
Indian Country Initiative
December 2, 1997
(dollars in millions)

President's Priority Reserve			
FBI	10		T
USA	3		I
Other	89		I
Subtotal		102	I
Grant Programs			I
Prison Grants (construction)	40		I
Subtotal		40	I
Direct Appropriations			I
Juvenile Justice	20		I
Drug Programs	10		I
Tribal Courts	10		I
Subtotal		40	I
TOTAL			
		182	

HAS TO
BE OUT?

NOTE: Assumes 4- year implementaton.

— NEED TO GO TO PRINCIPALS ON ISSUE
OF CONSOLIDATION

— PROPOSAL:

① Money/Resources targeted this year

② PROPOSAL FOR SHORT/LONG-TERM CONSOLIDATION

③ NEW BUDGET & APPEARED
(WINS WITH LOSERS).

④

CHOICE OF
CONTRACTING
OR BIA

3 pieces
DOT/Inst. Rural Rec
Lex. Piece on training

Report of The Executive Committee
For
Indian Country Law Enforcement Improvements

FINAL REPORT

To
The Attorney General
And
The Secretary of the Interior

Bruce/Tom/Leanne —
It looks as if OMB
had reason to worry —
this is a \$85 million
initiative.

Elean

October 1997



U. S. Department of Justice

Criminal Division

Office of the Deputy Assistant Attorney General

Washington, D.C. 20530

October 31, 1997

EXECUTIVE SUMMARY

MEMORANDUM FOR: THE ATTORNEY GENERAL AND THE
SECRETARY OF THE INTERIOR

THROUGH: THE DEPUTY ATTORNEY GENERAL

FROM: Kevin V. Di Gregorio *KVD*
Deputy Assistant Attorney General
Hilda A. Manuel *Hilda A. Manuel*
Deputy Commissioner of Indian Affairs

Co-Chairs: Executive Committee for Indian Country
Law Enforcement Improvements

SUBJECT: Final Report of the Executive Committee for Indian
Country Law Enforcement Improvements

PURPOSE: To provide the Attorney General and the Secretary
with the analysis, findings, and options for
improvements prepared by the Executive Committee
in accordance with the Presidential DIRECTIVE ON
LAW ENFORCEMENT IN INDIAN COUNTRY of August 25,
1997.

TIMETABLE: The President has requested options from you by
December 31, 1997.

DISCUSSION:

There is a public safety crisis in Indian Country. In
recognition of this, President Clinton asked both of you "to work
with tribal leaders to analyze law enforcement problems on Indian
lands [and to] provide [the President] with options for improving
public safety and criminal justice in Indian Country." The

urgency of the situation required completion of this report by October 31, 1997, so that it could be included in the next budget cycle. An "Executive Committee for Indian Country Law Enforcement Improvement" was formed to help carry out this mandate.¹ Its views and findings are in the attached Report. Generally, the Executive Committee, in consultation with the Tribes, examined the issues and problems and determined that (1) a substantial infusion of resources into Indian Country law enforcement is essential, and (2) the delivery of law enforcement services must be consolidated and improved.

U.S. Attorneys led a series of tribal consultations on Indian Country law enforcement across the country during September and early October of 1997. In the lower 48 states, a total of 205 of the 332 Tribes (62 percent) participated in these consultations. There was a general consensus among the Tribes on the following issues:

- Law enforcement in Indian Country, as it presently exists, often fails to meet basic public safety needs.
- Serious and violent crime is rising significantly in Indian Country -- in sharp contrast to national trends.
- The single most glaring problem is a lack of adequate resources in Indian Country.
- Although the system must change, Indian hiring preferences and contracting/compacting guarantees must be protected under any new structure.²
- The fragmented criminal justice system results in poor coordination, which can be remedied only by consolidating services under one authority.
- Tribal governments do not consider the FBI to be an appropriate management structure for this purpose.³

The Executive Committee recommends the following two options for your consideration:

¹ This Committee includes tribal leaders and representatives from DOI and DOJ. See the full list at Tab H.

² Of all issues discussed by the Executive Committee, tribal leaders held the strongest views on these two issues. The Tribes have made it very clear that assurances are mandatory that present contracting/compacting and Indian preference policies will continue.

OPTION A

Consolidate the three major law enforcement programs under the line and budgetary authority of BIA's Office of Law Enforcement Services (OLES). DOJ will assist OLES by expanding the availability of technical assistance and training.

OPTION B

Transfer all three major law enforcement programs in BIA (criminal investigations, uniformed police, and detention services) to DOJ, maintaining Indian hiring preference and contracting/compacting authority. DOJ will create liaison positions to assure that community accessibility and tribal input on local law enforcement issues and priorities are maintained.

Based on the President's 1998 budget, the federal government spends about \$130,000,000 on law enforcement and detention in Indian Country. Two implementation strategies are presented in the Report: phasing in increases over 3 years or over 4 years. In either case, the total request for FY 2003 would be approximately \$585,000,000, which exceeds the 1998 amount by almost 350 percent. Regardless of which option is chosen, the costs will be approximately the same. For FY 1999, the enhancement difference between phasing in over three versus four years is approximately \$22,900,000.

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REPORT OF THE EXECUTIVE COMMITTEE FOR INDIAN
COUNTRY LAW ENFORCEMENT IMPROVEMENTS

October 31, 1997

A. INTRODUCTION

There is a public safety crisis in Indian Country. Leaders from the federal and tribal governments have examined the law enforcement problems and determined that a substantial infusion of resources into Indian Country law enforcement is essential. This report discusses the issues and presents two options that address these problems.

Basic law enforcement protection and services are severely inadequate for most of Indian Country. This problem affects more than 1.4 million people who depend on the federal government for these services.¹ Simply put, many American citizens living on Indian reservations do not receive even the minimum level of law enforcement services taken for granted in non-Indian communities. According to a 1997 census estimate by the Indian Health Service (IHS), there are 1,429,800 Indians residing on or adjacent to Indian reservations, allotments, and dependent Indian communities governed by federally-recognized Tribes. In the lower 48 states, these communities are spread across approximately 56 million acres, with millions of additional acres in Alaska. American Indians are one of the fastest growing minority groups in the nation, yet rank at the bottom of all minority groups in terms of life expectancy. Unfortunately, violence and crime are

→ WHAT WOULD COMPARABLE LAW ENFORCEMENT SERVICES BE FOR SIMILAR # OF JURISDICTIONS, WITH SAME SIZE(S) + TOTAL POPULATION? WHY SO DIFFERENT FROM THESE (IF AT ALL)?

¹ Today, federal law enforcement is the only protection for victims of violent felonies in most of Indian Country. The federal government has a basic responsibility to preserve public safety in all of Indian Country. In general, this responsibility derives from the unique trust relationship between federal and tribal governments, as well as specific statutory provisions such as those that mandate exclusive federal jurisdiction for "major crimes," including murder, rape, robbery, and child abuse. (See 18 U.S.C. § 1152-1153). Moreover, the 1994 Crime Act has expanded federal criminal jurisdiction in Indian Country in such areas as guns, violent juveniles, drugs, and domestic violence. In states covered under 18 U.S.C. § 1162 (P.L. 280), such as California and Alaska, baseline law enforcement services are provided by the state, and Indian Tribes have concurrent authority over crimes by Indians.

→ WHAT IS CRIME PROBLEM -¹ JUIE, DRUG, VIOLENCE
→ BEST DEACT W/ BY WHICH JURISDICTION?

contributing factors. According to a 1996 IHS report,² the homicide rate for Indian males is almost three times higher than the rate for white males.

A reported crime in Indian Country is twice as likely to be violent as compared to crimes reported elsewhere in the United States. In contrast, there are fewer than half as many law enforcement officers per capita.³ This is not a new situation; the problems addressed in this report developed over decades.⁴ In the early 1990s, however, federal agencies with law enforcement responsibilities initiated an effort to re-examine and evaluate the federal government's role in ensuring public safety on America's Indian reservations.

The first step in addressing this process was President Clinton's Executive Memorandum on Government-to-Government Relations With Native American Tribes (April 28, 1994). Shortly thereafter, the historic 1994 Listening Conference was held in Albuquerque. There, the Departments of Justice, Interior, and Housing and Urban Development heard the concerns of tribal leaders. Issues of public safety and crime on reservations were recurring themes. As a direct response to the Listening Conference, the Attorney General created the Department's Office of Tribal Justice and issued the Department's Policy on Indian Sovereignty and Government-to-Government Relations (June 1, 1995). To address tribal concerns and improve law enforcement in Indian Country, a number of initiatives were undertaken, including the assignment of additional FBI investigators and federal prosecutors to Indian Country, and targeted Bureau of Indian Affairs (BIA) law enforcement projects. Furthermore, in November 1995, the Department of Justice launched the Indian Country Justice Initiative, an inter-departmental project specifically intended to explore and address the broad array of public safety needs in Indian Country.

As these efforts were implemented and continued to develop, some basic problems became apparent. The most glaring deficiency is a chronic lack of law enforcement resources in Indian Country. This realization led to a series of informal meetings between the BIA and DOJ, and a preliminary tribal consultation on this issue was initiated in June 1996. As the discussions

² Homicide and Suicide Among Native Americans (1979-1992) at 17. A report by The Indian Health Service in cooperation with the National Center for Injury Prevention and Control (1996).

³ Based on data from FBI Uniform Crime Reports and BIA Annual Law Enforcement Reports.

⁴ See, for example, the Report of the Task Force on Indian Matters, U.S. Department of Justice, October 1975.

→ ALMOST THREE
BLACK + HISPANIC
RATES?

→ AS
COMPARED
TO LAWYER,
SUNNY
JURISDICTION

WHAT
EXACTLY
IS THIS?

expanded, new participants brought new information. It became clear that the law enforcement problems in Indian Country are severe.

In recognition of this, President Clinton asked the Attorney General and the Secretary of the Interior "to work with tribal leaders to analyze law enforcement problems on Indian lands [and to] provide [the President] with options for improving public safety and criminal justice in Indian Country." The Attorney General and the Secretary in turn appointed an "Executive Committee for Indian Country Law Enforcement Improvement," charged with carrying out this mandate.⁵ The urgency of the crisis in Indian Country required completion of this report by October 31, 1997, so that any options selected that require additional funds could be included in the President's budget request for FY 1999. The views and findings of the Executive Committee follow.

B. THE CONSULTATION PROCESS: FINDINGS

Pursuant to the President's Directive, the Attorney General requested that the U.S. Attorneys with Indian Country jurisdiction hold consultations with tribal leaders. A series of tribal consultations about Indian Country law enforcement was held across the country during September and early October of 1997. In the lower 48 states, a total of 205 of the 332 Tribes (62 percent) participated in these consultations.⁶ Specific issues common to the consultation process are discussed at Tab F. A general consensus was reached on the following issues:

- Law enforcement in Indian Country, as it presently exists, often fails to meet basic public safety needs. → WHY?
- Serious and violent crime is rising significantly in Indian Country -- in sharp contrast to national trends.
- The single most glaring problem is a lack of adequate resources in Indian Country. Any solution requires a substantial

⁵ This Committee includes tribal leaders and representatives from DOI and DOJ. See the full list at Tab H.

⁶ This figure does not include Alaska, which has a large indigenous population and 226 Tribes. However, only one small Tribe in Alaska (the Metlakatla) is under federal jurisdiction. Alaska does have tribal police and a serious crime problem. While Alaska Natives represent 16 percent of the state's population, they account for 34 percent of the prison population. According to Crime Reported in Alaska 1995 (Alaska Department of Public Safety), death rates for Alaska Native males from homicide and legal execution were 2.3 times those of white males.

specific criminal justice issues are included as Tabs A through D.

Deficient Resources

Law enforcement and detention services in Indian Country are currently limited to a total federal budget of about \$130 million, of which about \$80 million are Tribal Priority Allocation (TPA) funds. The Executive Committee has determined that a 350 percent increase, over at least a three-year phase in period, will be necessary to make public safety in Indian Country comparable to the rest of America. At full funding in 2003, the projected budget will be about \$585,000,000. Under this plan the funding request for the next fiscal year (1999) will be about \$330,000,000.¹¹

→ How \$80?

→ MORE THAN ALL OF BYRNE?

One of the most telling indicators of inadequate law enforcement services in Indian Country is the chronic shortage of personnel. For example, the 1996 UCR statistics show 2.9 officers per 1,000 citizens in non-Indian communities under 10,000.¹² The equivalent ratio in Indian Country is 1.3 officers per 1,000 citizens -- less than one-half the per capita coverage in small communities outside of Indian Country. Approximately 1,600 BIA and tribal uniformed officers must patrol the 56 million acres of tribal lands in the lower 48 states. On the 17.5 million acres owned by the Navajo Nation, the ratio of officers to citizens is only 0.9 per 1,000. Remote areas, poor roads, and no backup not only result in poor service to the people, but also stressful and dangerous jobs for the officers. On the Navajo Nation alone, two officers were killed in the line of duty in the last two years while patrolling alone.

PER
CAPITA
ANALYSIS

In FY 1998, only 78 full-time BIA criminal investigators and the full-time equivalent of 102 FBI agents are available to investigate violent and serious crimes nationwide.¹³ Although

¹¹ This figure does not include officers hired under the three-year COPS grant program. In addition to the limited time frame, this program, by statute, does not permit expenditures for essential equipment, training, and other critical support services. DOJ grants, such as those funded under the Byrne and juvenile justice discretionary and formula grant programs, also are excluded from this figure.

¹² Using the 1990 census, the BIA reports that only 24 of the 558 federally-recognized Tribes numbered more than 10,000. Hence, this is the nearest possible comparison.

¹³ Although the FBI has assigned additional agents to help compensate for the loss of BIA criminal investigators, they normally work out of resident agencies or satellite offices that

there are about 90 tribal investigators, they often handle tribal code cases and seldom appear in federal court except as witnesses. The total investigative capacity for Indian Country is inadequate, especially given the rise in violent crime. As an interim measure, DOJ has requested additional FBI agents and Assistant U.S. Attorneys in Indian Country to help handle the higher Indian caseload.

Detention services also suffer from grossly inadequate resources. There are 70 jails, including detention and holding facilities, located on 55 reservations. Most were designed to hold between 10 and 30 inmates, were built in the 1960s and 1970s, are outdated, do not offer sufficient bed space for current needs, do not meet jail or building codes, and present a threat to the health and safety of inmates. Only 10 of the 55 jails are juvenile facilities, even though bed space demand for juvenile offenders is rising rapidly. Many Indian Country jails house both adults and juveniles. Funds are not available for renovation and new construction, and very little is available to maintain existing buildings.

JUVIE
#5

Jail operations are also poorly funded. Staffing levels fall far short of those required for adequate inmate supervision, thus creating a threat to the welfare of the community, staff, and inmates. Funds for needed inmate programs, such as education and substance abuse treatment, are virtually non-existent. Resources for equipment and supplies are such that, in some jails, inmates receive no blankets or mattresses and no basic hygiene items, such as soap or toothpaste. Staff sometimes buy these basic items with their personal funds. Finally, staff receive little or no training for the responsibilities and liabilities they face because (1) staffing levels are so low the jails cannot afford to lose an officer temporarily, and (2) funds are not available to travel to and attend the Indian Police Academy.

Funding Indian Country Law Enforcement

The Executive Committee's funding determination is a minimum figure necessary to bring law enforcement in Indian Country up to a basic level of services. Each Tribe's current law enforcement TPA allocation will form the baseline for that Tribe's law enforcement budget. Because this total figure represents the minimum amount needed to address these problems, funds must be dedicated solely for law enforcement services.

are not close to the Tribes they serve. For example, agents assigned to the FBI office in Gallup, N.M., report that it is not unusual to travel three to six hours for a single witness interview.

Among the factors that will be considered in allocating these funds are the following:

- Serious and violent crime rates and trends
- Population and distribution
- Geographic size, accessibility and infrastructure
- Current sworn force and existing law enforcement resources

DOJ program grants and other assistance will continue as a separate funding source that complements community outreach, victim assistance and other programs related to basic law enforcement efforts. As a consequence of improvements to law enforcement services, a corresponding increase in funds is needed for judicial systems, especially tribal courts. As a first step, DOJ is requesting \$10 million for FY 1999 and BIA is asking for \$11.1 million to aid tribal courts through a variety of programs.

D. OPTIONS TO IMPROVE LAW ENFORCEMENT SERVICES

Numerous options to improve law enforcement in Indian Country were explored during consultations with the Tribes. Based on these consultations, the Executive Committee refined the range of possibilities and present for consideration the following two options. Both options assume significant funding — ? increases above existing tribal allocation funds for law enforcement. Also, Option B assumes that Congress will give DOJ the necessary authority to contract/compact with Tribes and to offer Indian hiring preference.

The Tribes expressed little interest in options such as splitting functions between the Justice and Interior Departments or maintaining the status quo. Also, as a variation of the DOJ Option, the Tribes expressed no interest in placing all of the law enforcement responsibilities within the FBI. Some wanted no changes at all, just additional funds. A few others requested that Tribes be provided directly with sufficient funds for all law enforcement services. One variation on the BIA option was advanced by the Navajo Nation.¹⁴ Accordingly, we have narrowed

WHAT
EXACTLY
DOES THIS
MEAN

¹⁴ The Navajo Nation favors the BIA option but suggests "that OLES be elevated within (DOI) to a level equal with the several bureaus in (DOI), such as BIA, Bureau of Reclamation, Land Management, etc." In addition, the Navajo Nation believes that a DOJ office should be created to provide "a comprehensive interface between the DOI/BIA and USDOJ...to ensure coordination of the full range of services needed to support an enhanced law enforcement system in Indian Country."

the options to two.¹⁵ Also, based on feedback from the Tribes, the Executive Committee recommends designation of individuals to function as liaisons between each Tribe and the federal (and local) law enforcement community to improve accessibility and tribal input on local law enforcement issues and priorities. These persons could work out of U.S. Attorneys' offices or the appropriate field structure.

?
SOUNDS
GOOD - WHAT
ABOUT THIS
EXTRA?

The options presented below include commentary that may be helpful to the deliberative process.

OPTION A

Consolidate the three major law enforcement programs under the line and budgetary authority of BIA's Office of Law Enforcement Services (OLES). DOJ will assist OLES by expanding the availability of technical assistance and training.

Commentary

- Standardizes and consolidates BIA's currently bifurcated law enforcement administrative structure. Presently, criminal investigators work within a professional law enforcement organization, headed by managers with law enforcement training. In contrast, BIA uniformed police and detention staff report to that reservation's BIA superintendent, who generally has no law enforcement background.¹⁶ The elimination of fragmented responsibilities for law enforcement within BIA would allow BIA to build on its collective experience in delivering Indian Country law enforcement services. ✓
- Contains some of the same advantages of the DOJ Option, while allaying concern that the BIA is being dismantled.
- Allows for the uniform application of standards, policies, and procedures within BIA law enforcement components.
- A preliminary BIA analysis indicates that this consolidation may be possible under the 1990 Indian Law Enforcement Reform Act, thus eliminating the need for new legislation. ✓

¹⁵ Once an option is selected, a performance plan that will establish goals and measures of results will be developed, as mandated under the Government Performance Results Act (GPRA).

¹⁶ This problem was highlighted in an Oversight Hearing before the Subcommittee on Native American Affairs on the Indian Law Enforcement Reform Act, March 18, 1994. H.R. Doc. No. 103-74, p.50.

→ ?

- Because of the diverse mandate of the Department of the Interior, BIA may be unable to obtain or sustain adequate funding for law enforcement unless Congress requires a separate funding stream for that purpose.

OPTION B

Transfer all three major law enforcement programs in BIA (criminal investigations, uniformed police, and detention services) to DOJ, maintaining Indian hiring preference and contracting/compacting authority. DOJ will create liaison positions to assure that community accessibility and tribal input on local law enforcement issues and priorities are maintained.

Commentary

- Moves the law enforcement function to the Department with primary responsibility for federal law enforcement. This assures that professional standards for investigative, police, and detention services in Indian Country would be met.
- Brings the full array of all DOJ resources to bear on the deplorable condition of Indian Country law enforcement.
- Helps insulate Indian Country law enforcement from budget cuts that may affect a more multi-function Department such as Interior.

Implementation Overview

Under Option A, the Interior Secretary would direct the consolidation of criminal investigators, uniformed police, detention services, and other related law enforcement activities under BIA/OLES. The Indian Law Enforcement Reform Act of 1990 appears to provide the Interior Secretary with the required authority. Necessary legislation would be identified and requested.¹⁷ OLES would begin efforts to upgrade their training capacity. DOJ would establish a liaison mechanism with BIA and would support BIA's efforts through technical assistance and training. Also, DOJ would continue its existing grant programs to Tribes.

Under Option B, DOJ would ask Congress for enabling legislation to create a new Indian Country Law Enforcement Bureau, including authority to contract/compact with Tribes and

¹⁷ This may include whether technical corrections are needed in the Indian Law Enforcement Reform Act of 1990. For example, one area of interest is Sec. 5, 25 U.S.C. § 2804, relating to cross-deputization agreements.

to offer Indian hiring preference. A small headquarters and six field offices would be established. Simultaneously, the Interior Secretary would direct the consolidation of services as stated above. As part of an overall implementation plan, the ability to increase training capacity quickly is a priority. Also necessary are criteria for funding within program categories. Following Congressional approval, the functions, as well as both law enforcement and administrative personnel from OLES, would be transferred into the new DOJ bureau.

Under both options it would be necessary to develop a budget implementation plan and hire new staff.

G. ESTIMATED COSTS AND STAFFING ISSUES

Under any option, significant additional resources will be required to address the chronic and pervasive problems confronting law enforcement efforts in Indian Country. Additional resources are needed to create an effective uniformed police presence, to investigate major crimes in Indian Country, and to augment law enforcement management, administration, and oversight functions. In addition, resources are badly needed for a basic adult and juvenile detention capacity in Indian Country, including the construction, renovation, and operation of detention facilities. Where it is appropriate, funds are needed to contract for additional detention space. Imbedded in the options are several resource-related considerations which are discussed below, along with a discussion of cost estimates.

Basic Law Enforcement Needs

Given the current estimated population in Indian Country (1,429,800), a total of at least 4,290 sworn officers are needed to provide a minimum level of coverage comparable to that in rural America. Of that amount, about 15 percent should be criminal investigators and 85 percent should be uniformed officers. Adjusting for the fact that Indian lands in P.L. 280 states generally require only limited services from federal criminal investigators, a total of 496 criminal investigators and 3,647 uniformed officers are needed in Indian Country.¹⁸ Therefore, an increase of 226 (from 270 to 496) criminal investigators and 2,047 (from 1,600 to 3,647) uniformed officers

¹⁸ At 15%, the number of criminal investigators needed would be 644. However, this figure was reduced to 496 to take into account the 23% of tribal population that is covered by P.L. 280 and thus would not need additional federal criminal investigators. For example, approximately 100,000 Alaskan Natives would be eligible for additional police officers, but not a corresponding increase in criminal investigators, because the state is responsible for criminal investigations.

would be necessary to meet minimum standards. These increases will be necessary regardless of whether the law enforcement officers remain within a reorganized BIA or are assigned to a new DOJ agency. Also, clerical and support staff eventually would be needed at a level commensurate with the increase in sworn officers.

Additional Assistant U.S. Attorneys (AUSAs) are needed to support the increase in criminal investigators. Based on current standards in Indian Country, 1 AUSA is needed for every 3 investigators. Therefore, an additional 75 AUSAs (and commensurate support positions) are required to support an increase of 226 criminal investigators.

Detention

Detention needs in Indian Country involve funding for (1) operations, including staff, equipment, and supplies; (2) facilities, including maintenance, renovation, and new construction; (3) inspection and oversight; and (4) training and technical assistance. Most of the 70 jails in Indian Country are old, unsafe, and do not meet basic code requirements. At the same time, demand, especially for juvenile bed space, is rising. Initial costs for construction and renovation can be phased in over several years. The average, expected life of a jail is about 30 years, and most Indian Country jails were built in the 1960s and early 1970s. Once complete, however, about 80 percent of the budget should be for staffing. Funds are needed for augmenting current staffing and upgrading staff capabilities through training and technical assistance.

Training

It is imperative that law enforcement officers receive full and appropriate training. The range of training options must include curricula and certification for investigators, first responders, jailers, and support staff. Currently, there is no site that can accommodate the needed training programs. Moreover, the training capacity must increase to accommodate a surge in students. Thus, a police academy is needed to handle current and future training needs. While adequate curricula exist, an appropriate site must be identified, such as a recently closed military facility. See Tab E for further discussion.

Contracting

In 1974, Congress passed, and the President signed, into law the Indian Self-Determination and Education Assistance Act (P.L.

93-638).¹⁹ As amended, this law allows Tribes to enter into contracts for services in Indian Country that the BIA and some other federal agencies perform on Indian lands. Since 1995, the majority of Tribes have contracted all or part of their law enforcement programs, and all funds related to the contracted activity are provided to the Tribe. This includes funding for personnel, operating costs, and the indirect costs of performing the law enforcement function (such as personnel benefits, procurement, facilities management, and so on). For the most part, law enforcement funds are mixed with all other contracted/compacted funds and can be shifted to other needs as determined by the Tribe.

Under any option, the practice of contracting/compacting services must be preserved because it is central to tribal self-determination. Therefore, if the law enforcement function is transferred to DOJ, P.L. 93-638 must be amended to allow the Attorney General to enter into contract agreements with the Tribes. In addition, mechanisms must be put into place to ensure that law enforcement funds are used only for law enforcement purposes.

Liability Insurance

Many tribal police departments do not carry liability insurance. In addition, coverage under the Federal Tort Claims Act (FTCA) has not proven to be adequate protection for tribal law enforcement officers for several reasons. First, claimants and their attorneys are generally unfamiliar with this uncodified provision of federal law. Suits are often filed in tribal court, without notice to the United States, and tribal judges hear no references to the FTCA which might persuade them to dismiss the suit. Second, Bivens-type actions (personal liability) common against federal law enforcement officers, are not covered by the FTCA. Third, certification that the tribal officer is acting within the scope of a 638 contract is often difficult, as there are several layers of approvals, and some Tribes have not provided necessary information to the Interior Department to assist in the administrative determination of the claim. Consequently, the actions of tribal police officers outside of Indian Country when assisting police from other jurisdictions are not covered by this assumption of federal liability. Although FTCA provides important coverage for tribal police acting under 638 contract, additional coverage appears needed. This problem could be solved by earmarking a tiny fraction of the new funds for the purchase of liability insurance by law enforcement contractors.

¹⁹ Title I, § 102, 102 Stat.2285, as amended by P.L. 103-413, P.L. 103-435, and P.L. 103-437.

Cost Estimates

Practical considerations preclude the ability of either BIA or DOJ to "fix" law enforcement and detention in Indian Country in one year. Qualified applicants for additional positions need to be recruited, pass physical and background checks, and to be hired, trained, and assimilated into the workforce. New business practices, procedures, and working relationships need to be tested and implemented. Detention needs assessments must be prepared and revised as necessary, and facility repair and new construction plans must be developed to accommodate the revised needs. In short, a host of implementation issues must be systematically identified and resolved so that additional resources are applied effectively and efficiently. This takes time. Therefore, in developing cost estimates, the resource needs identified above are requested over a period of five years for planning purposes.

Based on the President's 1998 budget, the federal government spends about \$130,000,000 on law enforcement and detention in Indian Country. This provides for an inadequate level of services in every area of law enforcement, including program management, administration, and oversight. Presented below are the 1999 cost increases related to two implementation strategies: phasing in increases over 3 years, or phasing them in over 4 years. In either case, the total request for FY 2003 would be approximately \$580,000,000, which exceeds the 1998 amount by almost 350%. Regardless of which option is chosen, the costs will be approximately the same.

3-year Implementation, 1999 Enhancement

	Amount	Positions
Uniformed Officers.....	\$51,817,000	682
Criminal Investigators.....	6,550,000	65
Clerical Support.....	2,987,000	85
Dispatchers.....	7,921,000	220
Field Offices.....	3,063,000	60
Administrative Staff.....	3,142,000	73
Detention Staff.....	12,629,000	275
Detention Technical Assistance.....	250,000	...
Detention Construction.....	40,360,000	...
Detention Contracting.....	5,000,000	...
Detention Modernization and Repair....	12,600,000	...
Facilities Operations and Maint.....	2,600,000	...
Computer Equipment.....	380,000	...
FBI Agents/Support.....	4,660,000	50
Assistant U.S. Attorneys/Support.....	4,481,000	43
FBI Victim/Witness Coordinators.....	3,351,000	31
Training.....	3,000,000	...
Tribal Courts.....	10,000,000	...

Drug Testing/Treatment.....	10,000,000	...
Juvenile Justice Initiatives.....	20,000,000	...
Miscellaneous.....	<u>186,000</u>	<u>4</u>
TOTAL	\$204,977,000	1,584

4-year Implementation, 1999 Enhancement

	Amount	Positions
Uniformed Officers.....	\$38,863,000	512
Criminal Investigators.....	4,937,000	49
Clerical Support.....	2,249,000	63
Dispatchers.....	5,940,000	165
Field Offices.....	3,063,000	60
Administrative Staff.....	1,722,000	40
Detention Staff.....	9,441,000	206
Detention Technical Assistance.....	250,000	...
Detention Construction.....	40,360,000	...
Detention Contracting.....	5,000,000	...
Detention Modernization and Repair....	12,600,000	...
Facilities Operations and Maint.....	2,600,000	...
Computer Equipment.....	380,000	...
FBI Agents/Support.....	4,660,000	50
Assistant U.S. Attorneys/Support.....	3,466,000	35
FBI Victim/Witness Coordinators.....	3,351,000	31
Training.....	3,000,000	...
Tribal Courts.....	10,000,000	...
Drug Testing/Treatment.....	10,000,000	...
Juvenile Justice Initiatives.....	20,000,000	...
Miscellaneous.....	<u>186,000</u>	<u>4</u>
TOTAL	\$182,068,000	1,211

✓ Tribes Struggle With Violent-Crime Wave

■ **American Indians:** A surge in lawlessness in the Navajo Nation mirrors a rise in homicides and sexual assaults on U.S. reservations hard-pressed to cope.

By LOUIS SAHAGUN
TIMES STAFF WRITER

WINDOW ROCK, Ariz.—Only two years ago, social worker Deannah Neswood-Gishey's neighborhood on a hill overlooking the Navajo Nation's tribal capital was peaceful. Picturesque.

That was before many of the hogans—the trailers and shacks surrounding her home of 30 years—became turf-war bunkers for gang members and hide-outs for derelicts who swill a toxic mixture of hair spray and water called "ocean."

"A teen in that house was shot and killed a year ago with a shotgun, and over there a gang member recently burned to death in a Jeep when a Molotov cocktail backfired," said Neswood-Gishey, 32. "A person in that trailer was stabbed four months ago. . . . Five young men have committed suicide here over the past two years."

What is happening on the nation's largest reservation underscores a tragic reality in many others across the West: An alarming rise in crime—particularly homicide and sexual assaults on minors—is ripping apart the things that connect people with each other and their culture.

The crime wave comes at a time when Native Americans—whose police, investigation and detention services have always lagged far behind this country's poorest jurisdictions—are being blanketed with federally funded pilot programs to reduce social problems and violence.

So far, these strategies to curb gangs, substance abuse, alcoholism, chronic unemployment and abject poverty seem to have had little effect on crime trends that on some reservations now rival those seen in large cities.

Federal statistics illustrate the stark contrast between public safety throughout so-called Indian Country and the rest of the United States. On a per-capita basis, the nation's homicide rate dropped about 22% from 1992 to 1996. During the same period, homicides on reservation lands rose 87%.

On this 25,000-square-mile reservation, which has seen about 75 gangs emerge during the past five years, the murder rate has skyrocketed to four times the national average—and nearly double the rate in Los Angeles.

In 1996, the number of murders on the Navajo reservation soared to 67, far higher than the average of 35 per year recorded for a decade. This year, the number hit 40 by mid-October and was expected to wind up in the low 50s.

The federal government wants to help. President Clinton has directed Atty. Gen. Janet Reno and Interior Secretary Bruce Babbitt to develop by year's end a comprehensive proposal to improve law enforcement and criminal justice on reservations.

"Just throwing money and resources at them may not be the answer," said Tom LeClaire, director of the Justice Department's office of tribal justice. "It may take several types of programs tailored for specific locations and problems before we see a reversal."

In the meantime, the murderers are getting younger and the crimes more brutal in this economically depressed reservation of 165,000 people, most of them government workers, ranchers and welfare recipients.

In December 1996, two Shiprock, N.M., teenagers were charged with killing a father and son while they slept in the cab of an 18-wheeler loaded with M&Ms. In July, a heavy-equipment operator found the body of a woman who had been beaten, stabbed to death and then buried in a sand pit. In August, a 29-year-old man was slain with a pickax after an argument over a \$15 oil change.

On Oct. 4, a 16-year-old boy who had been beaten to death with fists, feet and possibly a baseball bat was discovered only a few blocks from Navajo Police Department headquarters. The boy's stepfather, Leroy Nez, is selling scraps of metal, wood and wire at a local flea market to raise money for funeral expenses that totaled \$2,625.

Seated at the dinner table in his tidy house trailer, the 36-year-old equipment operator winced at the memory of seeing "my boy's bloody face" after police found the corpse dumped beside a woodpile.

Wadding up a napkin and tossing it on his kitchen table, he said: "His face looked like that. That's what they did to my boy."

The crime wave is stirring up a law enforcement hornet's nest for the 319 Navajo tribal police who patrol a region the size of West Virginia. Essentially, public demands for protection are rising at the same time that budget-strapped agencies are being overwhelmed by realities over which they have no control.

For one thing, the Native American population is growing increasingly youthful, largely because of high fertility rates. The median age is 24.2 years, compared with 32.9 years for all Americans, according to the Census Bureau.

In recent testimony before the Senate Committee on Indian Affairs, Deputy Assistant Atty. Gen. Kevin Di Gregory warned: "The American Indian population will grow even younger into the next century."

"What this means for an Indian tribe like Gila River in Sacaton, Ariz., a reservation with significant gang activity, is that about one-half of the population is projected to be

under the age of 18 by the year 2000."

In October, police on the Gila River reservation near Phoenix had their hands full investigating drive-by shootings, suspected methamphetamine labs and reports of gang initiations that included mutilations of cats and dogs.

The largest obstacle facing reservation crime-fighters is a lack of funding for more officers, basic equipment and detention facilities. That problem is acute here, where Navajo police can only dream of owning a helicopter, a crime lab or cellular phones.

"We don't have a homicide unit, a sexual-abuse unit, a gang unit, a property-crimes unit—even macro lenses for our cameras to photograph splattered blood," lamented Dorothy Fulton, chief of criminal investigations here. "And we don't have a travel budget, which means our investigators sometimes have to drive 12 hours to 30-minute federal court hearings in Salt Lake City, Utah."

Navajo criminal investigators work out of a dilapidated building where bowed ceilings have leaked for seven years and "air-conditioning" is provided by opening doors and windows. The burglary unit's office is a battered 1989 Chevrolet dubbed "Old Faithful." Police cruisers limp along with faulty engines and cracked windshields.

The department's communications system is dangerously inadequate. A year ago, 11-year veteran Navajo Nation Police Officer Hoskie Gene was strangled and beaten to death when he pursued two burglary suspects. Gene's closest backup was 53 miles away when the killers beat him to the ground with a flashlight and then choked him.

The Window Rock Tribal Jail is a joke to criminals and police officials alike. It was so bad that 16 prisoners escaped before police learned that the facility's back security door could be opened with a piece of wire.

These problems, coupled with increasing demands for overtime, may be starting to take a toll on the personal lives of Navajo officers. In September, two officers were charged with domestic violence, and alcohol-related problems are on the rise departmentwide, authorities said.

The Navajo Department of Public Safety is trying to stretch its annual \$17-million law enforcement budget to recruit more officers from the reservation. Trouble is, they have done such a good job arresting drunks and substance abusers that few of the Navajos who apply for law enforcement positions can pass a requirement calling for a clean criminal record.

As police officials struggle to clean up their image, Navajo medicine men are

warning that the proliferation of gangs, drugs, homicides and sex abuse is a direct result of the steady erosion of Navajo language and traditions—and cultural pollution imported by television and tourists.

Daniel Deschinny, attorney for the Dineh Spiritual and Cultural Society, put it this way: "The guardian spirits that reside in our hearts and in the air, water, mountains, trees and animals around us have turned their backs on those who are doing violence with their ignorance."

"Internalize the great spirit and you will avoid evil and do the right thing for yourself and those around you. Digression from this path is a disaster to oneself and the whole community."

Young Navajo gang members, many of whom were reared in severely dysfunctional families, say it may be too late for that.

For James Wauneka, 20, the gang is his family.

Wauneka is leader of the notorious 200-member Cobra gang at the Rio Puerco Acres housing project, about seven miles north of Window Rock. The gang, he said, "respects me and protects me."

Fellow Cobra member Donathan Yazzie, 19, nodded in agreement.

"These are my family, these homeboys, these Cobras," he said. "What else is there to do? Where else can we go? We have no recreational places, no pool halls, not even a cinema here."

Both young men, however, belong to an all-gang-member work crew that recently was filling potholes with hot asphalt for minimum wage in their 86-unit housing

project. The crew—clad in the green-and-black hooded sweatshirts and bandannas favored by Cobras—was organized by Rio Puerco Acres manager Stewart Caln-impitewa, a law enforcement officer of 20 years and owner of a security and private investigation agency.

"This place used to be a hellhole. Now crime is down and the units are cleaned up," Calnimpitewa said. "Why? We hired over 20 Cobras after giving them the skills and responsibility to do drywalling, house-painting, electrical repairs, roadwork."

Still, none of these Cobras would even consider calling a truce with their rivals, the Dragons.

"As long as Cobras and Dragons are around," one of the young men grumbled, "the gang thing will keep going on."

That kind of tough talk breaks Shirley Yellowfeather's heart. Trying not to cry, the 49-year-old Rio Puerco office aide said her 17-year-old son is soon going to become the first minor from the Navajo Nation to be sentenced in Arizona as an adult in a gang-related homicide case.

"The Navajos are supposed to be real close, but that way of life is dying away," she said. "I was raised to get up at 4 a.m., greet the sun and then toss corn pollen in the four directions for wisdom and strength. I tried to get my son to do that and it was chaos. He'd yell, 'Leave me alone!'"

But she also believes that some Navajo parents are partly responsible for their children's behavior.

"We parents failed these kids because we all came from dysfunctional families," she said.

Neswood-Gishey, a child protective services social worker who averages 200 clients a month—90% of them on welfare—would not argue with that.

But she is not about to wait for things to get better in her troubled neighborhood. Neswood-Gishey and her husband are building a new home in a village about 50 miles away. They expect to move early next year.

Until then, her 9-year-old son is receiving shooting lessons from his father because, she said, "you never know what might happen."

- \$15.0 million for two Nightstalkers (\$10 million funded)
- \$0.9 million for HRT operational airlift support (\$1.5 million funded)

- Other Guidance

The 1999 appropriations bill includes authority for the Federal Bureau of Investigation to develop a three year pilot program for compensation of non-Special Agents in scientific, technical, and similar positions. Authority is also provided for the Treasury Department to implement demonstration programs for such positions in the Bureau of Alcohol, Tobacco, and Firearms, the United States Customs Service, and the United States Secret Service. While OMB strongly support efforts to ensure the highest quality workforce for law enforcement agencies, the new authority appears not to be necessary. Little evidence of recruitment and retention problems for these occupational categories has been provided to OMB, and if there are problems, it appears that they could be solved by the use of existing authorities. In addition, the budget impact of implementing the provisions is not known. The two departments are requested to work with the Office of Personnel Management and OMB to resolve these issues before developing any plan to implement the new authority.

Indian Country Law Enforcement

While this item is included in the list of potential funding increases from the Presidential Reserve, the Passback level includes the requested funding by redirecting and targeting existing programs toward Indian Country. Unless additional funds are provided from the Presidential Reserve, increased funding for Indians should be provided in the following manner:

- Items Funded

- \$10 million for tribal courts
- \$10 million for drug programs
- \$20 million for youth crime prevention programs

- Items Redirected/Targeted Within Base

- \$165 million for the Indian Country law enforcement initiative, to be achieved by targeting existing COPS, OJP, FBI, and U.S. Attorneys' resources towards Indian Country. The chart below shows how OJP and COPS grants should be targeted. In two

cases -- Tribal Courts and Juvenile Justice At-Risk -- new programs for Indian Country would be created. Within existing resources, the FBI should increase its spending on Indian Country from \$13 million to \$23 million, and the U.S. Attorneys should increase Indian Country funding from \$10 million to \$14 million.

Components w/ Indian Programs	Total 1999 Recommendation	Current allocation for Indians (\$)	Current allocation for Indians (%)	Proposed allocation for Indians (\$)	Proposed allocation for Indians (%)
COPS	1,420	2	0.1%	54	3.8%
Prison Grants	711	3	0.4%	78	11.0%
Byrne Grants	553	1	0.2%	25	4.5%
At-risk	20	n/a	n/a	20	100.0%
Drug Programs	200	1	0.5%	11	5.5%
Tribal Courts	10	n/a	n/a	10	100.0%

- **Items Not funded**

- No funds are provided for the transfer of existing programs from the Bureau of Indian Affairs to the Justice Department. Interior will continue to provide funds for law enforcement to tribal governments.

Drug Enforcement Administration

- **Items Funded**

- **\$7.5 million for methamphetamine.** This amount provides \$1.0 million for clandestine laboratory trucks, \$392,000 for laboratory intelligence, \$1.975 million for chemical control, and \$4.1 million for clandestine laboratory hazardous waste cleanup. While this level is lower than the amount requested, this funding provides infrastructure support to DEA to enhance its current efforts, as well as those provided for in FY 1998 (including 60 agents and \$11.046 million), and is in keeping with the drug-related priorities of the Attorney General and the Office of National Drug Control Policy (ONDCP).

THE WHITE HOUSE

WASHINGTON

August 25, 1997

*Did they do a summary
of the report recommending
+ how they differ from them?*

MEMORANDUM FOR THE ATTORNEY GENERAL
THE SECRETARY OF THE INTERIOR

SUBJECT: Law Enforcement in Indian Country

I am proud of my Administration's progress in reducing violent crime and improving public safety for our Nation's citizens. Our efforts are making an important difference. Nationwide, the violent crime rate has dropped approximately 17 percent since 1992, and the homicide rate has declined about 22 percent.

Unfortunately, during the same time period life has become more violent for the 1.2 million Indian citizens who live on or near reservations. Homicide rates, for example, have increased to levels that often surpass those in large American cities. Numbers alone, however, cannot convey the tragic impact of such violence on Indian families and their communities.

This and other information you have provided to me make clear that we need to refocus on this growing problem. While some tribal governments have developed strong law enforcement programs, many others have encountered significant difficulty in doing so. Many Indian citizens receive police, investigative, and detention services that lag far behind even this country's poorest jurisdictions.

The Federal Government has taken steps to address this problem. My Administration has sought increased Department of the Interior funding and tribal control of law enforcement programs on Indian lands. This year, the Federal Bureau of Investigation (FBI) established an Office of Indian Country Investigations in its Violent Crimes Section, allocating additional agents to Indian Country. The FBI also initiated a nationwide outreach training program for Indian Country law enforcement officers. We have created additional tribal liaison positions in the United States Attorney's Offices in Indian Country, intended to improve our ability to bring offenders to justice. Through our Community Oriented Policing Services Program, we have assisted tribal law enforcement agencies in hiring officers in Indian Country.

PHOTOCOPY
MISC. HANDWRITING

Yet, law enforcement in Indian Country remains a serious problem. For these reasons, consistent with the spirit of my 1994 memorandum on government-to-government relations and tribal self-governance, I hereby request that you work with tribal leaders to analyze law enforcement problems on Indian lands. By December 31, 1997, you should provide options to me for improving public safety and criminal justice in Indian Country. To the extent that these options might affect the Departments' budgets, they should be included in your fiscal year 1999 budget submissions and should be consistent with the funding targets of the Bipartisan Balanced Budget Agreement.

William L. Clinton

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In the meantime, the murderers are getting younger and the crimes more brutal in this economically depressed reservation of 165,000 people, most of them government workers, ranchers and welfare recipients.

In December 1996, two Shiprock, N.M., teenagers were charged with killing a father and son while they slept in the cab of an 18-wheeler loaded with M&Ms. In July, a heavy-equipment operator found the body of a woman who had been beaten, stabbed to death and then buried in a sand pit. In August, a 29-year-old man was slain with a pickax after an argument over a \$15 oil change.

On Oct. 4, a 16-year-old boy who had been beaten to death with fists, feet and possibly a baseball bat was discovered only a few blocks from Navajo Police Department headquarters. The boy's stepfather, Leroy Nez, is selling scraps of metal, wood and wire at a local flea market to raise money for funeral expenses that totaled \$2,625.

Josi-

This is the
working draft-
of the Indian
Country-Airline
directive report.

US

Seated at the dinner table in his tidy house trailer, the 36-year-old equipment operator winced at the memory of seeing "my boy's bloody face" after police found the corpse dumped beside a woodpile.

Wadding up a napkin and tossing it on his kitchen table, he said: "His face looked like that. That's what they did to my boy."

The crime wave is stirring up a law enforcement hornet's nest for the 319 Navajo tribal police who patrol a region the size of West Virginia. Essentially, public demands for protection are rising at the same time that budget-strapped agencies are being overwhelmed by realities over which they have no control.

For one thing, the Native American population is growing increasingly youthful, largely because of high fertility rates. The median age is 24.2 years, compared with 32.9 years for all Americans, according to the Census Bureau.

In recent testimony before the Senate Committee on Indian Affairs, Deputy Assistant Atty. Gen. Kevin Di Gregory warned: "The American Indian population will grow even younger into the next century.

"What this means for an Indian tribe like Gila River in Sacaton, Ariz., a reservation with significant gang activity, is that about one-half of the population is projected to be

under the age of 18 by the year 2000."

In October, police on the Gila River reservation near Phoenix had their hands full investigating drive-by shootings, suspected methamphetamine labs and reports of gang initiations that included mutilations of cats and dogs.

The largest obstacle facing reservation crime-fighters is a lack of funding for more officers, basic equipment and detention facilities. That problem is acute here, where Navajo police can only dream of owning a helicopter, a crime lab or cellular phones.

"We don't have a homicide unit, a sexual-abuse unit, a gang unit, a property-crimes unit—even macro lenses for our cameras to photograph splattered blood," lamented Dorothy Fulton, chief of criminal investigations here. "And we don't have a travel budget, which means our investigators sometimes have to drive 12 hours to 30-minute federal court hearings in Salt Lake City, Utah."

Navajo criminal investigators work out of a dilapidated building where bowed ceilings have leaked for seven years and "air-conditioning" is provided by opening doors and windows. The burglary unit's office is a battered 1989 Chevrolet dubbed "Old Faithful." Police cruisers limp along with faulty engines and cracked windshields.

The department's communications system is dangerously inadequate. A year ago, 11-year veteran Navajo Nation Police Officer Hoskie Gene was strangled and beaten to death when he pursued two burglary suspects. Gene's closest backup was 53 miles away when the killers beat him to the ground with a flashlight and then choked him.

The Window Rock Tribal Jail is a joke to criminals and police officials alike. It was so bad that 16 prisoners escaped before police learned that the facility's back security door could be opened with a piece of wire.

These problems, coupled with increasing demands for overtime, may be starting to take a toll on the personal lives of Navajo officers. In September, two officers were charged with domestic violence, and alcohol-related problems are on the rise departmentwide, authorities said.

The Navajo Department of Public Safety is trying to stretch its annual \$17-million law enforcement budget to recruit more officers from the reservation. Trouble is, they have done such a good job arresting drunks and substance abusers that few of the Navajos who apply for law enforcement positions can pass a requirement calling for a clean criminal record.

As police officials struggle to clean up their image, Navajo medicine men are

warning that the proliferation of gangs, drugs, homicides and sex abuse is a direct result of the steady erosion of Navajo language and traditions—and cultural pollution imported by television and tourists.

Daniel Deschinny, attorney for the Dineh Spiritual and Cultural Society, put it this way: "The guardian spirits that reside in our hearts and in the air, water, mountains, trees and animals around us have turned their backs on those who are doing violence with their ignorance.

"Internalize the great spirit and you will avoid evil and do the right thing for yourself and those around you. Digression from this path is a disaster to oneself and the whole community."

Young Navajo gang members, many of whom were reared in severely dysfunctional families, say it may be too late for that.

For James Wauneka, 20, the gang is his family.

Wauneka is leader of the notorious 200-member Cobra gang at the Rio Puerco Acres housing project, about seven miles north of Window Rock. The gang, he said, "respects me and protects me."

Fellow Cobra member Donathan Yazzie, 19, nodded in agreement.

"These are my family, these homeboys, these Cobras," he said. "What else is there to do? Where else can we go? We have no recreational places, no pool halls, not even a cinema here."

Both young men, however, belong to an all-gang-member work crew that recently was filling potholes with hot asphalt for minimum wage in their 86-unit housing

project. The crew—clad in the green-and-black hooded sweatshirts and bandannas favored by Cobras—was organized by Rio Puerco Acres manager Stewart Calnimpewa, a law enforcement officer of 20 years and owner of a security and private investigation agency.

"This place used to be a hellhole. Now crime is down and the units are cleaned up," Calnimpewa said. "Why? We hired over 20 Cobras after giving them the skills and responsibility to do drywalling, house-painting, electrical repairs, roadwork."

Still, none of these Cobras would even consider calling a truce with their rivals, the Dragons.

"As long as Cobras and Dragons are around," one of the young men grumbled, "the gang thing will keep going on."

That kind of tough talk breaks Shirley Yellowfeather's heart. Trying not to cry, the 49-year-old Rio Puerco office aide said her 17-year-old son is soon going to become the first minor from the Navajo Nation to be sentenced in Arizona as an adult in a gang-related homicide case.

"The Navajos are supposed to be real close, but that way of life is dying away," she said. "I was raised to get up at 4 a.m., greet the sun and then toss corn pollen in the four directions for wisdom and strength. I tried to get my son to do that and it was chaos. He'd yell, 'Leave me alone!'"

But she also believes that some Navajo parents are partly responsible for their children's behavior.

"We parents failed these kids because we all came from dysfunctional families," she said.

Neswood-Gishey, a child protective services social worker who averages 200 clients a month—90% of them on welfare—would not argue with that.

But she is not about to wait for things to get better in her troubled neighborhood. Neswood-Gishey and her husband are building a new home in a village about 50 miles away. They expect to move early next year.

Until then, her 9-year-old son is receiving shooting lessons from his father because, she said, "you never know what might happen."



U. S. Department of Justice
Office of the Attorney General

Washington, D.C. 20530

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DATE: October 29, 1997

TO: LeAnne Shimabukuaro

Telephone No. () _____ - _____ Fax No. () 456 - 7028

FROM: David W. Ogden
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SPECIAL NOTE(S) _____

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COUNSELOR TO THE
ATTORNEY GENERAL

fax to LeAnne Samuels

LeAnne —

This is a working draft.
We are still working on the
numbers. This is for your
use only.

Thanks.

David

Report Of The Executive Committee
For
Indian Country Law Enforcement Improvements

DRAFT FINAL REPORT

October 1997

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REPORT OF THE EXECUTIVE COMMITTEE FOR INDIAN
COUNTRY LAW ENFORCEMENT IMPROVEMENTS

DRAFT REPORT

DRAFT

DRAFT

October 24, 1997

A. INTRODUCTION

There is a public safety crisis in Indian Country. Leaders from federal and tribal governments have examined the law enforcement problems and determined that a substantial infusion of resources into Indian Country law enforcement is essential. This report discusses the issues and presents two options that address these problems.

Basic law enforcement protection and services are severely inadequate for most of Indian Country. This problem affects more than 1.4 million people who depend on the federal government for these services.¹ Simply put, many American citizens living on Indian reservations do not receive even the minimum level of law enforcement services taken for granted in non-Indian communities. According to a 1997 census estimate by the Indian Health Service, there are 1,429,800 Indians residing on or adjacent to Indian reservations, allotments, and dependent Indian communities governed by Federally-recognized Tribes. In the lower 48 states, these communities are spread across approximately 56 million acres, with millions of additional acres in Alaska. American Indians are one of the fastest growing minority groups in the nation, yet rank at the bottom of all minority groups in terms of life expectancy. Unfortunately, violence and crime are contributing factors. According to a 1996 Indian Health Service

¹ Today, Federal law enforcement is the only protection for victims of violent felonies in most of Indian Country. The federal government has a basic responsibility to preserve public safety in all of Indian Country. In general, this responsibility derives from the unique trust relationship between federal and tribal governments, as well as specific statutory provisions such as those that mandate exclusive federal jurisdiction for "major crimes," including murder, rape, robbery, and child abuse. (See 18 U.S.C. § 1152-1153). Moreover, the 1994 Crime Act has expanded federal criminal jurisdiction in Indian Country in such areas as guns, violent juveniles, drugs, and domestic violence. In states covered under 18 U.S.C. § 1162 (P.L. 280), such as California and Alaska, baseline law enforcement services are provided by the state, and Indian Tribes have concurrent authority over crimes by Indians.

(IHS) report,² the homicide rate for Indian males is almost three times higher than the rate for white males.

A reported crime in Indian Country is twice as likely to be violent as compared to crimes reported elsewhere in the United States. In contrast, there are fewer than half as many law enforcement officers per capita.³ This is not a new situation; the problems addressed in this report developed over decades.⁴ In the early 1990s, however, federal agencies with law enforcement responsibilities initiated an effort to re-examine and evaluate the federal government's role in ensuring public safety on America's Indian reservations.

The first step in addressing this process was President Clinton's Executive Memorandum on Government-to-Government Relations With Native American Tribes (April 28, 1994). Shortly thereafter, was the historic 1994 Listening Conference held in Albuquerque. There, the Departments of Justice, Interior, and Housing and Urban Development heard the concerns of tribal leaders. Issues of public safety and crime on reservations were recurring themes. As a direct response to the Listening Conference, the Attorney General created the Department's Office of Tribal Justice and issued the Department's Policy on Indian Sovereignty and Government-to-Government Relations (June 1, 1995). To address tribal concerns and improve law enforcement in Indian country, a number of initiatives were undertaken, including the assignment of additional FBI investigators and federal prosecutors to Indian Country; targeted Bureau of Indian Affairs (BIA) law enforcement projects; and in November of 1995, the Department of Justice launched the Indian Country Justice Initiative, an inter-departmental project specifically intended to explore and address the broad array of public safety needs of Indian Country.

As these efforts were implemented and continued to develop, some basic problems became apparent. The most glaring deficiency was a chronic lack of law enforcement resources in Indian Country. This realization led to a series of informal meetings between the BIA and DOJ, and a preliminary, tribal consultation on this issue was initiated in June of 1996. As the discussions

² Homicide and Suicide Among Native Americans (1979-1992) at 17. A report by The Indian Health Service in cooperation with the National Center for Injury Prevention and Control (1996).

³ Based on data from FBI Uniform Crime Reports and BIA Annual Law Enforcement Reports.

⁴ See, for example, the REPORT OF THE TASK FORCE ON INDIAN MATTERS, U.S. Department of Justice, October, 1975.

expanded, new participants brought new information. It became clear that the law enforcement problems in Indian Country are severe.

In recognition of this, President Clinton asked the Attorney General and the Secretary of the Interior "to work with tribal leaders to analyze law enforcement problems on Indian lands [and to] provide [the President] with options for improving public safety and criminal justice in Indian Country." The urgency of this crisis in Indian Country required completion of this report by October 31, 1997, so that it could be included next budget cycle (FY 1999). An "Executive Committee for Indian Country Law Enforcement Improvement" was formed to help carry out this mandate.⁵ Its views and findings follow.

B. THE CONSULTATION PROCESS: FINDINGS

Pursuant to the President's Directive, the Attorney General requested that the U.S. Attorneys with Indian Country jurisdiction hold consultations with tribal leaders. A series of tribal consultations about Indian Country law enforcement were held across the Country during September and early October of 1997. In the lower 48 states, a total of 205 of the 332 Tribes (62 percent) participated in these consultations.⁶ Specific issues common to the consultation process are discussed at Tab F. A general consensus was reached on the following issues:

- Law enforcement in Indian Country, as it presently exists, often fails to meet basic public safety needs.
- Serious and violent crime is rising significantly in Indian Country -- in sharp contrast to national trends.
- The single most glaring problem is a lack of adequate resources in Indian Country. Any solution requires a substantial infusion of new money in addition to existing funds under the current tribal priority allocation (TPA) system.

⁵ This Committee includes tribal leaders and representatives from DOI and DOJ. See the full list at Tab G.

⁶ This figure does not include Alaska, which has a large indigenous population and 226 Tribes. However, only one small Tribe in Alaska (the Metlakatla) is under federal jurisdiction. Alaska does have tribal police and a serious crime problem. While Alaska Natives represent 16 percent of the state's population, they account for 34 percent of the prison population. According to Crime Reported in Alaska 1995 (Alaska Department of Public Safety), death rates for Alaska Native males from homicide and legal execution were 2.3 times those of white males.

- Although the system must change, Indian hiring preferences and contracting/compacting guarantees must be protected under any new structure.
- The fragmented criminal justice system results in poor coordination, which can be remedied only by consolidating investigative, police and detention services under one authority.
- Tribal governments do not consider the FBI to be an appropriate management structure for the consolidated law enforcement services.

C. THE LAW ENFORCEMENT CRISIS IN INDIAN COUNTRY

Rising Crime

Americans have come to expect protection of their basic rights, a sense of justice, and freedom from fear. A responsive, professional criminal justice system makes this possible. Uniformed police officers handle complaints, maintain order, and make arrests. Professional investigators handle serious or complex crimes. Jails and prisons house offenders; many provide appropriate treatment and other programs. Nearby magistrates set bail and judges hear cases. Probation officers make recommendations to the court and supervise probationers as well as those released from prison. To a large extent, what we take for granted exists only in a rudimentary form or does not exist at all for the 1.4 million Native Americans who live on or near Indian lands. Today, many Indian citizens receive police, investigative, and detention services that are not only inadequate, but also suffer by comparison to this country's poorest jurisdictions.

Information from the FBI, the BIA, U.S. Attorneys, researchers, and tribal leaders themselves depicts a stark contrast between public safety in Indian Country and the rest of the United States. Nationwide, for example, violent crime has declined significantly between 1992 and 1996. The overall violent crime rate has dropped about 17 percent, and homicides are down 22 percent. For the same time period, however, the BIA reports that homicides in Indian Country rose sharply.⁷ Some Tribes have murder rates that far exceed those of urban areas known for their struggle against violent crime. In 1995, for example, the murder rate on Ft. Peck reservation in Montana was more than twice that of New Orleans, one of the most violent cities in the United States. During 1996, the people on America's largest reservation, the Navajo Nation, endured 46 non-

⁷ Based on data from FBI Uniform Crime Reports and BIA Annual Law Enforcement Reports.

negligent homicides, resulting in a rate among the top 20 most violent cities.⁸

Other violent crimes, such as gang violence, domestic violence, and child abuse have paralleled the rise in homicides. During fiscal years 1994 - 1996, 84 percent of the FBI Indian Country cases opened (4,334) involved either crimes of violence (48%) or the sexual or physical abuse of a minor child (36%). Violent Indian gangs, who model themselves after their urban counterparts, are a frightening new reality on many reservations. Drug abuse now has been added to the problems caused by alcohol.

There is broad consensus among law enforcement professionals and U.S. Attorneys in Indian Country that the situation is serious and merits urgent attention. Indeed, there is concern that available statistics understate the magnitude of the problem in many areas of Indian Country. A major finding of a recent DOJ Inspector General report on Criminal Justice in Indian Country⁹ was that there is a pervasive "lack of reliable crime statistics in Indian Country...." Moreover, while law enforcement resources have been increased and deployed effectively throughout the United States, BIA resources actually have been reduced in Indian Country during the past few years.¹⁰

Indian Country is extraordinarily diverse in terms of size, geography, enrollment figures, government structure, resources, culture, language, traditions, and law enforcement capabilities. What has become common to too many Tribes is increasing violence, including juvenile crime, gangs, drug abuse, and the physical or sexual assault of children. Problem statements addressing specific criminal justice issues are included as Tabs A through D.

⁸ Other data corroborate this violent trend. According to the IHS, for example, aggravated assaults on Navajo Nation lands rose 71 percent between 1991 and 1995.

⁹ Report No. 96-16, September 1996. For example, in 1996 only 32 percent of the Tribes submitted official crime reports to the BIA. Much information comes from informal surveys.

¹⁰ According to the BIA Office of Law Enforcement Services, 137 positions were lost during the 1995 RIFs. This includes 30 Criminal Investigators, 55 police officers, 16 jailers, and other essential support personnel. These BIA funding cutbacks also cause parallel reductions in law enforcement services provided by the Tribes. Although these were permanent personnel, the three-year grants by the COPS Office have helped increase the uniformed police presence on some reservations.

Deficient Resources

The criminal justice system in Indian Country is currently limited to a total budget of about \$130 million, of which about \$85 million are TPA funds. The Executive Committee has determined that a 350 percent increase, over at least a three-year phase in period, will be necessary to make public safety in Indian Country comparable to the rest of America. At full funding in 2003, the projected budget will be about \$580,000,000. Under this plan the funding request for the next fiscal year (1999) will be about \$330,000,000.¹¹

One of the most telling indicators of inadequate law enforcement services in Indian Country is the chronic shortage of personnel. For example, the 1996 UCR reports a ratio of 2.9 officers per 1,000 citizens in non-Indian communities under 10,000.¹² The equivalent ratio in Indian Country is 1.3 officers per 1,000 citizens -- less than one-half the per capita coverage in small communities outside of Indian Country. Approximately 1,600 BIA and tribal uniformed officers must patrol the 56 million acres of tribally-owned lands in the lower 48 states. On the 17.5 million acres owned by the Navajo Nation, the ratio of officers to citizens is only 0.9. Remote areas, poor roads, and no backup not only result in poor service to the people, but also a stressful and dangerous job for the officers. On the Navajo Nation alone, two officers were killed in the line of duty in the last two years while patrolling alone.

In FY 1998, only 80 full-time BIA Criminal Investigators and the full-time equivalent of 102 FBI Agents are available to investigate violent and serious crimes nationwide.¹³ Although there are about 90 tribal investigators, they often handle tribal code cases and seldom appear in federal court except as

¹¹ This figure does not include officers hired under the three-year COPS grant program. In addition to the limited time frame, this program, by statute, does not permit expenditures for essential equipment, training, and other critical support services.

¹² Using the 1990 census, the BIA reports that only 24 of the 558 Federally-recognized Tribes numbered more than 10,000. Hence, this is the nearest possible comparison.

¹³ Although the FBI has assigned additional Agents to help compensate for the loss of BIA Criminal Investigators, they normally work out of resident agencies or satellite offices that are not close to the Tribes they serve. For example, Agents assigned to the FBI office in Gallup, N.M., report that it is not unusual to travel three to six hours for a single witness interview.

witnesses. The total investigative capacity for Indian Country is inadequate, especially given the rise in violent crime. As an interim measure, DOJ has requested additional FBI agents and Assistant U.S. Attorneys in Indian Country to help handle the higher Indian caseload.

There are 70 Indian Country jails, including detention and holding facilities, located on 55 reservations. Of the 70, ten detain only juveniles. Many of the others house both adults and juveniles. Thirty-seven jails are owned by the BIA and 33 by individual Tribes. Most of the jails were built in the 1960s and 1970s with funding from the Justice Department's former Law Enforcement Assistance Administration and were designed to hold between 10 and 30 inmates.

Most inmates in Indian Country jails are sentenced for misdemeanor offenses and, in most cases, the offenses are alcohol-abuse related. Inmates can be sentenced for up to one year for a tribal offense, and longer if there are multiple offenses. Most inmates, however, serve less than one year. A minority of inmates are felony offenders who are held until they are transferred to federal facilities.

Funding Indian Country Law Enforcement

The Executive Committee's funding determination is a minimum figure necessary to bring law enforcement in Indian Country up to a basic level of services. Because this figure represents the minimum amount needed to address these problems, funds must be dedicated solely for law enforcement services. Among the factors that will be considered in allocating these funds are the following:

- Serious and violent crime rates and trends
- Population and distribution
- Geographic remoteness, accessibility and infrastructure
- Current sworn force and existing law enforcement resources

DOJ program grants and other assistance will continue as a separate funding source that compliments community outreach, victim assistance and other programs related to basic law enforcement efforts. As a consequence of improvements to law enforcement services, a corresponding increase in funds is needed for judicial systems, especially tribal courts.

D. OPTIONS TO IMPROVE LAW ENFORCEMENT SERVICES

Numerous options to improve law enforcement in Indian Country were explored during consultations with the tribes.

Based on these consultations, the Executive Committee refined the range of possibilities and present for consideration the following two options. Both options assume significant funding increases above existing tribal allocation funds for law enforcement. Also, Option B assumes that Congress will give DOJ the necessary authority to contract/compact with Tribes and to offer Indian hiring preference.

The Tribes expressed little interest in options such as splitting functions between the two departments or maintaining the status quo. Also, as a variation of the DOJ Option, the Tribes expressed no interest in placing all of the law enforcement responsibilities within the FBI. A few wanted no changes at all, just additional funds. Excluding some requests to provide the Tribes directly with sufficient funds for all law enforcement services, no additional, substantive proposals were advanced by Tribes. Accordingly, we have narrowed the options to the following two.¹⁴ Based on feedback from the Tribes, the Executive Committee recommends designation of a person to function as a liaison between each Tribe and the federal (and local) law enforcement community to improve accessibility and tribal input on local law enforcement issues and priorities. These persons could work out of the USAOs or the appropriate field structure.

Also, each of the remaining two options includes commentary that may be helpful to the deliberative process.

OPTION A

Consolidate the three major law enforcement programs under the line and budgetary authority of BIA's Office of Law Enforcement Services (OLES). DOJ will assist OLES by expanding the availability of technical assistance and training.

Commentary

- Standardizes and consolidates BIA's currently bifurcated law enforcement administrative structure. Presently, criminal investigators work within a professional law enforcement organization, headed by managers with law enforcement training. In contrast, each BIA uniformed police force reports to that reservation's BIA superintendent, who

¹⁴ Once an option is selected, a performance plan that will establish goals and measures of results will be developed, as mandated under the Government Performance Results Act (GPRA).

generally has no law enforcement background.¹⁵ The elimination of fragmented responsibilities for law enforcement within BIA would allow BIA to build on its collective experience in delivering Indian Country law enforcement services.

- Accomplishes some of the objectives contained in the DOJ Option while allaying concern that the BIA is being dismantled.
- Allows for the uniform application of standards, policies, and procedures within BIA law enforcement components.
- A preliminary BIA analysis indicates that this consolidation may be possible under the 1990 Indian Law Enforcement Reform Act, thus eliminating the need for new legislation.
- Because of the diverse mandate of the Department of the Interior, BIA may be unable to obtain or sustain adequate funding for law enforcement unless Congress requires a separate funding stream for that purpose.

OPTION B

Transfer all three major law enforcement programs in BIA (criminal investigations, uniformed police, and detention services) to DOJ, maintaining Indian hiring preference and contracting/compacting authority. DOJ will create liaison positions to assure that community accessibility and tribal input on local law enforcement issues and priorities are maintained.

Commentary

- Moves the law enforcement function to the Department with primary responsibility for federal law enforcement. This assures that professional standards for investigative and police services in Indian Country would be met.
- Brings the full array of all DOJ resource to bear on the deplorable condition of Indian Country law enforcement.
- Helps insulate Indian Country law enforcement from budget cuts that may affect a more multi-function Department such as Interior.

¹⁵ This problem was highlighted in an Oversight Hearing before the Subcommittee on Native American Affairs on the Indian Law Enforcement Reform Act, March 18, 1994. H.R. Doc. No. 103-74, p.50.

Implementation Overview

Under Option A, the Secretary would direct the consolidation of criminal investigators, uniformed police, detention services, and other related law enforcement activities under BIA/OLEs. The Indian Law Enforcement Reform Act of 1990 appears to provide the Secretary with the required authority. Necessary legislation would be identified and requested. OLES would begin efforts to upgrade their training capacity. DOJ would establish a liaison mechanism with BIA and would support their efforts through technical assistance, training, and appropriate grant programs. A budget implementation plan is necessary.

Under Option B, as a first step, the Secretary would direct the consolidation of services as stated above. As part of an overall implementation plan, the ability to increase training capacity quickly is a priority. Also necessary are criteria for funding within program categories. DOJ would ask Congress for enabling legislation to create a new Indian Country Law Enforcement Bureau, including authority to contract/compact with Tribes and to offer Indian hiring preference. A small headquarters and six field offices would be established. Following Congressional approval, the functions, as well as both law enforcement and administrative personnel from OLES, would be transferred into the new DOJ bureau. Additional hiring of new employees would begin as soon as feasible.

G. ESTIMATED COSTS AND STAFFING ISSUES

Under any option, significant additional resources will be required to address the chronic and pervasive problems confronting effective law enforcement in Indian Country. Additional resources are needed to create an effective uniformed police presence, to investigate major crimes in Indian Country, and to augment law enforcement management, administration, and oversight functions. In addition, resources are badly needed for a basic adult and juvenile detention capacity in Indian Country, including the construction, renovation, and operation of detention facilities. Where it is appropriate, funds are needed to contract for additional detention space. Imbedded in the options are several resource-related considerations which are discussed below, along with a discussion of cost estimates.

Basic Law Enforcement Needs

Given the current population estimate of Indian Country (1,429,800), a total of 4,290 sworn officers are needed to provide a minimum level of coverage that is comparable to rural America. Of that amount, about 15 percent should be criminal investigators and 85 percent should be uniformed officers. Adjusting for the fact that Indian lands in P.L. 280 states generally require only limited services from federal criminal

investigators, a total of 496 criminal investigators and 3,647 uniformed officers are needed in Indian Country.¹⁶ Therefore, an increase of 226 (from 270 to 496) criminal investigators and 2,047 (from 1,600 to 3,647) uniformed officers would be necessary to meet minimum standards. These increases will be necessary regardless of whether the law enforcement officers remain within a reorganized BIA or are assigned to a new DOJ agency. Also, clerical and support staff eventually would be needed at a level commensurate with the increase in sworn officers.

Additional Assistant U.S. Attorneys (AUSAs) are needed to support the increase in criminal investigators. Based on current standards in Indian Country, 1 AUSA is needed for every 3 investigators. Therefore, an additional 75 AUSAs (and commensurate support positions) are required to support an increase of 226 criminal investigators.

Detention

Detention needs in Indian Country involve funding for (1) operations, including staff, equipment, and supplies; (2) facilities, including maintenance, renovation, and new construction; and (3) jail standards, inspection and oversight. Most of the 70 jails in Indian Country are old, unsafe, and do not meet basic code requirements. At the same time, demand, especially for juvenile bed space, is rising. Initial costs for construction and renovation can be phased in over several years. The average, expected life of a jail is about 30 years, and most Indian Country jails were built in the 1960s and early 1970s. Once complete, however, about 80 percent of the budget should be for staffing. Funds also will be needed for augmenting current staffing and staff capabilities through training and technical assistance.

Training

It is imperative that law enforcement officers receive full and appropriate training. The range of training options must include curricula and certification for investigators, first responders, jailers, and support staff. Currently, there is no site that can accommodate the training needs that exist. Moreover, training needs must accommodate a surge in students.

¹⁶ At 15%, the number of criminal investigators needed would be 644. However, this figure was reduced to 496 to take into account the 23% of tribal population that is covered by P.L. 280 and thus would not need additional Federal criminal investigators. For example, approximately 100,000 Alaskan natives would receive additional police officers, but not a corresponding increase in criminal investigators because, by law, the state is responsible for criminal investigations.

Thus, a police academy is necessary to handle the current and future training needs. While adequate curricula exist, an appropriate site must be identified, such as a recently closed military facility. See Tab E for further discussion.

Contracting

In 1974, Congress passed and the President signed into law the Indian Self-Determination and Education Assistance Act (P.L. 93-638).¹⁷ As amended, this law allows Tribes to contract programs in Indian Country that the BIA and some other federal agencies perform on Indian lands. Since 1995, the majority of tribes have contracted all or part of their law enforcement programs, and all funds related to the contracted activity are provided to the Tribe. This includes funding for personnel, operating costs, and the indirect costs of performing the law enforcement function (such as personnel, procurement, facilities management, and so on). For the most part, law enforcement funds are mixed with all other contracted funds and can be shifted to other needs as determined by the Tribe. Currently, BIA has delegated the contracting responsibility to the lowest level -- the 83 agency superintendents and 12 area directors.

Under any option, the practice of contracting services must be preserved because it is central to tribal self-determination. Therefore, if the law enforcement function is transferred to DOJ, P.L. 93-638 must be amended to allow the Attorney General to enter into contract agreements with the Tribes. In addition, safeguards must be put into place that restrict the tribes' ability to use funds appropriated for law enforcement purposes for non-law enforcement programs.

Liability Insurance

Many tribal police departments do not carry liability insurance. In addition, coverage under the Federal Tort Claims Act (FTCA) has not proven to be adequate protection for tribal law enforcement officers for several reasons. First, claimants and their attorneys are generally unfamiliar with this uncodified provision of federal law, and suits are often filed in tribal court, without notice to the United States, and tribal judges hear no reference to the FTCA which might persuade them to dismiss the suit. Second, Bivens-type actions (personal liability) common against federal law enforcement officers, are not covered by the FTCA. Third, certification that the tribal officer is acting within the scope of a 638 contract is often difficult, as there are several layers of approvals, and some Tribes have not provided necessary information to the Interior

¹⁷ Title I, § 102, 102 Stat.2285, as amended by P.L. 103-413, P.L. 103-435, and P.L. 103-437.

Department to assist in the administrative determination of the claim. Consequently, the actions of tribal police officers outside of Indian Country, assisting police from other jurisdictions, are not covered by this assumption of federal liability. Although FTCA provides important coverage for tribal police acting under 638 contract, additional coverage appears needed. This problem could be solved by earmarking a tiny fraction of the new funds for the purchase of liability insurance by law enforcement contractors.

Cost Estimates

Practical considerations preclude the ability of either BIA or DOJ to "fix" law enforcement and detention in Indian Country in one year. Qualified applicants for additional positions need to be recruited, pass physical and background checks, hired, trained, and assimilated into the workforce. New business practices, procedures, and working relationships need to be tested and established. Detention needs assessments must be prepared and revised as necessary, and facility repair and new construction plans developed to accommodate the revised needs. In short, a host of implementation issues must be systematically identified and resolved so that additional resources are applied effectively and efficiently. This takes time. Therefore, in developing cost estimates, the resource needs identified above are requested over a period of five years for planning purposes.

Based on the President's 1998 budget, the federal government spends about \$130,000,000 on law enforcement and detention in Indian Country. This provides for an inadequate level of services in every area of law enforcement, including program management, administration, and oversight. Presented below are the 1999 cost increases related to 2 implementation strategies: phasing in increases over 3 years, or phasing them in over 4 years. In either case, the total request for FY 2003 would be approximately \$580,000,000, which exceeds the 1998 amount by almost 350%. Regardless of which option is chosen, the costs will be approximately the same.

3-year Implementation, 1999 Enhancement

	Amount	Positions
Uniformed Officers.....	\$51,817,000	682
Criminal Investigators.....	6,550,000	65
Clerical Support.....	2,987,000	85
Dispatchers.....	7,921,000	220
Field Offices.....	3,063,000	60
Administrative Staff.....	3,142,000	73
Detention Staff.....	12,629,000	275
Detention Technical Assistance.....	250,000	...
Detention Construction.....	40,360,000	...

Detention Contracting.....	5,000,000	...
Detention Modernization and Repair....	12,600,000	...
Facilities Operations and Maint.....	2,600,000	...
Computer Equipment.....	380,000	...
FBI Agents/Support.....	4,660,000	50
Assistant U.S. Attorneys/Support.....	4,481,000	43
FBI Victim/Witness Coordinators.....	3,351,000	31
Training.....	3,000,000	...
Tribal Courts.....	10,000,000	...
Drug Testing/Treatment.....	10,000,000	...
Juvenile Justice Initiatives.....	20,000,000	...
Miscellaneous.....	<u>186,000</u>	<u>...</u>
Total	\$204,977,000	1,584

4-year Implementation, 1999 Enhancement

	Amount	Positions
Uniformed Officers.....	\$38,863,000	512
Criminal Investigators.....	4,937,000	49
Clerical Support.....	2,249,000	63
Dispatchers.....	5,940,000	165
Field Offices.....	3,063,000	60
Administrative Staff.....	1,722,000	40
Detention Staff.....	9,441,000	206
Detention Technical Assistance.....	250,000	...
Detention Construction.....	40,360,000	...
Detention Contracting.....	5,000,000	...
Detention Modernization and Repair....	12,600,000	...
Facilities Operations and Maint.....	2,600,000	...
Computer Equipment.....	380,000	...
FBI Agents/Support.....	4,660,000	50
Assistant U.S. Attorneys/Support.....	3,466,000	35
FBI Victim/Witness Coordinators.....	3,351,000	31
Training.....	3,000,000	...
Tribal Courts.....	10,000,000	...
Drug Testing/Treatment.....	10,000,000	...
Juvenile Justice Initiatives.....	20,000,000	...
Miscellaneous.....	<u>186,000</u>	<u>...</u>
Total	\$182,068,000	1,211

APPENDIX

TAB A

JUVENILE CRIME AND GANG ACTIVITY

There are two realities that have fueled the rise of juvenile crime on Indian lands during the past several years. First, after decades of stable birth rates, the fertility rate in Indian Country began to rise sharply during the 1970s. The 1990 Census reports that while 26 percent of all Americans were under the age of 18, 34 percent of the Indian population was under the age of 18. The Census Bureau estimates this trend will continue, with a projected Indian population of 4.3 million by the year 2050. In the Gila River Indian Community in Arizona, an area struggling with gang problems, approximately one-half of the population is projected to be under the age of 18 by the year 2000.

Second, the old termination policies and the constraints of reservation life have made economic sufficiency and traditional culture more difficult to sustain. American Indian communities confront difficult social and economic conditions not generally characteristic of other U.S. communities.¹⁸ Chronic unemployment, low levels of educational attainment, geographic displacement and family disruption helps foster the rise in juvenile crime now confronting Indian country.

Dealing with Indian Country juvenile crime is complex. Intelligence on Indian youth gangs can be extremely difficult to gather in light of overlapping jurisdictions, geographic remoteness, and understaffed and overworked FBI, BIA, and tribal law enforcement. The news is not encouraging where detailed records are kept. A 1997 BIA survey, with 132 participating Tribes, estimates 375 gangs with approximately 4,650 gang members on or near Indian Country. Tribal police on the Menominee Reservation in Wisconsin report two organized gangs and a 293 percent increase in juvenile arrests between 1990 and 1994; for the same period, there was only a 45 percent increase in adult arrests.

Despite similarities, the development and characteristics of urban street gangs appears unlike Indian gangs. Most gangs in Indian country are not motivated by economic enterprise to the same extent as urban street gangs, but can be as dangerous or more so as they undertake violent acts to acquire status within their ranks. Some of the Indian gang violence can be shocking:

¹⁸ BIA Strategic Plan, August, 1997.

- In 1996, a man on the Laguna Pueblo was bludgeoned with a beer bottle, stabbed 72 times, then left with a ritualistic triangle carved on his side.
- Also in 1996, on the Laguna Reservation, the nine police officers (who must patrol one-half million acres) were assaulted 34 times, often by juveniles.
- On the Salt River Pima-Maricopa community in Arizona, the number of drive-by shootings rose from one in 1992 to 55 in 1994.
- In October, 1996, five members of the East Side Crips Rolling 30s were indicted under the RICO statute with predicates that included murder, arson, and witness intimidation. All, who were members of the Salt River Pima-Maricopa Community in Arizona, were convicted on May 9, 1997.

Few detention facilities exist in Indian Country that are suitable for juveniles. In short, juvenile delinquents can be arrested, but the lack of detention facilities, probation officers, social services, and other needed programs perpetuates the problem. Not surprisingly, juvenile recidivism in Indian country is very high. Those programs which are in place are often understaffed and lack adequate funding. As existing juvenile facilities are frequently at capacity, juvenile offenders are often kept overnight and then released to their parents. The Omaha Tribal Prosecutor in Nebraska reported that \$30,000 was spent in 1996 housing juveniles at the Wayne, Nebraska, detention center; more than \$180,000 has been spent housing juveniles during the first three quarters of FY 1997, which represents a 500% increase in costs.

TAB B

SEXUAL AND PHYSICAL ABUSE OF CHILDREN

Child abuse permeates all societies without any cultural or socioeconomic boundaries. Despite the lack of accurate reporting, child abuse is undisputedly one of the most prevalent crimes in Indian Country. According to BIA figures from 1993 to 1995, child sexual abuse is among the top three crimes reported in Indian Country.¹⁹ Indeed, in 1990, after hearings on hundreds of documented child sexual abuse cases at the Hopi, Navajo and North Carolina Cherokee Indian Reservations, Congress enacted the Indian Child Protection and Family Violence Prevention Act.²⁰

To improve our response to these crimes, federal agencies have attempted to improve protocol addressing reporting, victim services, background checks, and training. For example, within the Navajo Nation, FBI and the Navajo Division of Public Safety has implemented a Safe Trails Task Force. The New Mexico Safe Trails Task Force has five agents and three criminal investigators from the Navajo Division of Public Safety. Eighty percent of the task force's caseload involves the sexual or physical abuse of children. The caseload is so high that the FBI investigates only sexual abuse involving a child under the age of 12. Even so, as of October 1997 the Phoenix Division Task Force reported 127 open child sexual abuse cases, in addition to 83 homicide cases. Other felony sexual abuse matters are referred to the Tribe for investigation and referral to the United States Attorney's Office.

Other efforts include memoranda of agreements between federal, state and tribal authorities to streamline the reporting and investigation of child abuse. Since 1995, pursuant to a formal agreement between FBI and OLES fingerprint checks have been conducted on tribal employees whose duties and

¹⁹ For example, in the BIA Phoenix area, which includes Nevada, 131 sexual abuse offenses out of 413 total offenses were reported in calendar year 1995. This figure does not reflect all incidents, as fewer than half of the Tribes reported offenses during those years.

²⁰ Codified at 18 U.S.C. § 3201 et seq. Congress expressly found that throughout Indian Country there was gross under-reporting of child abuse, repeated incidents of child abuse perpetrated by federal employees, a complete failure by the federal government and Tribes to conduct criminal background checks for child care providers and teachers, and de minimis funding of counseling and other victim services.

responsibilities allow them regular contact with or control over Indian children.

An inherent difficulty in child sexual abuse investigations is the lack of physical evidence. In one study, experts found that in more than 85 percent of all child sexual abuse cases there was no physical evidence of abuse. Defense attorneys frequently attack interviews of children as suggestive, and investigations are often criticized as inadequate.

Despite attempts to quell child abuse through increased training, multidisciplinary approaches, and prosecution, child abuse continues to threaten Indian Country's most precious resource. Under-reporting continues to mask the toll that child abuse continues to take in Indian Country. Children are reluctant to disclose sexual abuse because of fear and retaliation. Particularized training is necessary to recognize signs and symptoms consistent with child abuse. Support systems must be in place for those victims and their families who come forward. For example, in a recent case, a child victim and her family were forced out of their community and had to live in a hotel for over nine months while they awaited trial of the defendant, a prominent tribal leader.

Most child abuse cases, like all abuse cases nationwide, involves a family member, acquaintance, or other authority figure. Recently, a jailor was convicted of sexually molesting a 14-year-old inmate. Now, at an increasingly disturbing rate, is the reality that more juveniles are committing sexual crimes against children.²¹ One of the most egregious pedophile cases in history involved a non-Indian school teacher employed by BIA boarding schools. Non-Indians pose unique problems for Indian communities because tribal law enforcement has no criminal jurisdiction over these suspects.

Treatment for both victims and offenders, especially juveniles, are limited. Facilities available through BOP contractors, Federal Probation, and the Tribes, cannot accommodate the disturbing increase in these cases. Given that child abuse occurs at an alarming rate, the issue for the federal government, in meeting its trust responsibility to Indian people,

²¹ Examples include a 16-year-old step brother who sneaked into his seven-year-old step sister's bedroom each night to fondle her under her pajamas; two cousins, one 14, the other 16, who sodomized two neighborhood children because "they thought it would be fun"; a 14-year-old boy who, left to babysit an eight-year-old girl and her six-year-old brother, threw the girl down to the floor and raped her; and two 16-year-old brothers who raped girls in the community and then tattooed them. Other tragic examples of child abuse abound.

is to ensure that the needed prevention and intervention capabilities increase accordingly.

TAB C

SUBSTANCE ABUSE

Alcohol remains the most pervasive substance abuse problem in Indian Country. Its destructive effects range from homicides to fetal alcohol syndrome. Although data are incomplete, there is broad consensus among Indian Country law enforcement personnel that the vast majority of violent assaults on children, spouses, and others involve excessive alcohol consumption.

Substance abuse, and our lack of an effective response, directly contributes to rising violence on Indian lands in America. Compounding the problems related to alcohol abuse is the growing use of illicit drugs, especially marijuana, methamphetamine, and occasionally cocaine, primarily among young people. The drug problem is spreading -- no longer confined to a few reservations near urban areas. Informal surveys of law enforcement officers and prosecutors indicate that a significant percentage of thefts and violent crimes in Indian Country are related to drug or alcohol abuse.

Federal investigators agree that marijuana and methamphetamine are the illicit drugs of choice in Indian Country. Marijuana is often cultivated in remote areas of Indian Country, for later distribution both on and off Indian lands. In addition, the BIA reports an alarming trend of methamphetamine manufacture and consumption on Indian lands. In 1996 alone, BIA seized two clandestine methamphetamine labs, including 12 gallons of methamphetamine oil.

Indian Tribes face unique impediments to effective drug enforcement in that Tribes have no jurisdiction to prosecute non-Indians who commit crimes on Indian lands. As a result, only state and federal courts have jurisdiction to prosecute non-Indians who sell illicit substances on the reservation. However, because the quantities are usually below minimum thresholds for federal prosecution, and because state courts are not often receptive to such prosecutions for a variety of reasons, many non-Indian traffickers operate with impunity.

Tribal justice systems often lack the resources to deal with these cases effectively. The tribal obstacles are twofold: statutory and financial. First, the Indian Civil Rights Act limits tribal criminal sentences to no more than one year in custody and a \$5,000 fine, regardless of the crime. This maximum sentence has little deterrent value.

Second, and more importantly, only a small percentage of the 558 federally-recognized Tribes have the resources actually to incarcerate convicted offenders because few Tribes have access to affordable detention facilities.

Tribal judges can adjudicate offenders, but lack viable options because of inadequate detention facilities, intermediate sanctions, and substance abuse treatment programs. Many drug offenders are put on tribal probation, yet there are not enough probation officers to handle the growing caseloads.

Federal prosecution is also problematic. Local drug organizations are aware that most U.S. Attorney's offices simply do not have the resources to handle large numbers of small marijuana or methamphetamine cases. In addition, some federal judges perceive that such cases are inappropriate for adjudication in U.S. federal courts. Unfortunately, the reality is that drug trafficking activities on a reservation may have a disproportionate impact in relation to the size of the community and the quantity of drugs being distributed. A trafficker whose weekly supply is a couple of pounds of marijuana and some "crank" (methamphetamine) can create significant problems in a small rural community where jobs and constructive activities are scarce.

Without the range of prevention, intervention, and enforcement tools that are common in non-Indian communities, Indians must rely more on federal drug enforcement. One positive development is that more U.S. Attorneys who have Indian lands within their districts are more sensitive to the special drug enforcement needs of Indian Tribes. Where possible, minimum drug thresholds are relaxed for Indian Country cases. Thus, Indian Country U.S. Attorneys have made an effort to target the worst offenders on reservations and file federal cases that can make an impact beyond the immediate effect on the individual defendants.²²

²² For example, the U.S. Attorney's office in the Eastern District of Wisconsin recently coordinated an extensive investigation of a drug trafficking organization on the M. ominee reservation. The investigation included the first Title III wiretap on an Indian reservation, culminating in two multi-count indictments charging 27 people with various federal narcotics offenses, including ten who are subject to five-year mandatory minimum penalties. Similarly, on September 4, 1997, 22 individuals were arrested on federal drug trafficking charges resulting from a seven-month, joint-agency undercover investigation on the Pine Ridge reservation in South Dakota. The marijuana purchased in that investigation will expose some defendants to five-year minimum sentences. Other U.S. Attorney's offices, especially in the Southwest, are also making an effort to coordinate investigations, search warrants, and federal indictments directed at drug traffickers on Indian reservations.

TAB D

DETENTION

Detention operations in most Indian Country jails fall far short of basic professional and BIA detention standards. This results from a chronic shortage of operating funds, training, and technical assistance. Operations are substandard in such critical areas as staff and inmate safety; inmate supervision and management; inmate services and programs; fire safety; hazardous substance control; sanitation and pest control; and preventive maintenance. The design of many of these old jails presents diverse health hazards, including an inability to isolate inmates with communicable diseases such as tuberculosis. Most jails do not have written operations policies and procedures, nor do they have adequate systems of documenting operations.

On average, about 80% of a jail's operating budget is dedicated to staffing, but most Indian Country jails have insufficient staff to perform all security, custody, and ancillary functions inherent to jail operations. If staff cannot supervise inmates, they also cannot prevent escapes, suicides, assaults, and vandalism. Moreover, of all law enforcement personnel in Indian Country, detention officers receive the lowest pay and the fewest career opportunities, conditions which contribute to extreme staff "burnout" and high turnover. Detention staff also suffer from inadequate training because staffing levels are low and people cannot be spared to attend training, and because training costs such as transportation are high. There is a pervasive lack of funding, equipment, and supplies for such areas as security, safety, sanitation and hygiene, inmate services and programs, record keeping, and jail administration. Finally, little technical assistance has been available to Indian Country jails from the Federal government.²³

Deficient jail operations are accompanied by completely antiquated and inadequate jail structures, which contribute to

²³ The BIA has only one detention specialist position, which has proven inadequate to provide the level of service needed to help jail staff effectively manage and operate their facilities. Additional technical assistance has been provided through the Justice Department's National Institute of Corrections (NIC). NIC, however, has a very limited budget which must provide technical assistance and training to prisons, jails, probation, parole, and community corrections facilities nationwide. Services to Indian Country jails constitute only a small percentage of NIC's yearly assistance.

high suicide rates.²⁴ Most Indian Country jails were designed without consideration for their population: facilities usually were built with a high-security design, while the population typically consists of misdemeanants who are usually cooperative when sober. There is also little or no space for badly needed programs.

Most Indian Country jails are in such poor condition that physical plants are out of compliance with building codes as well as professional and BIA jail standards.²⁵ As part of its technical assistance program, NIC has conducted reviews of some Indian Country jails and cited serious physical plant deficiencies in terms of safety, security, and conditions of confinement. Although tribal judges are commended for innovative sentencing to community service and their use of alternative sanctions, many Indian Country jails are extremely crowded, especially on weekends and during tribal celebrations, and bed space is scarce. Even worse off are Tribes which lack facilities altogether and must transport prisoners to other locations.

This broad array of detention problems is a direct result of inadequate funding; for fiscal years 1996 and 1997 no new construction funds were appropriated. In the past nine years, the BIA has been able to construct only five jails and provide limited repairs to others.

²⁴ Most Indian Country jails are of a linear design, meaning cells are arranged in a row and sit at right angles to a corridor. Bars or security doors separate the cells from the corridor. Staff observe the inmates in their cells by "patrolling" the corridor at irregular intervals. This design has proven to be a hindrance to even the most basic of jail operations, including inmate observation, supervision, and management. Under ideal conditions staff would patrol the corridor at least every 30 minutes. Staffing levels often result in patrol intervals that are much longer.

²⁵ In 1995, the BIA contracted with a consultant to conduct needs assessments on 34 BIA-owned facilities. The firm concluded that many facilities are beyond repair and should be replaced. The BIA's Division of Safety Management, the Indian Health Service, and some tribal courts have recommended or ordered that facilities be repaired or closed. Very recently, the Federal Court, District of Colorado, ordered the BIA to make major repairs to the BIA jail on the Ute Mountain Ute Reservation.

TAB E

TRAINING NEEDS

Presently, most uniformed police officers attend the BIA Indian Police Academy (IPA) at Artesia, New Mexico. It is a satellite facility of the Federal Law Enforcement Training Center (FLETC) in Glynco, Georgia, operated by the Department of the Treasury. The basic police officer course is run three times a year for 16 weeks. Each session has 50 students, with 52 beds available at the IPA during any one time. A waiting period of one year currently exists to receive training at the IPA.

According to the IPA staff the attrition rate of new officers is approximately 50 percent. In addition, of the officers who graduate, approximately 50 percent leave Indian Country law enforcement within two years.

No present federal law enforcement academy, including the Glynco facility, can train the number of officers projected for this initiative. Either creating a new training facility to replace the current IPA, or acquiring a second academy will be necessary. The need for a greater capacity reflects both the projected surge of new law enforcement officers and the high turnover rate among Indian Country police officers.

Any new facility should be accessible to land and air transportation. The facility could be associated with a university or tribal college that could be used as a resource and means for attendees to obtain college credits for courses received. Ideally, it should be large enough for a driving course and a firearms range. In addition, the new academy could be affiliated with a laboratory structure that can address the forensic needs of Indian country.

Tribal officers are often sent to the training academies of various states. A component of any new training unit should be created to help certify that these officers meet federal standards. In addition, this group should work with the police officer standards training (POST) commission of each state so that training received by officers at the IPA is accepted by that state.

TAB F

SUMMARY OF PRELIMINARY CONSULTATIONS WITH TRIBES

The Executive Committee has summarized below the concerns expressed by the Tribes during the recent consultation process. We have chosen to express those concerns as questions.

TRIBAL CONCERNS

- Q. Contracting. If the functions are moved to DOJ, what would happen to self-determination and self-governance compacting?
- A. If functions are transferred, DOJ will seek the necessary legislation to protect the rights of Tribes to contract or compact much the same way that BIA does now. DOJ believes that this is a necessary prerequisite.
- Q. Indian Preference. Given the restrictive Supreme Court interpretation of the Indian Preference clause, would DOJ need and seek statutory authorization for Indian hiring preference?
- A. As a necessary part of legislation enabling the transfer, DOJ will seek such legislation.
- Q. Scale of Possible Transfer. Could specific agencies or Tribes opt in or out of the transfer of certain functions to DOJ? Or will any transfer be nationwide?
- A. Opting in or out would be organizationally unmanageable and would conflict directly with our overarching goal to reduce the fragmentation and diffusion of law enforcement services that now compromises their effective delivery.
- Q. P.L. 280 and Tribal Jurisdiction. Do these proposals envision any changes in 18 U.S.C. § 1162? Would centralization of law enforcement functions, especially in DOJ, further erode tribal criminal jurisdiction?
- A. In order to stay focused on securing essential funds to improve law enforcement services from a more responsive organizational structure, we do not plan to ask for any changes in P.L. 280. Our goals of strengthening both federal and tribal law enforcement at the same time are compatible. For example, tribal officers (whether provided directly or by contract) not only maintain order and enforce tribal codes, but also are the typical "first responders" to a serious crime that may fall under federal jurisdiction.
- Q. Trust Responsibility. If there is a transfer, what happens to the trust responsibility that now rests with the BIA?

- A. That trust responsibility binds the entire Executive Branch, not just BIA. Reflecting that trust responsibility, DOJ has written a Directive (June 1, 1995) that guides its work in Indian Country and will remain in force regardless of who the next Attorney General may be.
- Q. Funding Formula. What funding formula will DOJ use to assign law enforcement personnel? Will the financial status or land area of Tribes be considered?
- A. We have no firm answers to this at such an early stage. Violent crime rates and population will be among the factors considered. In a July 22, 1997 letter to Senator Stevens, DOJ "strongly opposed" the "means testing" provision in Section 118 of the Interior Appropriations Bill as "contrary to the United States' longstanding protection of tribal self-government and the Federal trust responsibility...."
- Q. Funding. How much additional money is being requested by category (detention, investigators, etc.)? Does this amount change much depending on which agency is mandated to carry out these responsibilities?
- A. See the section on Cost Estimates supra.
- Q. Law Enforcement and TPA Accounts. If funds in the "638" law enforcement contracts are unused, will they revert to the TPA allocation system and be available for other non-law enforcement programs or will the funds simply be returned to the Treasury?
- A. Each Tribe's current law enforcement TPA allocation will form the baseline for that Tribe's law enforcement budget. Additional funds, representing the 350% increase over five years proposed by the Executive Committee, will supplement this baseline amount.
- Q. Training. How will BIA or DOJ increase access to training for law enforcement officers?
- A. There will be adequate funding to train all additional officers and investigators hired at a federal or appropriate state facility.
- Q. Tribal Courts. Is DOJ considering a request for oversight of tribal court programs? What is planned to strengthen tribal courts?
- A. No, that will remain with BIA. DOJ is requesting \$10 million for FY 1999 and BIA is asking for \$ 11.1 million to aid tribal courts through a variety of programs, including drug courts, special grants, and technical assistance.

- Q. Law Enforcement Responsive to Local Needs. If investigative and local police functions are centralized in DOJ, how will each Tribe be able to express their views on law enforcement problems and priorities? Will ICIS or OLES investigators investigate tribal crimes?
- A. DOJ plans to create liaison positions to assure that community accessibility and tribal input on local law enforcement issues and priorities are maintained. Also, community policing will be emphasized. Federal investigators will continue to investigate serious crimes. Uniformed officers will continue to enforce tribal laws. Whether the subsequent case is presented in federal or Tribal court is and will continue to be a prosecutorial decision.
- Q. DOJ Cultural Sensitivity. If there is a transfer, how will DOJ compensate for its lack of demonstrated experience with Indian Country law enforcement issues?
- A. Under Attorney General Reno's leadership, DOJ has worked hard to improve law enforcement in Indian Country. Assistant U.S. Attorneys have been designated as tribal liaison; the Office of Tribal Justice was created in 1995 to serve as liaison with tribal governments; the Criminal Division has developed a pilot program to improve coordination of Indian Country law enforcement matters; the FBI has established an Office of Indian Country Investigations and dedicated increased manpower to fight violent crime; and the COPS Office as well as the Office of Justice Programs have substantially increased assistance to Indian Country. Finally, U.S. Attorneys have been prosecuting serious crimes in Indian Country since passage of the Major Crimes Act in 1885.
- Q. Impact on BIA. Would a transfer of law enforcement functions to DOJ impair BIA's ability to fulfil their broad mandate as the focal point for government-to-government relations between the United States and Indian Tribes?
- A. No. Currently, DOJ works closely with BIA in its central role in fulfilling the federal trust responsibility and will continue to do so regardless of whether some or all of BIA law enforcement functions are transferred to DOJ. BIA will remain the core Indian agency in the Executive Branch.
- Q. Youth Crime and Treatment. Many Tribes are concerned that more must be done to help at-risk youth and to treat offenders, when appropriate, and reintegrate them into the Tribe. Does DOJ plan to help in this area?

- A. Although not the focus of this initiative, DOJ is asking for \$30 million in FY 1999 for drug testing and treatment, as well as prevention and intervention for Indian youth.

Selected Excerpts

- Albert Hale, President, Navajo Nation: "...the threshold issue is expanding the ability to 638 contract over to the Department of Justice."
- Gregg Bourland, Chairman, Cheyenne River Sioux Tribe: "...these kids think that they're above the law. 'I'm sixteen years old. I'm above the law. I'm in a gang, but they're going to baby me around in tribal court.'"
- Eddie Tullis, Chairman, Poarch Creek Band of Creek Indians: "I am of the opinion that law enforcement is such a complicated issue that if you have the investigative services on one side and then you have the uniformed police officers in another, you're asking for some real conflicts to develop from an operational point of view."

TAB G

**OUTCOMES OF THE CONSULTATIONS
TRIBAL PREFERENCES**

BIA

ICIS

Formal Tribal Responses	Informal Communications	Formal Tribal Responses	Informal Communications
<i>Arizona</i> *Colorado River Tribes *Navajo Nation *Salt River Pima-Maricopa *White Mountain Apache	<i>Arizona</i> Pascua Yaqui	<i>Arizona</i> *Thono O'odham	<i>Alabama</i> *Poarch Creek
<i>California</i> Cortina Indian Rancheria	<i>Iowa</i> Meskwaki Tribe	<i>Colorado</i> *Ute Mountain Ute	<i>Minnesota</i> Leech Lake
<i>Nevada</i> Duck Valley	<i>Louisiana</i> *Chitimacha *Coushatta *Tunica-Biloxi	<i>Idaho</i> *Nez Perce	<i>Montana</i> *Fort Peck

Formal Tribal Responses	Informal Communications	Formal Tribal Responses	Informal Communications
Oklahoma Caddo Tribe *Cherokee Chickasaw Nation *Choctaw Nation *Kaw Tribe Modoc Tribe *Creek (Muskogee) Nation *Pawnee Tribe *Seminole Tribe	Minnesota Upper Sioux	Maine *Passamaquoddy Pleasant Pt. *Passamaquoddy Township *Penobscot	Nevada Inter-Tribal Council of 24 Tribes Battle Mountain Carson Colony Dresslerville Colony *Duckwater Elko Colony *Goshute Paiute of UT & NV Moapa River South Fork Stewart Colony Summit Lake *Walker River Wells Colony Winnemucca Colony Woodfords Colony Yomba Colony *Yerington Colony Tribes speaking for Council: *Ely Indian Colony *Fallon Colony Fort McDermitt Lovelock Colony *Pyramid Lake *Reno-Sparks Colony *Te-Moak Tribe W. Shoshone *Washoe

Formal Tribal Responses	Informal Communications	Formal Tribal Responses	Informal Communications
<i>Washington</i> *Colville *Yakama	<i>Mississippi</i> *Choctaw	<i>North Dakota</i> Three Affiliated Tribes Turtle Mountain *Sisseton-Wahpeton Sioux Spirit Lake Nation Standing Rock Sioux	<i>South Dakota</i> *Cheyenne River Sioux *Oglala Sioux
	<i>Nebraska</i> Winnebago Tribe *Omaha Tribe	<i>Oklahoma</i> *Absentee Shawnee Tribe	<i>Washington</i> *Lower Elwha
	<i>New Mexico</i> *Acoma Pueblo Cochiti Pueblo *Isleta Pueblo Jemez Pueblo *Laguna Pueblo Mescalero Apache *Ramah *San Juan Pueblo Sandia Pueblo *Santa Ana Pueblo Santo Domingo Pueblo Zia Pueblo *Zuni Pueblo	<i>Washington</i> *Quinault	<i>Wisconsin</i> *Menominee

	<i>Oklahoma</i> *Cheyenne-Arapaho Miami Tribe Wyandotte		
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Formal Tribal Responses	Informal Communications	Formal Tribal Responses	Informal Communications
	<i>Oregon</i> *Burns Paiute *Coquilla Indian Community Grand Ronde Siletz *Umatilla *Warm Springs		
	<i>South Carolina</i> Catawba Tribe		
	<i>Washington</i> *Swinomish *Squaxin Island *Puyallup *Skokomish *Upper Skagit *Port Gamble S'Klallam		

* Denotes contracting or compacting tribes for any and all law enforcement functions
 (including 4 self-funded tribes)

NO POSITION

Arizona

*Ak-Chin

*Cocopah

*Fort McDowell

*Fort Mohave

Gila River

Havasupai

Hopi

Hualapai Tribe

*Kaibab-Paiute

Quechan Tribe

*San Carlos Apache

San Juan Southern Paiute

Tonto Apache

Yavapi-Apache

Yavapi-Prescott

California

*Hoopa Valley

Mooretown

Pit River Tribe

Quartz Valley
Redding Rancheria
Tule River
Twenty-Nine Palms
Wiyot Tribe

Colorado
*Southern Ute

Florida
*Miccosukee
Seminole Tribes

Idaho
*Coeur D'Alene
Shoshone-Bannock Tribes

Kansas
*Iowa
*Kickapoo
*Prairie Band Potawatomi
*Sac and Fox

Michigan
*Bay Mills Chippewa
*Grand Traverse
*Hannahville
*Keweenaw Bay Indian Community
*Lac Vieux Desert
Little River Band

*Little Traverse Bay Bands
*Saginaw Chippewa Tribe
*Sault Ste. Marie

Minnesota
Bois Forte
Fond du Lac
Grand Portage
Lower Sioux
*Mille Lacs
Prairie Island Community
*Red Lake Band
Shakopee
White Earth

Montana
*Blackfeet
Crow
Fort Belknap
Northern Cheyenne
*Rocky Boy

Nevada

***Las Vegas Colony**

New Mexico

***Jicarilla Apache**

Nambe Pueblo

***Picuris Pueblo**

***Pojoaque Pueblo**

San Ildefonso Pueblo

***Santa Clara Pueblo**

***Taos Pueblo**

***Tesuque Pueblo**

New York

Cayuga Nation

***Oneida**

Onondaga

Seneca Nation

***St. Regis Mohawk**

Tonawanda

Tuscarora Nation

North Carolina

Eastern Cherokee

Oklahoma

Alabama Quassarte Tribal Town

Chickasaw Nation

***Citizen Band Potawatomi**

***Comanche Tribe**

*Iowa
*Kickapoo Tribe
*Ponca
*Sac and Fox
Seneca-Cayuga Tribe
Thlopthlocco Tribal Town

South Dakota
*Crow Creek Sioux
Flandreau Santee Sioux
Lower Brule
*Rosebud
Yankton

Texas
Alabama-Coushatta
Kickapoo
Tigua (Ysleta del Sur Pueblo)

Utah
Paiute Indian Tribe
Unitah and Ouray

Washington
*Makah
*Kalispel
Spokane

Wisconsin

***Oneida
Stockbridge-Munsee**

**Wyoming
Eastern Shoshone
Northern Arapaho**

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001. fax	re: Executive Committee for Indian Country Law Enforcement Improvement Committee Members [partial] (1 page)	10/29/1997	b(7)(C), b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Jose Cerda
OA/Box Number: 18930

FOLDER TITLE:

Indian Country Directive

2016-0931-S

rc2284

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- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
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TAB H

**EXECUTIVE COMMITTEE (EC) FOR INDIAN COUNTRY
LAW ENFORCEMENT IMPROVEMENT (FORMERLY ICIS)**

LIAISON WITH CONGRESS, THE WHITE HOUSE, AND CABINET OFFICERS
David Ogden (DOJ) and Anne Shields (DOI)

THE EXECUTIVE COMMITTEE

		<u>Phone</u>	<u>Fax</u>
<u>Co-Chairs:</u>	Kevin Di Gregory (DOJ)	202-514-9724	514-6034
*	Hilda Manuel (BIA)	202-208-5116	208-6334
<u>Members:</u>	Tom LeClaire (DOJ-OTJ)	202-514-8835	514-9078
*	Ted Quasula (BIA-OLES)	505-248-7937	248-7905
*	Derril Jordan (BIA-SG)	202-208-3401	219-1791
	Tim Vollman (BIA-ABQ)	505-883-6700	883-6711
*	Ron Allen (S'Klallam)	202-466-7767	466-7797
*	Mary Thomas (Gila River)	520-562-6000	562-3422
*	Phillip Martin (Choctaw)	601-656-5251	656-1992
*	Bill Anoatubby (Chickasaw)	405-436-7204	436-4287
	Janet Napolitano (USA)	602-514-7576	514-7670
	John Kelly (USA)	505-766-3341	766-8517
	S. Matteucci (USA-Alt)	406-657-6101	657-6989
	Mike Roper (DOJ)	202-514-1843	514-1778
	(b)(6), (b)(7)c		
	Pat Sledge (BOP)	202-514-8585	307-0215

[001]

STAFF TO EC

<u>Director:</u>	*	Phil Baridon	202-514-2659	514-9087
<u>Members:</u>		Soo Song (OTJ-20%)	202-616-9040	514-9078
		T. Toulou (MT AUSA-25%)	406-247-4629	657-6989
	* x185	K. Bliss (NM AUSA-25%)	505-766-2868	766-8517
	x138	S. Kimball (NM-AUSA-20%)	505-766-2868	766-2127
		Mikki Atsatt (DOJ/BS-15%)	202-616-3786	514-3333
	*	Brent LeRocque (OLES-25%)	505-248-7937	248-7905
	*	Dave Nicholas (BIA-25%)	202-208-5039	208-6170
	*	Craig Jones (BIA-10%)	505-748-5753	748-8162
		June Kress (COPS-50%)	202-616-2915	616-9612
	x140	Ginny Hutchinson (NIC-15%)	303-682-0639	682-0469
		Joe Lodge (AZ AUSA-15%)	602-514-7565	514-7693
	*	(b)(6), (b)(7)c		
		Beth Luedtke (DOJ-100%)	202-514-4669	514-9087

* Enrolled tribal members.

DRAFT

LRM ID: WRF9

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Monday, June 1, 1998

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: *E. Fitter*
E. Holly Fitter (for) Assistant Director for Legislative Reference
OMB CONTACT: Wendy R. Fink
PHONE: (202)395-7302 FAX: (202)395-5691
SUBJECT: Attorney General's Oversight Testimony on President's Initiative on Law Enforcement in Indian Country

DEADLINE: 4:00 p.m. Monday, June 1, 1998

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

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Julie A. Fernandes
James Boden

**TESTIMONY FOR THE ATTORNEY GENERAL
Before the Senate Indian Affairs Committee
June 3, 1998**

Chairman Campbell, Vice Chairman Inouye, and members of the Committee, I appreciate the opportunity to discuss a critical initiative regarding law enforcement in Indian country. Violence and crime, especially in Indian country, are among the most pressing challenges facing our country at this time. The Department of Justice, in partnership with the Department of Interior, has designed an approach to serve as a significant first step in bolstering tribal law enforcement's capacity to meet these challenges.

The President and I commend the efforts of this Committee to bring attention to the needs of tribal governments for increased resources for law enforcement to provide greater safety and stability in Indian communities.

STATUS OF INDIAN TRIBAL GOVERNMENTS

The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive orders, and court

decisions. President Clinton recently affirmed in his May 14, 1998 Executive Order on Consultation and Coordination with Indian Tribal Governments:

Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection ... The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, trust resources, and Indian tribal treaty and other rights:

Our basic responsibility to preserve public safety for the citizens of Indian Country derives from the unique trust relationship between federal and tribal governments, as well as specific statutes, such as the Major Crimes Act and the Indian Country Crimes Act, that provide for federal jurisdiction for serious felonies, such as homicides and sex offenses. Tribal governments and the Bureau of Indian Affairs (BIA) provide law enforcement for misdemeanors and other offenses.

PRESIDENTIAL DIRECTIVE ON INDIAN COUNTRY LAW ENFORCEMENT

Throughout most of the Nation, increased pressure and emphasis on crime over the last several years has brought about significant decreases in the rates of violent and juvenile crime.

Yet, during the same period, many Indian citizens living on reservations have suffered an increased threat of violence. In too many tribal communities, law enforcement services lag far behind their state and local counterparts. On August 25, 1997, President Clinton directed the Secretary of the Interior and me to work with tribal leaders to analyze law enforcement problems on Indian lands and suggest ways for improving public safety and criminal justice in Indian country. Beyond the increasing crime rates, the President cited the lack of permanent law enforcement officers, investigators, and detention facilities as evidence of the critical importance of addressing this problem immediately.

EXECUTIVE COMMITTEE ON INDIAN COUNTRY LAW ENFORCEMENT

Secretary Babbitt and I formed an Executive Committee for Indian Country Law Enforcement Improvements with tribal leaders and representatives from each of our Departments. We tasked the Executive Committee with providing options for law enforcement reform, including consideration of whether tribal law enforcement programs ought to be transferred from Interior to Justice. At the request of the Executive Committee, U.S. Attorneys in

districts with Indian tribes led an extensive series of tribal consultations on Indian Country law enforcement in September and October 1997. Information obtained through the consultations depicts a stark contrast between public safety in Indian country and the rest of the United States.

Testimony by tribal leaders regarding higher rates of homicide and gang violence corroborates information gathered by the FBI, BIA, U.S. Attorneys, and tribal police. Of the 6002 Indian Country cases opened by the FBI in 1997, 83% were either violent crimes or child physical or sexual abuse. Murder, rape, robbery, and aggravated assault comprise 26% of the reported FBI Index offenses in Indian country, whereas non-Indian communities - of comparable size report 13% of these offenses. According to the Indian Health Service, the homicide rate for Indians is at least 2.4 times higher than the U.S. white population; and, the homicide rate for some tribes like the Navajo Nation would place it among the most violent cities in the country.

The lack of a system of graduated sanctions through tribal court, that stems from severely inadequate tribal justice support, directly contributes to the escalation of adult and juvenile criminal activity. In the U.S. Attorney-led

consultations, tribal leaders expressed concern that the lack of adequate law enforcement resources feeds a perception by young people in Indian country that they can commit crimes with impunity. On September 17, 1997, Deputy Assistant Attorney General Kevin Di Gregory testified at a joint hearing before this Committee and the Committee on the Judiciary about the increase in the proportion of violent crime attributable to juvenile offenders and Indian youth gangs. Reflecting a greater number of prosecutions and convictions, 149 (64%) of the 234 youth in the custody of the federal Bureau of Prisons for violent or serious offenses are American Indian. This represents a 50% increase in the number of Indian youth in federal custody since 1994.

The Census Bureau has found the median age of American Indians to be 24.2 years compared with 32.9 years for other Americans; and, on many reservations, roughly half of the population is under 18 years of age. While demographics may contribute to the problem of Indian youth delinquency and violence, we must consider the potential negative impact if we do not reverse the upward trend.

EXECUTIVE COMMITTEE FINDINGS

Summarizing available information, the Executive Committee Report documents a compelling need for an infusion of resources in order to meet the federal obligation to preserve public safety for citizens in Indian country. The Executive Committee's Report determined that:

- 1) the single most glaring problem is a lack of adequate resources for law enforcement in Indian country, namely a severe shortage of uniformed law enforcement officers, criminal investigators, detention specialists, and administrative personnel;
- 2) the current criminal justice system results in poor coordination and delivery of services because of the fragmented supervision of criminal investigators, uniformed officers, and detention specialists; and,
- 3) the overburdened and understaffed system which presently exists in Indian country struggles to confront increasing violent crime and the prevalence of youth gangs in Indian country.

Secretary Babbitt and I endorsed the findings in the Executive Committee Report and recommended to the President an aggressive plan to implement Interior and Justice law enforcement enhancements, starting in fiscal year 1999. We also urged that, for now, primary responsibility for tribal law enforcement services remain with the Bureau of Indian Affairs as long as

three conditions are met: (1) we establish a central line authority over all law enforcement functions under the Bureau of Indian Affairs Office of Law Enforcement Services; (2) we remove funds from the Tribal Priority Allocation (TPA) accounts that are identified for law enforcement purposes within their TPAs; and (3) we obtain adequate funding of law enforcement as a distinct line item within the Interior budget.

NEED FOR BUDGET INCREASES THROUGH DEPARTMENT OF JUSTICE

Today, federal law enforcement is the only protection for victims of violent felonies in most of Indian Country. While both the Departments of Justice and Interior share some responsibility for law enforcement in Indian Country, the Department of Justice has a distinct role in responding to many serious criminal offenses. First, 27 of the Federal Bureau of Investigation's field divisions have some degree of investigative jurisdiction in Indian country criminal matters. Second, by statute, the Department through our United States Attorneys' Offices is responsible for the prosecution of major crimes and crimes among Indians and non-Indians in most of Indian country.

Third, the Department supports tribal self-government and is committed to enhancing the capacity of Indian tribes to confront crime and its disruptive impact in their communities.

The Department of Justice fiscal year 1999 budget request includes \$157 million in new and redirected funds as part of a joint \$182 million initiative with the Department of Interior to address the severe deficiencies in tribal law enforcement. The goal of this multi-year initiative is to raise the level of Indian country law enforcement to national standards in such areas as the number of officers per capita, training and equipment for tribal law enforcement officers, and the quality and availability of detention facilities. In fiscal year 1999, the Initiative will be funded primarily through anti-crime grants provided directly to Indian tribal governments through the Department of Justice. Ultimately, to sustain any meaningful improvements, funding enhancements will have to be institutionalized through permanent augmentations to tribal law enforcement budgets.

In light of the federal responsibility to investigate and prosecute major crimes, this Initiative will support 30 additional FBI agents and 31 victim/witness assistance positions

in Indian country. Twenty-six (26) Assistant U.S. Attorneys will also be added to target violent crime, gang-related violence, and juvenile crime on Indian lands.

Within the Office of Justice Programs and Community Oriented Policing Services (COPS) office, we intend to target and set-aside discretionary funds for direct support to Indian country, including:

- * \$52 million to construct tribal detention facilities;
- * \$54 million for uniformed officers and related needs through the COPS program;
- * \$20 million for the Title V At-Risk Children Program;
- * \$10 million for "drug" testing/treatment/and intervention, primarily for alcohol abuse; and,
- * \$10 million for Tribal Justice Assistance and general tribal courts support.

The Executive Committee Report notes consensus among tribal, BIA, and DOJ corrections specialists that the 70 small jails that exist in Indian Country are severely inadequate and antiquated. Most Indian Country jails are in such poor condition that they are out of compliance with contemporary building codes and professional jail standards. The \$52 million that we have

requested as part of the Law Enforcement Initiative will be used to fund grants to construct, modernize, and repair correctional facilities and jails on Indian lands. Of course, even with these new funds, we would not have enough resources to build a separate facility on every reservation. The Department hopes to rely on tribal leaders for guidance about developing regional inter-tribal facilities for Indian country.

With relation to uniformed law enforcement officers, we are concerned that violent crime rates appear to be increasing while the number of officers per capita remains below the acceptable levels for rural communities, Indian or non-Indian. The BIA informs us that the number of officers per 1,000 residents in Indian Country is anywhere from 0.9 to 1.3, versus 2.9 for non-tribal communities of comparable size. Thus, COPS grants, although only a temporary boost, are essential to the success of this Initiative. The Department of Justice has also been exploring how to maximize the use of COPS funds to assure that the individuals hired can be adequately trained and equipped.

Another crucial aspect of the Department's appropriations request, is the \$10 million that we have requested to better enable Indian tribal courts, historically under-funded and under-

staffed, to meet the demands of burgeoning case loads. Tribal judges may adjudicate offenders, but confront a lack of viable options for placement, probation, and incarceration. Therefore, in addition to more police officers, investigators, and detention officers, some accompanying investment in the tribal justice systems that adjudicate and sentence offenders is needed. Like the other grant funds requested in the initiative, we intend to use the \$10 million allocation for tribal courts to augment existing programs through the BIA with needed support and incentives for inter-jurisdictional cooperation.

The need to assure safety to citizens in Indian Country demands a coordinated federal response. The fiscal year 1999 funding requested by the Departments of Interior and Justice will be a modest, but necessary, first step.

ON GOING EFFORTS TO COMBAT CRIME AND IMPROVE RESPONSIVENESS

Among the most meaningful steps the Department of Justice can take to combat crime in Indian country is to help Indian tribes to strengthen their own justice systems; but, escalating violence and criminal activity in Indian country have frequently

outpaced the development of tribal law enforcement and justice systems. The complexity of the criminal justice problems in Indian country demands an immediate, innovative response by the federal government, including the Department of Justice.

Although the Presidential Initiative represents our comprehensive proposal to improve Indian Country law enforcement, for the past several years, the Department of Justice has worked internally to improve the federal law enforcement response in Indian Country, while instituting an on-going effort to expand the availability of crime prevention and intervention funds through existing grant programs.

First, United States Attorneys in Indian Country have been asked to designate Assistant U.S. Attorneys to serve as tribal liaisons and to work cooperatively with tribal police, investigators, prosecutors, and judges. Also, in direct response to concerns about the Department's responsiveness to crime and other justice issues, I directed the creation of the Office of Tribal Justice, to coordinate tribal issues and serve as a point of contact for tribes, and an American Indian and Alaska Native Grants Desk in the Office of Justice Programs.

Recognizing that the unique aspects of crime in Indian

country require a specialized response, the FBI created an Office of Indian Country Investigations (OICI) within its Violent Crime and Major Offenders Section in January 1997. In 1997, an additional 30 FBI agents were reallocated to Indian Country divisions most in need of augmented investigative resources to combat violent crime and the FBI has requested an additional 30 agents for fiscal year 1999. The Office of Indian Country Investigations has also formulated training to coordinate FBI Special Agents, BIA Criminal Investigators, and tribal investigators. Since March 1997, the OICI has facilitated the training of more than 170 investigators who work in Indian Country.

Tribal police are best situated to respond to and gather information about violence and criminal activity. The most effective federal initiatives to combat violence recognize the need to strengthen tribal law enforcement in Indian Country. Unfortunately, while law enforcement resources have been increased and deployed effectively throughout the United States, BIA criminal justice resources actually have been reduced in Indian Country. As a short-term, partial solution, the Department's Office of Community Oriented Policing Services

(COPS) has awarded a number of grants to Indian Country through hiring programs and other innovative partnerships since 1994.

To date, 172 tribes have been approved for estimated COPS funds totaling more than \$54 million. This includes 319 grants in 29 states, with 765 funded police officer positions. The COPS funded officers have provided needed support to law enforcement programs in Indian Country as an interim measure. However, as a 3-year grant program, these grants are not a long-term solution.

The Criminal Division's Indian Country Justice Initiative, enlists cooperation among federal partners, the Laguna Pueblo, and Northern Cheyenne Indian tribe in order to try and ameliorate problems that span the criminal justice system, from prevention to post-release supervision, and affect coordination of federal, tribal, and local justice systems.

The Department has also tried to enhance the degree of multi jurisdictional cooperation through the FBI's Safe Trails Task Force model. An adaptation of the FBI Safe Streets Task Forces, the Safe Trails Task Forces team the FBI with other federal, tribal, or state law enforcement agencies to employ their resources collectively to address violent crime problems in Indian country. Since 1994, the FBI has developed Safe Trails

Task Forces in Arizona, New Mexico, Utah, and Nevada.

Law enforcement improvements in Indian country must be combined with equally important prevention, suppression, and intervention programs in order to combat the expansion of violent crime. Offenders may be arrested, but tribes frequently lack detention facilities, probation officers, and substance-abuse treatment options, which creates a "revolving door" through tribal court. Through the Office for Victims of Crime, Bureau of Justice Assistance, Drug Courts Program Office, and Violence Against Women Grants Office, we have increased the funding available for tribal court development and judicial training by more than \$1.7 million. Strong tribal justice systems can respond rapidly with graduated sanctions and prevent the escalation of criminal activity into more vicious violent crime, which ultimately becomes the responsibility of the federal criminal justice system.

CONCLUSION

Mr. Chairman and members of the Committee, I know that you are aware of the costs exacted by crime in Indian country and

that the Committee wants to help tribes build stronger and safer tribal communities. Violence and crime interfere with the ability of Indian tribes to achieve meaningful self-governance and assure peace and stability in their communities.

This situation cannot go unaddressed. Both the Departments of Interior and Justice strongly believe that the magnitude of the problem in Indian country is so great, that we simply cannot afford to defer improvements into a later budget cycle. Moreover, our treaty, trust, and statutory obligations require that we ensure an acceptable level of public safety in Indian country. The Department of Justice is committed to assisting Indian tribes to strengthen their own justice systems as an essential component of our national crime prevention and intervention strategy.

The Department of Justice has worked to provide training, technical assistance, and funding to tribal justice institutions, including tribal law enforcement agencies and tribal courts. However, absent substantive systemic improvements to law enforcement in Indian country, violence may likely continue to overwhelm tribal justice systems at great costs in lives and property.

We are confident that by working in partnership with the Department of Interior and Indian tribes on the Initiative that I have described today, we can begin to progress towards a vision of safe, healthy, and secure tribal communities.

Mr. Chairman, that concludes my statement. I would be glad to answer any questions that you may have.

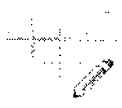
Appropriation Language

To be inserted at the end of the first paragraph (immediately preceding the period) of appropriations language submitted as part of the 1999 budget for the COPS program:

"Provided further, That funds provided in this appropriation shall be available for Indian Country law enforcement improvement including equipment and training".

Report Language

The report of the interagency Executive Committee for Law Enforcement Improvement documents a need for additional resources for improving the criminal justice system in Indian Country. The COPS appropriation, under current statutory authorities, can provide grants and cooperative agreements to Indian tribes for additional uniformed officers. To allow these officers to perform their duties effectively, and given the unique federal role in law enforcement in Indian Country, this language allows COPS funds to be used for the purchase of equipment and for training, so that fully trained and equipped uniformed officers may be deployed in Indian Country.

 Michael Deich
04/15/98 01:46:39 PM

Record Type: Record

To: Jose Cerda III/OPD/EOP
cc:
Subject: COPS/Indian Funding

pls call re: attached. thanks.

----- Forwarded by Michael Deich/OMB/EOP on 04/15/98 01:46 PM -----

► **James Boden**
04/15/98 11:29:23 AM
.....

Record Type: Record

To: Michael Deich/OMB/EOP
cc: Theodore Wartell/OMB/EOP, Patricia E. Romani/OMB/EOP, David J. Haun/OMB/EOP, Richard H. Kodl/OMB/EOP
Subject: COPS/Indian Funding

This e-mail is in response to your question to David last night about COPS funding for the Indian initiative. In response to concerns raised by DOJ that the \$54 million provided in the budget for Indian cops cannot be spent unless the COPS program is able to cover equipment costs, we met with Interior Department and DOJ staff on February 28. As a result of that meeting, It is our understanding that the \$25 million provided to Interior as part of the Indian initiative could be used to make equipment purchases.

Interior prefers to use the \$25 million to hire investigators and BIA officers and to replace obsolete vehicles for existing officers. However, Jim McDivitt BIA's Chief of Staff is willing to work with COPS to provide equipment. He mentioned two possibilities: 1) that COPS funds are used to hire officers by Indian tribes and that these officers are then put under BIA authority, which would free up BIA funds and 2) that a portion of the \$25 million be used to replace aging BIA vehicles but rather than discard the old vehicles, these cars be passed on to the Tribes.

At the last meeting of the COPS working group Ogden argued that it would not be possible to use Interior funding to purchase equipment. Interior was not represented at the meeting. Jose suggested that Justice explore with Congressional staff the possibility of using COPS funding to purchase equipment under existing authority. DOJ indicated that they would wait until after the reprogramming request had been approved before raising the issue of using COPS money to buy equipment. To date, the reprogramming request has not been approved and we do not know whether COPS has held discussions with Congressional staff about Indians.

As you know, we have argued against a statutory change amending the Crime Act to allow other uses of COPS money, which we see as an invitation to substantially alter the COPS program. In addition to allowing the use of COPS money for Indian law enforcement equipment, Congress could allow COPS funds to be used for the Local Law Enforcement Block Grant and other purposes.

Proposing to amend the COPS statute is particularly problematic because the reprogramming submitted by COPS indicates that COPS funding proposed in the budget may be sufficient to hire 107,000 officers by 2000. As a result, Congress could conclude that the 100,000 goal could be reached with less money than is proposed in the President's budget. We believe that the DOJ estimates are based on optimistic assumptions about the number of officers that can be hired in the next two years and continue to believe that the full amount requested in the budget should be provided for COPS.

We confirmed today with Jim McDivitt that Interior is willing to work with DOJ to make equipment available for officers hired under the COPS program. We suggest that you ask Jose to schedule another meeting of the COPS working group but one that includes Interior to resolve the issue of Interior's providing equipment support either from the \$25 million or through other means. We also suggest that you ask Jose to stop any proposed legislative change.

URGENT

Total Pages: 14

LRM ID: WRF8

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, May 28, 1998

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: *RPitts*
Ronald K. Peterson (for) Assistant Director for Legislative Reference

OMB CONTACT: Wendy R. Fink *7302*
PHONE: (202)395-~~3881~~ FAX: (202)395-5691

SUBJECT: INTERIOR; JUSTICE Oversight Testimony on President's Initiative on Law Enforcement in Indian Country

DEADLINE: 10:00 a.m. Monday, June 1, 1998

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

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David J. Haun - *Barnes Boden?*
Julie A. Fernandes

P. 1/13

FROM: FITTER, E.

JUN-01-1998 11:56 TO: 410 JULIE FERNANDES

STATEMENT OF KEVIN GOVER, ASSISTANT SECRETARY - INDIAN AFFAIRS,
DEPARTMENT OF THE INTERIOR, BEFORE THE COMMITTEE ON INDIAN AFFAIRS,
UNITED STATES SENATE, HEARING ON THE DEPARTMENT OF THE INTERIOR AND
THE DEPARTMENT OF JUSTICE INITIATIVE ON INDIAN COUNTRY LAW
ENFORCEMENT

JUNE 3, 1998

Chairman Campbell and members of the Committee, I am pleased to provide a statement on behalf of the Department of the Interior regarding the President's Initiative on Law Enforcement in Indian Country. With me today is Ted Quasula, Director, Office of Law Enforcement Services for the Bureau of Indian Affairs. We thank you for requesting the Department of the Interior to provide testimony on this very important issue.

Crime, especially violent crime, has risen significantly in Indian Country. Law enforcement, as it presently exists, often fails to meet basic public safety needs. The single most glaring problem is a lack of adequate resources in Indian Country. There are 1.4 million citizens living on or near reservations who do not receive the most basic of services.

There have been numerous reports and news articles that outline the extreme shortcomings of the criminal justice systems on Indian lands. Tribal leaders and BIA officials have repeatedly voiced their concerns for expanded law enforcement services and that crime is seriously increasing on their homelands. It is not an exaggeration that violent youth crime has reached epidemic proportions on Indian lands.

I think everyone will agree that all citizens of the United States of America deserve to live in a safe community. Sadly, it has been well documented that this is not the case on many reservations and in Indian communities.

R. Canale

Pursuant to President Clinton's directive of August 25, 1997, the Secretary of the Interior and the Attorney General worked with Indian leaders to analyze the law enforcement problems and to provide options to improve public safety in Indian Country. A series of tribal consultations on Indian Country law enforcement was held by many United States Attorneys last September and October. With information gained from these consultation sessions, along with the expertise and experience of numerous officials in the Interior and Justice Departments, a report was prepared. We respectfully request the *Report of the Executive Committee for Indian Country Law Enforcement Improvements Final Report to the Attorney General and the Secretary of the Interior*, which was provided to the President on January 20, 1998, be made a part of the hearing record. That report, which was prepared in part by tribal leaders, underscores the public safety crisis in Indian Country. It is important that I stress to this Committee that the mutual cooperation between Justice and Interior has been outstanding in trying to understand and ameliorate these complex problems. Our respective staff have formed a true partnership and have worked hard towards one goal; that is, to significantly improve law enforcement services in Indian Country.

Increased Crime

As outlined in the *Final Report of the Executive Committee*, there is a public safety crisis in Indian Country due to the rising crime rate. While nationwide violent crimes in 1996 dropped 16 percent below 1992 levels and murders were down 20 percent, this was not the case in Indian Country. In fact, there continues to be a downward crime trend, including violent crime, just about everywhere, except Indian Country. Just two weeks ago, the FBI reported that crime has continued to decrease in America for the ninth straight year. In contrast, in the past two years, according to reports submitted by tribes and BIA law enforcement agencies, there has been an overall 18 percent increase of Part One crimes from 1996 to 1997. Part One crimes include homicides, forcible rape, robbery, aggravated assault, burglary, larceny, motor vehicle theft and arson. Because data

automation for the BIA and tribal law enforcement agencies is either non-existent or sporadic at best, and because not all tribes provide annual crime reports, it is likely the actual figures are higher.

Five years ago, most of the murders and aggravated assaults were the result of fights between intoxicated adults. Today, they more often are committed by juveniles. There are a number of reservations where Indian youth have committed serious crimes in gang-like fashion. There have been homicides, armed robberies, drive-by shootings, car thefts, graffiti, wearing of colors and a general disregard for authority. Many witnesses are terrified and hesitant to cooperate with criminal investigators for the fear of gang retaliation. While one may surmise that youth violence may be more prevalent on those Indian lands near metropolitan areas, this is not the case. There are similar problems on rural reservations. Last June, the BIA's Office of Law Enforcement Services conducted a survey of BIA and Tribal police, representing 132 tribes. They identified 375 gangs and over 4,600 gang members in Indian Country. Many who investigate and prosecute gang violence in Indian Country agree that gang killings typically lack economic or drug related associations. Rather, the dismal backdrop of gang violence depends on a plain disregard for life --- just killing to kill.

Tribal leaders, the Attorney General, the Secretary--all of us are tremendously concerned about this growing problem. The Indian youth population is growing dramatically on reservations. According to the 1990 Census, while 26 percent of all Americans were under the age of 18, 34 percent of the Indian population was in this age group. The Census Bureau estimates this trend will continue, with a projected Indian population of 4.3 million by the year 2050. Today, the median age for the Navajo Nation is 17 years for its population of 225,000. On the Gila River Indian Community in Arizona, about one-half of the population is projected to be under 18 by the year 2000.

Just about any person who lives on the many Indian reservations will verify that safety for their families, including in their own homes, is a daily worry. We strongly believe the Administration, the Congress, the BIA and Tribes collectively need to address and resolve the escalating crime rate in Indian Country.

Manpower and Equipment

For the 1.4 million Indian citizens who live on or near Indian reservations, which total approximately 56 million acres, life has become much more violent. The number of law enforcement officers per 1,000 residents in tribal communities is about 1.3, versus 2.9 for non-tribal communities of comparable size, according to the 1996 Uniform Crime Report. This estimate is based on aggregate data and not on data from individual tribal locations. However, even very small tribes need additional police officers for 24-hour, seven days per week coverage just like the rest of America. On most reservations there is no 24-hour police coverage. Police officers patrol alone and respond alone to both felony and misdemeanor calls. More alarming, police officers are placed in great danger because back up is miles and hours away, if available at all. For example, in January, 1996, Navajo Police Officer Hoskie Gene, Jr. was bludgeoned and stabbed to death by teens who waylaid him when he responded alone to a nighttime burglary.

Today, 203 tribes have tribal-BIA law enforcement services. Ninety-four tribes have 638 contracts (46%), 36 have self-governance compacts (18%), 14 operate with strictly tribal funds (7%), and 59 tribes have BIA police (29%). At some locations tribes have contracted/compacted the uniformed police, whose authority is the enforcement of tribal laws. Additionally, many tribes supplement BIA funding with their own resources. The remaining tribes rely on state and local law enforcement due to *Public Law 83-280* or similar enabling legislation.

Police officers "on the streets" is a large part of the Initiative. The Justice Department has proposed \$54 million in grants for tribes under the COPS program and the BIA proposes \$5 million in base funding to add 100 uniformed officers to those locations with BIA police services. The BIA also proposes to elevate GS grade levels for uniformed police to be competitive with other federal law enforcement agencies with similar duties and responsibilities. The high turnover rate in law enforcement personnel is in part attributable to the current low salary structure.

The Justice Department's many grant programs, especially the Community Oriented Policing Services (COPS) program, have been extremely beneficial for law enforcement in Indian Country. Recognizing their value, many tribal leaders have requested that the BIA pay for these officers when the DOJ grants expire and make the funds permanent base funding. Some tribes may be able to step in with their own resources, but the vast majority will not be able to pick up the costs. In order to continue to ensure that Indian communities are kept safe, permanent funding must be available. Otherwise, any progress to combat crime will be lost.

We have already reported that violent crime, particularly involving young people, has risen significantly. Considering the young age of the Native American population, the upward crime trend will most likely continue. The Federal criminal justice system is the primary legal avenue for prosecuting felonies involving Indians on Indian lands, outside of P.L. 280 and similar jurisdictions. Under the Initiative, the BIA proposes to add another 40 criminal investigators. The Justice Department is adding 26 assistant United States attorneys, 30 FBI agents and 31 victim/witness coordinators.

Given the estimated population in Indian Country (1.4 million), the BIA and Justice Department estimate that at least 4,290 sworn law enforcement officers are needed to provide a minimum level of coverage comparable to that of rural America. This means an increase of approximately 1,600 uniformed officers and 270 investigators to investigate

Federal crimes. The Initiative does not include the entire uniformed officer and criminal investigator resources needed, as our plan consists of a four year implementation phase tailored by the reality of hiring a large number of rookie law enforcement personnel, then completing training/certification requirements for them. This process can take up to six months depending on the availability of training facilities.

Tribal leaders consistently express concern for the poor quality of law enforcement services provided to Indian Country. The shortage of officers is a great part of the problem. Compounding this problem is the state of equipment for police officers such as vehicles, weapons, and radio communications; these vital necessities to the officer "on the street" are worn and need to be updated or replaced. I speak for many Tribal and BIA law enforcement officers in expressing gratitude, Mr. Chairman, for taking the lead on the recent "Bulletproof Vest Partnership Act of 1998" legislation to ensure that States, local and Tribal governments are provided police body armor for their protection. Today, many BIA and Tribal officers do not have such body protection vests, simply because the funding is not available. To fully evaluate the situation in Indian Country in this regard, we are currently in the process of determining overall needs for police equipment.

Although our needs assessment is not yet complete, preliminary feedback reveals that BIA and Tribal police are using more than 300 vehicles with over 100,000 miles. For example, Federal regulations require replacement of vehicles at 60,000 miles. The Sac and Fox of Oklahoma have one vehicle with over 242,000 miles.

Another area of major concern is the state of two-way radio communication for law enforcement personnel as this is the life-line for officers in the field. Most radio systems used in Indian Country must be replaced because they are outdated. Hand-held portable radios are considered a luxury for the few who have them. BIA or tribal police radio systems lack voice communication encryption capability and are therefore detectable by the public using police scanners. The safety risk to responding law enforcement is

increased by the officer's own equipment as "eavesdroppers" on the frequency can forewarn of pending police action such as arrests or raids. Thus, the elements of preparedness and surprise are negated. Moreover, emergency 911 systems rarely exist on Indian reservations.

Detention-Rehabilitation

The lack of adequate police manpower is compounded by the lack of adequate detention facilities. There are 72 jails in Indian Country, including detention and holding (one to two cells) facilities located on 57 reservations. Of the 72, only 10 are used exclusively to detain juveniles as required by federal standards. Thirty-seven facilities are owned by the BIA and 35 by individual tribes. Twenty jails are operated by the BIA and 52 by individual tribes. Most of these facilities were built in the 1960s and 1970s through funding from the Justice Department's former Law Enforcement Assistance Administration. Further, at the time of construction, these facilities were designed to hold only 10-30 adult inmates.

In addition to decrepit facilities, which are still used today, there are serious staffing and maintenance problems. Most all of the facilities have limited staff on duty at any given time to adequately manage inmates. For example, during a shift, the same person may serve as jailor, dispatcher, receptionist and cook. Clearly, this frequent predicament causes an unreasonably dangerous situation for the employees as well as the inmates. Under the Initiative, we plan to address these unsafe working conditions by adding 100 BIA and tribal detention officers and 75 dispatchers to eliminate dual functions.

Jails, particularly juvenile facilities, are greatly needed to improve public safety in Indian Country. Many officers have said that juveniles openly defy police, knowing there are no facilities to incarcerate them. Law enforcement officers are left with little recourse when dealing with violent and intoxicated juveniles, particularly juveniles who have just assaulted a parent or grandparent. Many times violent youth are detained in isolated jail cells

designed for adults until they are sober and are no longer combative, simply because there are no other options. Juvenile offender recidivism is very high; and unfortunately, many repeat offenders graduate to more serious crimes. Typically, after dozens of tribal offenses, juveniles enter the Federal criminal justice system. While jail is not the answer in many cases, it is important that juvenile jail facilities exist. Moreover, these facilities cannot consist of just lockups. It is critical that any jail facility, especially juvenile jail facilities, include educational and mental health services; otherwise, recidivism will continue to plague Indian communities.

Under the Presidential Initiative, the Department of Justice proposes to provide grants to tribes for new jail construction in FY 1999. We support the Justice Department's position for regional, multi-tribal use facilities; yet both the Department of the Interior and the Justice Department recognize that "regionalization" will not apply everywhere due to the size and remoteness of several reservations.

Training

BIA operates the Indian Police Academy, which provides basic recruit police training (16 weeks) and a variety of other police, jail and radio dispatch courses for tribal and BIA law enforcement officers. More than 100 tribes use the Indian Police Academy. BIA has a formal partnership training agreement with the Federal Law Enforcement Training Center (FLETC), Department of the Treasury. The Indian Police Academy is co-located with the FLETC at Artesia, New Mexico. Our training partnership has proven to be very cost effective when considering the sharing of trainers and facilities. BIA and tribal criminal investigators train at the main FLETC facility in Glynnco, Georgia. BIA and tribal law enforcement managers also participate in the FBI's National Academy in Quantico, Virginia. Other tribes with police utilize respective state Peace Officers Standards and Training courses.

The BIA also has a formal agreement with the FBI to provide in-service training on or near Indian Country for BIA and tribal police. This fiscal year the BIA and Bureau of Alcohol, Tobacco and Firearms formed a partnership to train BIA and tribal police on the nationally acclaimed Gang Resistance, Education and Training (GREAT). These two programs were formed because of the critical need for additional training. Unfortunately, these joint training efforts are temporary and will soon end due to limited funding.

Tie this in with the fact that many tribes have hired new uniformed officers through COPS grants who require basic training and we have an expanded need for additional training courses at the Academy. Currently, there is over a year-long backlog at the Indian Police Academy for training basic recruits. In order to train new hires and keep up with the demand for in-service/outreach training, the Initiative proposes to double the training staff at the Indian Police Academy and therefore double training capacities. We have discussed this expansion with FLETC officials who support us and assure the Academy of classroom, lodging, and meal capacities along with other related expansion requirements.

Restructuring BIA Law Enforcement

On January 20, 1998, the Secretary of the Interior and the Attorney General submitted the *Executive Committee for Indian Country Law Enforcement Improvement Final Report* to the President. The cover letter with the *Final Report* to the President endorses the findings of the Executive Committee with some options. Based primarily on tribal leader's testimony at consultations, the two cabinet officers favored leaving Indian Country law enforcement with BIA instead of transferring the function to the Justice Department. They also concluded that the three major law enforcement programs (criminal investigations, uniformed police and detention services) be consolidated and placed under the line and budgetary authority of the BIA's Office of Law Enforcement Services.

Through its administrative authority, the BIA will restructure its chain of command to

consolidate the aforementioned three law enforcement components under one office. For the first time, this important reform measure will allow experienced, professionally trained law enforcement officers to be in charge of other law enforcement officers in the chain of command as well as having one central point of communications and coordination for law enforcement services throughout Indian Country. Currently, uniformed police and detention-dispatch personnel are under the supervision and management of area directors and superintendents, most of whom do not have professional law enforcement experience and training. It is essential that professional, experienced law enforcement managers supervise law enforcement personnel when you recognize that this authority includes the use of deadly force and the civil rights of citizens.

Further, the consolidated chain of command will allow for improved response to reports of crime. Every field location will have an on-site manager, a "chief", to coordinate field operations and respond to community concerns on law enforcement efforts. Additionally, hotline numbers will be established in the field to ensure that citizens have a point of contact at all times. Recognizing that this area of program responsibility is chiefly in the field, the BIA has already relocated the headquarters of the Office of Law Enforcement Services to Albuquerque, New Mexico, from Washington, D.C. It was felt that the work was in the field and the managers should be as close to the field as possible to provide quality service to the Indian constituency. It has proved to be an excellent decision in improving rapport and service with Tribes.

Consolidation will also allow BIA to provide for the standard application of sufficient professional police policies and procedures, as well as increasing our ability to provide technical assistance to tribal programs. This streamlining effort is also in line with recent Presidential initiatives to improve services provided by the Federal government.

The Secretary and the Attorney General, as outlined in the January letter to the President, want to ensure that funds specifically provided for the law enforcement line item apply only

to improvement of law enforcement services. We want Initiative dollars to remain in the Law Enforcement program line item rather than be a part of the competitive process of other Tribal Priority Allocations (TPA) programs. Rather than transferring funds from the TPA Law Enforcement line item, which is opposed by many tribes, the BIA will implement administrative controls on fund distributions, allowing the Office of Law Enforcement Services the responsibility for the distribution of funds based on a professional assessment of law enforcement needs.

In doing so, the Office of Law Enforcement Services will have budgetary control of funds to ensure that funding levels in FY 1999 for the line item do not fall below the established funding level and will be used solely for law enforcement needs and priorities. This administrative procedure - which is currently followed by the BIA in the distribution of other TPA funds, such as Contract Support and Welfare, will accomplish the intent of the two cabinet officers to ensure that law enforcement funds remain allocated for law enforcement purposes. We are not proposing to reduce any tribe's current TPA base funding for law enforcement. The Initiative is a multi-fiscal year effort and, considering the extreme needs at some locations, priorities will be established when determining funding levels:

The total Indian Country law enforcement enhancement for fiscal year 1999 is projected to be approximately \$182 million. This includes \$25 million for BIA law enforcement and \$157 million for the Department of Justice, most of which consists of grant monies. We believe this is an excellent start, but we realize that additional appropriations for BIA law enforcement are essential over the next three years to institutionalize the much needed improvements to public safety in Indian Country.

I am committed to reform and improve services provided by the BIA to Indian Country. I am confident that restructuring our law enforcement program, with the necessary infusion of more resources, will represent a significant step forward in accomplishing my objectives.

We commend you for holding this hearing on such an important subject. We will continue to work closely with the Department of Justice and tribal leaders to see a positive end to the law enforcement initiative.

I will be happy to answer any questions you may have.

THE WHITE HOUSE

Office of the Press Secretary
(Martha's Vineyard, Massachusetts)

For Immediate Release

August 25, 1997

August 25, 1997

MEMORANDUM FOR THE ATTORNEY GENERAL
THE SECRETARY OF THE INTERIOR

SUBJECT: Law Enforcement in Indian Country

I am proud of my Administration's progress in reducing violent crime and improving public safety for our Nation's citizens. Our efforts are making an important difference. Nationwide, the violent crime rate has dropped approximately 17 percent since 1992, and the homicide rate has declined about 22 percent.

Unfortunately, during the same time period life has become more violent for the 1.2 million Indian citizens who live on or near reservations. Homicide rates, for example, have increased to levels that often surpass those in large American cities. Numbers alone, however, cannot convey the tragic impact of such violence on Indian families and their communities.

This and other information you have provided to me make clear that we need to refocus on this growing problem. While some tribal governments have developed strong law enforcement programs, many others have encountered significant difficulty in doing so. Many Indian citizens receive police, investigative, and detention services that lag far behind even this country's poorest jurisdictions.

The Federal Government has taken steps to address this problem. My Administration has sought increased Department of the Interior funding and tribal control of law enforcement programs on Indian lands. This year, the Federal Bureau of Investigation (FBI) established an Office of Indian Country Investigations in its Violent Crimes Section, allocating additional agents to Indian Country. The FBI also initiated a nationwide outreach training program for Indian Country law enforcement officers. We have created additional tribal liaison positions in the United States Attorney's Offices in Indian Country, intended to improve our ability to bring offenders to justice. Through our Community Oriented Policing Services Program, we have assisted tribal law enforcement agencies in hiring officers in Indian Country.

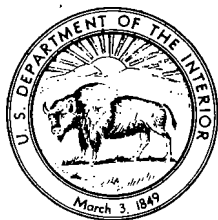
Yet, law enforcement in Indian Country remains a serious problem. For these reasons, consistent with the spirit of my 1994 memorandum on government-to-government relations and tribal self-governance, I hereby request that you work with tribal leaders to analyze law enforcement problems on Indian lands. By December 31, 1997, you should provide options to me for improving public safety and criminal justice in Indian Country. To the extent that these options might affect the Departments' budgets, they should be included in your fiscal year 1999 budget submissions and should be consistent with the funding targets of the Bipartisan Balanced Budget Agreement.

WILLIAM J. CLINTON

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EXECUTIVE CORRESPONDENCE

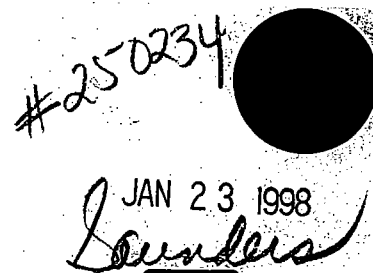
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RETURN IT WITH THE FILE COPIES TO ORIGINATING OFFICE**



THE SECRETARY OF THE INTERIOR
WASHINGTON

January 20, 1998

The President
The White House
Washington, DC 20500



Dear Mr. President:

On August 25, 1997, you directed us, working in conjunction with tribal leaders, to analyze law enforcement problems on Indian lands and suggest ways for improving public safety and criminal justice in Indian Country. In response to this Administration's efforts, violent crime is falling in many American cities. However, as you noted, it is rising in Indian Country.¹ Today, federal law enforcement is the primary protection for victims of violent crime in most of Indian Country. Our basic responsibility to preserve public safety for the citizens of Indian Country derives from the unique trust relationship between federal and tribal governments, as well as specific statutory provisions such as the Major Crimes Act that mandate exclusive federal jurisdiction for crimes such as homicides and sex offenses.

To carry out your directive, we formed an experienced, interdepartmental "Executive Committee for Indian Country Law Enforcement Improvement." One third of the 18 Executive Committee members are tribal leaders who represent diverse interests, cultural backgrounds, and geographic areas.²

In order to ensure consideration during the next budget cycle, a short timetable was imposed for completing the attached Report. At the request of the Executive Committee, U.S. Attorneys led an unprecedented series of tribal consultations on Indian Country law enforcement across the country during September and October 1997. In the lower 48 states, more than 205 Tribes participated in these consultations.³

¹The Federal Bureau of Investigation (FBI) reports that the nationwide violent crime rate in 1996 dropped 16 percent below 1992 levels, and murders are down 20 percent. Sadly, for the 1.4 million Indian citizens who live on or near reservations, life has become much more violent during the same time period. Some reservations have murder rates that far exceed cities like New Orleans and our Nation's Capital. At the same time, available law enforcement resources in Indian Country actually have been reduced over the last few years.

² More than one-half of the Executive Committee members are enrolled tribal members.

³In addition, an official from Department of Justice's (DOJ) Office of Tribal Justice met with tribal leaders at the annual Alaska Inter-tribal Council Conference.

As a result of these consultations, the Executive Committee determined that:

- Law enforcement in Indian Country, as presently organized, often fails to meet basic public safety needs.
- Serious and violent crime is rising significantly in many parts of Indian Country -- in stark contrast to national trends.
- The single most glaring problem is a lack of adequate resources in Indian Country. There is a severe shortage of uniformed law enforcement officers, criminal investigators, detention specialists, and administrative personnel. Also, antiquated and inadequate communications and other basic equipment are the norm for many tribal police departments.
- Although the system must change, Indian hiring preferences and contracting/compacting authorities under P.L. 93-638 must be continued under any new structure.
- The current criminal justice system results in poor coordination and delivery of services because of inadequate funding and the fragmented supervision of criminal investigators, uniformed officers, and detention specialists.

We endorse these findings.

After considering numerous possibilities, and the comments and suggestions received from the Tribes, the Executive Committee recommended to us the following options to address the lack of adequate law enforcement in Indian Country:

OPTION A

Consolidate the three major law enforcement programs (criminal investigations, uniformed police, and detention services) under the line and budgetary authority of the Bureau of Indian Affairs (BIA) Office of Law Enforcement Services (OLES). DOJ will assist OLES by expanding the availability of technical assistance and training.

OPTION B

Transfer all three major law enforcement programs in BIA to DOJ, maintaining Indian hiring preference and contracting/compacting authority. DOJ will create liaison positions to assure that community accessibility and tribal input on local law enforcement issues and priorities are maintained.

Although the consultation process produced no clear consensus among the Tribes favoring any specific option, it confirmed the serious and growing crime problem in Indian Country. For example, the National Congress of American Indians, representing 210 Tribes, passed a resolution on November 24, 1997 that "congratulates President William Jefferson Clinton for recognizing that the federal government has failed to provide adequate support for law enforcement in Indian Country, [and urges] President Clinton to make improving law enforcement in Indian Country a high priority in his second term, specifically by including, in his fiscal year 1999 budget, a substantial increase in funding for law enforcement initiatives in Indian Country."

Consistent with the findings and recommendations of the Executive Committee, we recommend that Indian Country law enforcement should be reorganized and given adequate resources. We further recommend that it remain within the BIA as outlined in OPTION A. The planned reorganization of BIA should address many of the chronic problems resulting from the fragmentation of police and detention services.

There are three prerequisites essential to implementing OPTION A: (1) establish a central line authority over all law enforcement functions under BIA/OLES; (2) remove funds from the Tribal Priority Allocation (TPA) accounts that are identified for law enforcement purposes in the TPAs; and (3) obtain adequate funding of law enforcement as a distinct line item within the Interior budget.

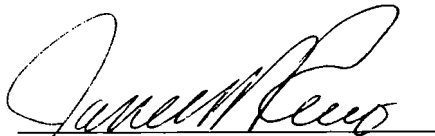
We favor OPTION A because:

- The BIA is considered the core Indian Agency that works on behalf of Indian people and their lands. Moving law enforcement out of BIA may further fragment the federal relationship with the tribes.
- The BIA currently has contracting/compacting authorities and Indian hiring preference with Tribes, and DOJ must seek legislation to do this.

- Consolidation of law enforcement functions within OLES is an essential first step in the implementation of either option. Should BIA be unable to implement the prerequisites necessary for Option A, Option B still could be implemented without a substantial loss of time or resources.

Based on your 1998 budget, the Federal Government spends about \$130 million on law enforcement and detention in Indian Country. For practical and fiscal reasons, we recommend phasing in increases over 4 years. The total Indian Country law enforcement enhancement for fiscal year 1999 is projected to be approximately \$182 million. Of this amount, your 1999 budget will include an enhancement of \$25 million for BIA law enforcement. Department of Justice grant monies, however, constitute approximately 80 percent of the \$182 million. Although this will provide an excellent start, additional appropriations over the next 3 years for BIA law enforcement will be essential to institutionalize critical improvements to public safety. The inadequacies in the current provision of federal law enforcement services in this area are documented in the enclosed report.

Respectfully,



Janet Reno
Attorney General
Department of Justice

Bruce Babbitt
Secretary
Department of the Interior

Enclosure

WHITE HOUSE STAFFING MEMORANDUM

DATE: 1/27/98

ACTION/CONCURRENCE/COMMENT DUE BY: -----

Final Report of the Executive Committee for Indian Country Law Enforcement.
 SUBJECT: Improvements to the Attorney General and Secretary of the Interior
 October 1997

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	McCURRY	☐	☐
BOWLES	☐	☐	McGINTY	☐	☐
McLARTY	☐	☐	NASH	☐	☐
PODESTA	☐	☐	RADD	☐	☐
MATHEWS	☐	☐	REED	☒	☐
RAINES	☐	☐	RUFF	☐	☐
BLUMENTHAL	☐	☐	SMITH	☐	☐
BERGER	☐	☐	SOSNIK	☐	☐
ECHAVESTE	☐	☐	SPERLING	☐	☐
EMANUEL	☐	☐	STREETT	☐	☐
GIBBONS	☐	☐	TARULLO	☐	☐
HILLEY	☐	☐	VERVEER	☐	☐
IBARRA	☐	☐	WALDMAN	☐	☐
KLAIN	☐	☐	YELLEN	☐	☐
LEWIS	☐	☐	BEGALA	☐	☐
LINDSEY	☐	☐		☐	☐
MARSHALL	☐	☐		☐	☐
				☐	☐

REMARKS: Please return report to this office after review. If you would like a copy of this report to keep, contact this office. Thanks.

RESPONSE:

Staff Secretary
Ext. 6-2702

ID# 250234

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

INCOMING

DATE RECEIVED: JANUARY 26, 1998

NAME OF CORRESPONDENT: THE HONORABLE BRUCE BABBITT

'98 JAN 27 PM 5:15

SUBJECT: SUBMITS REPORT OF THE EXECUTIVE COMMITTEE FOR
INDIAN COUNTRY LAW ENFORCEMENT IMPROVEMENTS,
OCT '97

ROUTE TO: OFFICE/AGENCY (STAFF NAME)		ACTION ACT CODE	DATE YY/MM/DD	TYPE RESP	C D	COMPLETED YY/MM/DD
TIM SAUNDERS		ORG	98/01/26			C 98/1/27
REFERRAL NOTE: <i>Todd Stern</i>		A	98/01/26			
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COMMENTS: ENCLOSURES

Not for the President's arrival to the Congress

ADDITIONAL CORRESPONDENTS:

MEDIA:L INDIVIDUAL CODES:

MI MAIL

USER CODES: (A)

(B)

(C)

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*A-A
*C-C
*D-I
*F-F
*I-I
*R-D
*S-F
*X-I

ON
*OUTGOING
*CORRESPONDENCE:
*TYPE RESP=INITIALS
* OF SIGNER
* CODE = A
* COMPLETED = DATE OF
* OUTGOING
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UPDATES TO CENTRAL REFERENCE

D TO THE ORIGINAL INCOMING
D COMPLETED RECORD TO RECORDS

*Copy of
President's
memo
attached
1-27-98
98*

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

INCOMING

DATE RECEIVED: JANUARY 26, 1998

NAME OF CORRESPONDENT: THE HONORABLE BRUCE BABBITT

98 JAN 27 PM 5:15

SUBJECT: SUBMITS REPORT OF THE EXECUTIVE COMMITTEE FOR
INDIAN COUNTRY LAW ENFORCEMENT IMPROVEMENTS,
OCT '97

		ACTION		DISPOSITION	
ROUTE TO: OFFICE/AGENCY	(STAFF NAME)	ACT CODE	DATE YY/MM/DD	TYPE RESP	C COMPLETED D YY/MM/DD
TIM SAUNDERS		ORG	98/01/26		C 98/11/27
<i>Todd Stern</i>	REFERRAL NOTE:	A	98/01/26		1/1
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COMMENTS: ENCLOSURES

Not for the President's arrival to the Congress

ADDITIONAL CORRESPONDENTS: MEDIA:L INDIVIDUAL CODES: _____

MI MAIL USER CODES: (A) _____ (B) _____ (C) _____

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*ACTION CODES:          *DISPOSITION          *OUTGOING          *
*                      *                      *CORRESPONDENCE:   *
*A-APPROPRIATE ACTION  *A-ANSWERED          *TYPE RESP=INITIALS *
*C-COMMENT/RECOM       *B-NON-SPEC-REFERRAL  *          OF SIGNER *
*D-DRAFT RESPONSE      *C-COMPLETED          *          CODE = A   *
*F-FURNISH FACT SHEET  *S-SUSPENDED          *COMPLETED = DATE OF *
*I-INFO COPY/NO ACT NEC*                      *          OUTGOING  *
*R-DIRECT REPLY W/COPY *                      *                      *
*S-FOR-SIGNATURE       *                      *                      *
*X-INTERIM REPLY       *                      *                      *
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REFER QUESTIONS AND ROUTING UPDATES TO CENTRAL REFERENCE
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LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS
MANAGEMENT.