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LRM ID: REJ252

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

Monday, September 15, 1997

## LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: James J. Jukes (for) Assistant Director for Legislative Reference

OMB CONTACT: Ronald E. Jones

PHONE: (202)395-3386 FAX: (202)395-3109

SUBJECT: TREASURY Testimony on Gang Activity in Indian Country

DEADLINE: 10:00 Tuesday, September 16, 1997

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.

COMMENTS: Testimony is for a joint Indian Affairs and Judiciary Committee hearing. Justice testimony is being circulated as LRM REJ 251.

DISTRIBUTION LIST

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**SUBJECT: TREASURY Testimony on Gang Activity in Indian Country**

☐ Concur  
☐ No Objection  
☐ No Comment  
☐ See proposed edits on pages \_\_\_\_\_  
☐ Other: \_\_\_\_\_  
☐ FAX RETURN of \_\_\_\_\_ pages, attached to this response sheet

Statement of Charles F. Rinkevich  
Director of the Federal Law Enforcement Training Center  
For Presentation to the  
Senate Committee on Indian Affairs  
and the  
Senate Judiciary Committee  
September 17, 1997

Chairman Campbell and Chairman Hatch and members of the Committees, I am pleased to be here today to provide you with an overview on the operations of the Federal Law Enforcement Training Center (FLETC) and to answer any questions you may have about training conducted by the FLETC as it relates to Indian Country gang activity. With us today are Woody Wright, Program Manager, Indian Police Academy, John Holland, Instructor/Course Developer, Office of Artesia Operations and John Doohar, Associate Director of the FLETC.

If I may, I would like to provide the Committees with a brief history and overview on FLETC operations before specifically discussing the Center's recent program development and delivery activity as it relates to gangs in Indian Country.

Conceived as part of the great urban and police reforms of the 1960s, the FLETC opened its doors in 1970. Its headquarters have been housed since 1975 on a 1,500 acre former Navy training base located just outside the city of Brunswick on Georgia's southeast coast. The FLETC also operates two satellite training facilities, an owned facility in Artesia, New Mexico, and a temporary facility in Charleston, South Carolina.

Born from the need to provide Federal law enforcement with consistent, high quality training and nurtured through its infancy by a combination of interagency cooperation and support, the FLETC has matured into the largest, most cost-efficient center for law enforcement training in the nation. Center

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facilities at Glynco include a modern cafeteria, regular and special purpose classrooms, dormitories capable of housing more than 1,200 students, office and warehouse space and state-of-the-art specialized ranges and facilities for physical, driver/marine and firearms training. The Artesia satellite center has facilities similar to those at Glynco, but on a much smaller scale.

The FLETC's mission is to conduct basic and advanced training for the majority of the Federal Government's law enforcement personnel. We also provide training for state, local and international law enforcement personnel in specialized areas and support the training provided by our participating agencies that is specific to their needs. The Department of the Treasury has been the lead agency for the United States Government in providing the administrative oversight and day-to-day direction for the FLETC since its creation.

Using a multi-discipline faculty that includes criminal investigators, lawyers, auditors, researchers, education specialists, police and physical security professionals, the FLETC provides entry level training programs in basic law enforcement for police officers and criminal investigators along with advanced training programs in areas such as marine law enforcement, anti-terrorism, financial and computer fraud, and white-collar crime. Currently 70 Federal agencies participate in more than 200 different programs at the Center. During FY 1996 the FLETC trained 19,352, and we estimate that during FY 1997 the Center will train 22,334 students.

In addition to the training conducted on-site at one of the FLETC's residential facilities, some advanced training, particularly that for state, local, and international law enforcement, is exported to regional sites to make it more convenient and/or cost efficient for our customers.

The FLETC is essentially a voluntary association with each agency's participation governed by a Memorandum of Understanding, and bolstered by the commitment of the participating agencies, the Department of the Treasury and the Congress. Only by consolidation at a centralized location are programs and facilities like those at the FLETC economically feasible. We estimate that it would cost in excess of \$175,000,000 just to duplicate the facilities available at the FLETC.

Chairman Campbell, I would like to take this opportunity to express my appreciation to you, Secretary of the Treasury Robert Rubin and Under Secretary of the Treasury for Enforcement Raymond Kelly for the continuous and strong support that has been shown the FLETC and the concept of consolidated training. This support has allowed the government to realize significant cost savings, while at the same time providing high quality training to its law enforcement personnel. With continued support I am certain the Center will be able to meet any challenge that it may face in the future.

We view FLETC and consolidated training as a National Performance Review concept ahead of its time. Indisputable results of consolidation are quality, standardized, cost-effective training in state-of-the-art facilities; interagency cooperation; and networking. The Administration and Congress can be proud of the quality of the training being provided at the FLETC and the savings realized through consolidation.

In 1984 the Department of Interior's Bureau of Indian Affairs (BIA) requested that the FLETC manage the Indian Police Academy (IPA) and assume responsibility for training its law enforcement personnel and tribal police officers. Following the signing of a Memorandum of Understanding (MOU) in 1984, training operations of the United States Indian Police Academy (IPA) were moved to a FLETC leased facility in Marana, Arizona. The Center conducted the first basic BIA training program at Marana in

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January 1985. Later, in 1993, BIA training was relocated to FLETC's Artesia training center after dramatic increases in lease and operating costs made it cost prohibitive to continue training operations at Marana.

Over the last three fiscal years, FY 1994 through FY 1996, the FLETC has provided training to 1,324 BIA students representing 5,738 student weeks of training.

Juvenile gangs and related criminal activity is a serious and increasing problem. In 1991, the Office of Juvenile Justice and Delinquency Prevention estimated that there were approximately 4881 gangs nationwide with an estimated 249,324 members. In 1996, it was conservatively estimated that the United States had more than 16,000 gangs with more than 500,000 members who commit 600,000 crimes per year.<sup>1</sup>

It is estimated that 42 percent of all arsons are committed by juveniles, as are 26 percent of all car thefts, 23 percent of all larcenies, 20 percent of all burglaries, 16 percent of all robberies, 14 percent of all rapes, 12 percent of all assaults, and 9 percent of all murders. In addition to these crimes, juvenile gangs are also involved in extortion, shoplifting, harassment, drug dealing, destruction of property through graffiti and vandalism, gun trafficking, and other criminal acts.

The most insidious aspects of juvenile gangs is how they prey on at-risk youth. These youth include those who come from families in which drugs or alcohol are used or abused, single-parent families, families in poverty and/or in which there is marital discord, and families in which there is a cycle of abuse or violence.

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<sup>1</sup>Curry, G. D., Ball, R. A., & Dacker, S. H. (1996). Estimating the national scope of gang crime from law enforcement data. In C. R. Huff (ED.), Gangs in America (2nd ed.). Thousand Oaks CA: Sage.

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The Gang Resistance Education and Training Program, developed by the Phoenix Police Department under a grant from the Bureau of Alcohol, Tobacco and Firearms, is an important tool for combating and stemming the growth of juvenile gangs. Commonly referred to as GREAT, the program attempts to reach the at risk youth and prevent their becoming involved in gangs. From the outset, FLETC has played a key role in providing and supporting GREAT training, and we have recently begun increasing our efforts in this area. This past year, the FLETC increased the number of GREAT Officer Training Programs it offers by 41 percent, from 17 a year ago to 24 this year. In the coming year the FLETC will again increase the number of GREAT programs it offers by 54 percent to 37 programs.

Gang activity is no longer just a large urban problem. It is finding its way into rural America and recent data gathered by Indian Police Academy and FLETC staff in Artesia, New Mexico, indicates that gang activity is on the increase in Indian Country.

In 1992, the BIA's Division of Law Enforcement Services Chief, Theodore Quasula, requested that the IPA conduct research and surveys of tribes and reservations to determine if there was a "Gang Problem" within Indian Country. In response to this request, the FLETC and the IPA conducted on-site reservation visits, interviewing present Indian gang members, BIA and tribal law enforcement personnel, tribal prosecutors, social services counselors, victims of gang related crimes on Indian reservations, and trainees attending basic police programs at the IPA. Leaders and law enforcement officials from more than 20 tribes were contacted during the survey.

The survey, which continues today, revealed increased youth violence and an increase of gang related criminal acts of violence against Indian communities and reservations. Some type of gang related activity was found at each of the 20 sites visited to date.

Based on the information gathered during the survey, we feel that most of Indian country is experiencing emerging gang activity. By that we mean that there are one or more gangs operating in an area, locals schools and parks are hangouts, to one degree or another the community is experiencing a loss of identity and pride, gang crime is on the increase and limited short-term counter measures are being used to address the problem. But, there are several reservations and communities that are at a crisis level. These communities are experiencing major gang activity, including drive-by shootings. Parks and schools are dominated by gangs, the community is living in fear of the gangs, there is an increase in truancy/dropouts, and crime and the police are overburdened. These are primarily reservations with immediate access to metropolitan areas such as Tacoma, Seattle, Phoenix, Oklahoma City, Tulsa, Rapid City and Albuquerque.

Our experience in responding to requests for gang education training received from the Puyallup Tribe and other Northwestern tribes in the Tacoma/Seattle area in early 1994 prompted the FLETC and the IPA to develop a training course dealing primarily with Indian gangs on reservations. The "Street Gangs in Indian Country Training Program," developed in 1995, is the culmination of that cooperative effort. The program is geared toward providing the BIA's law enforcement and tribal police officers and investigators with the information and skills necessary to effectively deal with the increase in gang related activity.

Topics covered in the program include:

- Gang identification,
- Gang graffiti,
- Current gang trends and activities,



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- The reasoning of Indian youth for joining or starting gangs,
- Prosecution and law statutes,
- Prevention techniques, and
- Intervention.

Since the development of this course in 1995, the FLETC/IPA have provided training to more than 485 BIA and Tribal law enforcement officers, managers and investigators attending training at Artesia. The FLETC/IPA are also currently providing outreach on-site Indian gang prevention and hate/bias training to requesting Indian Nations for tribal law enforcement programs, social services programs, and reservations or communities. During FY 1997, outreach programs were conducted for the Indian Health Services in Tennessee and Florida, BIA Educational Services in Oklahoma, Aberdeen Area Law Enforcement and Phoenix Area Law Enforcement.

The FLETC and the IPA are fully committed to providing all training assistance possible to help Indian country law enforcement agencies deal with the growing gang problem. I am confident that, with that assistance and the commitment of tribal leaders and law enforcement agencies, progress can be made in addressing this very important issue.

Chairman Campbell and Chairman Hatch, I want to thank you and the other members of the Committees for the opportunity to testify before you today on this critical issue. I and my staff, will be happy to answer any questions you may have concerning my testimony today.

**DRAFT**  
**DRAFT**

6/27/97

Mr. Kenneth L. Schwartz  
Deputy Associate Director  
Transportation, Commerce,  
Justice and Services Division  
Office of Management and Budget  
Washington, D.C. 20503

Dear Mr. Schwartz:

This letter requests approval from the Office of Management and Budget (OMB) to notify Congress of the Department's intention to reprogram no-year resources originally appropriated to the General Legal Activities (GLA) appropriation in the Transportation Appropriations Act, 1990, Emergency Drug Funding. Of the unobligated balance of \$2,125,543 currently available, \$575,000 will be used to fund an interagency Executive Committee for Indian Country Law Enforcement Improvement. No year funds are required because the work of the Executive Committee will begin in FY 1997 and continue into FY 1998.

By Presidential Memorandum dated \_\_\_\_\_, the President directed the Attorney General and the Secretary of the Interior to analyze the criminal justice crisis in Indian Country and develop a comprehensive proposal for ensuring improved criminal justice in Indian Country. In response, Attorney General Reno and Secretary Babbitt will appoint the Executive Committee for Indian Country Law Enforcement Improvement, which will consist of approximately 15 representatives from Federal agencies and Tribal governments, and will be supported by a staff of approximately 15 employees. The staff will include a full-time staff director (detailee from the Department of Justice (DOJ)) and contract secretary, and part-time detailees from DOJ components and the Department of the Interior (DOI). All non-personnel expenses of the Executive Committee and all expenses of the staff will be provided by DOJ or absorbed by DOJ components.

There is a criminal justice crisis in Indian Country. While violent crime is falling in American cities, it is rising in Indian Country. The homicide rate for Tribes under federal

Mr. Kenneth L. Schwartz

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jurisdiction has risen 87 percent since 1992. The overall homicide rate in Indian Country is four times the rate in smaller, non-urban areas, and certain reservations have homicide rates that dwarf those in cities like Washington, DC. Other violent crimes, such as gang violence, domestic violence, and child abuse have paralleled the rise in homicides.

As you know, the Federal Government and Tribes share jurisdictional responsibility for law enforcement functions in Indian Country. By statute, however, enforcement of major crimes in Indian Country is purely a federal responsibility that cannot be delegated to state or local jurisdictions. Currently, the FBI and Bureau of Indian Affairs (BIA) share this responsibility.

Not only is violent crime growing in Indian Country, but federal jurisdiction is expanding. The 1994 Crime Act's expanded list of gun, drug, and domestic violence provisions all apply to Indian Country, and many Tribes have asked the Federal Government for help with the growing problem of violent and repeat juvenile offenders.

At the same time, federal law enforcement resources, which have been increased and deployed to great effect throughout the United States, have actually been reduced in Indian Country over the past few years. This has severely compromised public safety and the safety of law enforcement officers, diminished the number of investigators to the point that many violent crimes in Indian Country remain uninvestigated, and resulted in jails that are grossly inadequate in capacity and neither secure nor safe. Today, Indian citizens receive police, investigative, and detention services that are not only inadequate, but also suffer by comparison to this country's poorest jurisdictions.

The Executive Committee will engage in dialogue with the Tribes and pertinent agencies, experts, and interest groups; develop a consensus on the best manner to address criminal justice problems in Indian Country; and submit a report to the President with recommendations no later than November 14, 1997. The \$575,000 will be used primarily for travel for the Executive Committee, staff, Tribes, and BIA area supervisors. In addition, funding is required for contract secretarial support, court reporter or stenographer services, and to pay the salaries of detailees to DOJ from DOI. All administrative functions will be performed by staff currently assigned to the Criminal Division, within the GLA appropriation.

A draft copy of our proposed congressional notification is enclosed for your review. Your assistance in processing this

Mr. Kenneth L. Schwartz

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notification quickly will be greatly appreciated, since the Executive Committee would like to begin its work in July. The Department will provide any additional information you may require. Please contact Adrian A. Curtis, Director, Budget Staff, on 514-4082 if there are any questions.

Sincerely,

Stephen R. Colgate  
Assistant Attorney General  
for Administration

Enclosure

The Honorable Harold Rogers

Page 2

There is a criminal justice crisis in Indian Country. While violent crime is falling in American cities, it is rising in Indian Country. The homicide rate for Tribes under federal jurisdiction has risen 87 percent since 1992. The overall homicide rate in Indian Country is four times the rate in smaller, non-urban areas, and certain reservations have homicide rates that dwarf those in cities like Washington, DC. Other violent crimes, such as gang violence, domestic violence, and child abuse have paralleled the rise in homicides.

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The Honorable Harold Rogers

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The Office of Management and Budget approved this notification on \_\_\_\_\_ . I look forward to hearing from you soon, because the Executive Committee would like to begin its work in July. The Department will provide any additional information you may require. Please contact me if there are any questions.

Sincerely,

Stephen R. Colgate  
Assistant Attorney General  
for Administration

Total Pages: \_\_\_\_\_

LRM ID: IMS144

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

Tuesday, September 16, 1997

## LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: James J. Jukes (for) Assistant Director for Legislative Reference *J. Jukes*

OMB CONTACT: Ingrid M. Schroeder *for J. Jukes*

PHONE: (202)395-3883 FAX: (202)395-3109

SUBJECT: INTERIOR Testimony on Gang Activity in Indian Country

DEADLINE: 3pm Tuesday, September 16, 1997

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.

COMMENTS: Testimony is for a joint Indian Affairs and Judiciary Committee hearing.

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Charles Konigsberg  
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Michael F. Crowley  
Harry G. Meyers  
Richard H. Kofl

**SUBJECT: INTERIOR Testimony on Gang Activity in Indian Country**

**If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.**

(2) sending us a memo or letter

**Please include the LRM number shown above, and the subject shown below.**

**FROM:** \_\_\_\_\_ (Date)  
 \_\_\_\_\_ (Name)  
 \_\_\_\_\_ (Agency)  
 \_\_\_\_\_ (Telephone)

**The following is the response of our agency to your request for views on the above-captioned subject:**

☐ Concur  
☐ No Objection  
☐ No Comment  
☐ See proposed edits on pages \_\_\_\_\_  
☐ Other: \_\_\_\_\_  
☐ FAX RETURN of \_\_\_\_\_ pages, attached to this response sheet



STATEMENT OF ADA E. DEER, ASSISTANT SECRETARY - INDIAN AFFAIRS,  
DEPARTMENT OF THE INTERIOR, BEFORE THE JOINT OVERSIGHT HEARING OF THE  
COMMITTEE ON INDIAN AFFAIRS AND THE JUDICIARY COMMITTEE, UNITED STATES  
SENATE, ON JUVENILE JUSTICE ISSUES IN INDIAN COUNTRY

SEPTEMBER 17, 1997

Good morning, Chairman Campbell, Chairman Hatch and Members of the Committees. I am pleased to provide testimony on youth violence, particularly as it relates to the increasing number of gangs in Indian country.

As is reported elsewhere in America, serious youth crime has increased tremendously in recent years in Indian country. More and more we see that young American Indian people have resorted to violence in settling differences with others. These are not youth pairing up with peers sneaking alcohol and perhaps joyriding. These are violent criminals who prey on others, including their own relatives. We find that young criminals come from all walks of life on reservations and they are not exclusive to coming from poor, unemployed or broken families. In many ways cause could be attributed to the social ills found on many reservations. However, we are pleased to report that there are many successful young people living in the same neighborhoods. We believe it is more important to focus on ways to confront and combat the problem of youth violence. Clearly, this begins with all Federal agencies, especially the Departments of Interior and Justice to coordinate their efforts to work with and support tribal governments.

In 1992, staff from the Indian Police Academy and the Federal Law Enforcement Training Center (FLETC) facility in Artesia, NM, conducted on-site visits with 20 Indian reservations. Staff members interviewed law enforcement officers, prosecutors, counselors, social workers, victims of gang related crimes, Tribal leaders, and gang members to understand the true picture of gang or youth violence in order for us to prepare the proper training program. Our continuing surveys indicate that there are gangs in Indian country and the number of gangs is growing. Many Tribes are experiencing crises level gang activity. These problems go beyond incidents of graffiti. They include incidents of drive-by shootings that result in serious bodily injuries and deaths.

In 1994, the BIA, Office of Law Enforcement Services conducted a survey, asking BIA and tribal law enforcement officers-in-charge to report gang activity. The survey identified 181 active gangs located on or near Indian country. The most gang activity was reported by the BIA's Phoenix Area which encompasses reservations in Arizona, Nevada and Utah. Keep in mind that while there are no identifiable gangs on some reservations, this doesn't mean there are no gang members. We are finding that many juveniles are going off reservation to cities where they participate in gang activities.

In June 1997, the BIA and Tribal police representing 132 tribes conducted another survey and reported that there were 375 gangs and 4,652 gang members. People involved in Indian country law enforcement report a growing juvenile crime problem with varying degrees of emerging gang

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activity.

There are a number of reservations where Indian youth have committed serious crimes in a gang-like fashion. There have been homicides, armed robberies, drive-by shootings, car thefts, graffiti, wearing of colors and a general disregard for authority. Five years ago, most of the murders and aggravated assaults were the result of fights between intoxicated adults. Now, they are committed by juveniles. Many witnesses are terrified and are hesitant to cooperate with criminal investigators for fear of gang retaliation.

Reservations with immediate access to metropolitan areas such as Tacoma, Seattle, Phoenix and Albuquerque have tremendous problems with violence, truancy and dropouts. The gang problems, however, are not limited to reservations located near large cities. We find similar problems at Navajo Nation and other rural reservations.

Big city youth problems have settled into many Indian communities. We are finding that many American Indian young people who have, for whatever reason, lived for a period of time in larger cities where they interacted with established gangs or became gang members, may later return to the reservation, and, in effect, export urban gang behavior to their reservations. These connections, of course, allow for access to drugs and other illegal substances. Alcohol and marijuana use are preferred by young offenders. However, the use of crack cocaine and methamphetamine is becoming more common.

As a result of our findings, the Indian Police Academy developed a training course entitled "Street Gangs in Indian Country" where law enforcement officers are provided with the information and skills to effectively deal with gang related activity. To date, nearly 500 BIA and tribal law enforcement officers have been trained.

We are also grateful to those tribes that have stepped forward with their own resources to help fight crime in Indian country. Many tribes have supplemented the BIA with tribal officers and equipment. Many tribes have received grants from the Department of Justice to hire additional police officers and this is certainly needed and welcome. However, the Justice Department grants do not cover all aspects for fighting crime in Indian country. For example, the funds for equipment such as weapons, vehicles, communications and training costs must be found in other places. Tribes that are appreciative in getting additional officers tend to turn to the BIA to provide them with the needed support costs. Unfortunately, we do not have the funds to assist them. We are also very concerned that once the grant funds expire, tribes will revert to square one, unless there are some other funding provisions.

Compiling crime data is difficult. The data we have is manually kept by tribes and BIA program managers. The BIA's Office of Law Enforcement Services is working on an Indian country-wide automated law enforcement information data system that is called INLINE or Indian Country Law Enforcement Network. There are 31 tribes that are using INLINE and the largest, the Navajo Nation, is coming online and will begin use of the system in 1998. Until all tribes and BIA programs are

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provided hardware/software and are online with the new INLINE system, crime statistics will be incomplete. However, we know that once all Tribes are online, data will not be comprehensive because some tribes refuse to provide crime data to the BIA.

There are youth crime prevention programs that have proven to be effective. Unfortunately, the Drug Abuse Resistance Education (DARE) program previously provided by the Indian Police Academy was discontinued due the funding cutbacks in the BIA's Branch of Drug Enforcement program. DARE proved to be a very effective crime prevention tool geared toward young people in the schools. On a more positive note, the BIA, Office of Law Enforcement Services recently formed an alliance with the Bureau of Alcohol, Tobacco and Firearms (ATF) to begin an Indian country Gang Resistance Education and Training (G.R.E.A.T.) program. This program which is scheduled to begin in fiscal year 1998, is similar to the D.A.R.E. program but focuses on gang issues and is taught in schools by police officers. I might add that both the ATF and the FLETC have been extremely cooperative in getting the G.R.E.A.T. training program started in Indian country. Despite this new crime prevention program initiative, it is safe to say that across Indian country, due to the great shortage of law enforcement officers, proactive policing is second to the current reaction mode to calls for service.

It seems to us in the BIA that having adequate resources to address youth violence is where we should start. Things that may seem pretty basic like having enough police officers with proper equipment such as vehicles, weapons and radio communications is where we need to begin. These Committees know that funding for the BIA and Indian tribes have been cut back or at best remained static the last few years. This has adversely impacted law enforcement and detention services tremendously. On many reservations there is no 24-hour police coverage, equipment is outdated and most alarming, police officers are placed in great danger because backup is miles and hours away. For the record, I want to express our sincere gratitude for the many dedicated BIA and tribal law enforcement officers who have time and time again risked their lives to protect the citizens in Indian country.

Even if there were a sufficient number of law enforcement officers in Indian country there would still be problems due to the fact that detention facilities are too few to meet the need. There are 70 Indian country jails, including detention and holding (one to two cells) facilities located on 55 reservations. Of the 70, ten detain only juveniles. Many others house both adults and juveniles. Thirty-seven jails are owned by the BIA and 33 by individual tribes. Twenty-two jails are operated by the BIA and 48 by individual tribes. Most jails were built in the 1960's and 1970's with funding from the Justice Department's former Law Enforcement Assistance Administration, and were designed to hold 10 - 30 inmates. In short, there is a severe need for jails, particularly juvenile facilities. Many officers have said that juveniles openly defy police knowing there are no facilities to lock them up. Law enforcement officers are left with little recourse when dealing with a violent and intoxicated juvenile, particularly a juvenile that has just assaulted a parent or grandparent. Many times violent youth are detained in isolated jail cells designed for adults until they sober and are no longer combative. There are no other options in many cases. Juvenile offender recidivism is very high and most unfortunately, many repeat offenders graduate to more serious crimes and ultimately into the Federal

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criminal justice system. While jail is not the answer in many cases, it is important that juvenile facilities be available especially when parents ask police to take away a threatening and intoxicated juvenile, especially a young person that is very large. These juvenile facilities should be more than for confinement. They must be structured to include educational and mental health services.

In November 1993, the BIA provided testimony at the House Subcommittee on Native American Affairs, Oversight Hearing on Indian Juvenile Detention Facilities. At that time, the BIA pointed out the glaring need for juvenile detention and rehabilitation facilities. Unfortunately, the needs have not changed. Even more unfortunate is the fact that the Congress has zeroed out the BIA's request for detention facility construction the past two fiscal years.

Ted Quasula, Director of the BIA's Office of Law Enforcement Services and Deputy Commissioner of Indian Affairs' Hilda Manuel, have met with Justice Department officials to discuss law enforcement and detention problems in Indian country. Clearly, the shortage of police officers to timely and safely respond to citizen calls for service is of paramount concern. Tribal leader after tribal leader have expressed concern for better and adequate criminal justice systems on Indian lands. Priorities have not changed since Senator Domenici stated during a hearing that tribal leaders have met with him more times about law enforcement needs than any other reservation program.

On August 25, 1997, President Clinton directed Secretary Babbitt and Attorney General Reno to meet with tribal leaders to analyze law enforcement problems on Indian lands. The BIA, FBI and United States Attorneys have already begun to meet with tribal officials. Addressing youth violence is a top priority for many. A report is due to the President by the end of December. In any case, meetings with tribal leaders reflect that additional resources for law enforcement in Indian country will be necessary to fully have positive impact.

I commend all of you for holding this hearing on such an important subject. I assure you that we will work closely with the Committees and tribal leaders to address the serious problem of youth violence. The BIA, Office of Law Enforcement Services is prepared and able to address these and other pressing law enforcement issues if granted resources necessary to do so. The future of Indian people is at stake.

Total Pages: \_\_\_\_\_

LRM ID: REJ251

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

Monday, September 15, 1997

**LEGISLATIVE REFERRAL MEMORANDUM**

**TO:** Legislative Liaison Officer - See Distribution below

**FROM:** James J. Jukes (for) Assistant Director for Legislative Reference

**OMB CONTACT:** Ronald E. Jones

PHONE: (202)395-3386 FAX: (202)395-3109

**SUBJECT:** JUSTICE Testimony on Gang Activity in Indian Country

**DEADLINE:** 10:00 AM  
Tuesday, September 16, 1997

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.

**COMMENTS:** Testimony is for a joint Indian Affairs and Judiciary Committee hearing. Testimony also comments on S.10, the "Violent and Repeat Juvenile Offender Act of 1997". (pps 13+14)

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\_\_\_\_\_ Concur  
 \_\_\_\_\_ No Objection  
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 \_\_\_\_\_ See proposed edits on pages \_\_\_\_\_  
 \_\_\_\_\_ Other: \_\_\_\_\_  
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*Justice Draft*

**TESTIMONY ON GANGS IN INDIAN COUNTRY**  
**Before the Senate Indian Affairs and Judiciary Committees**  
**September 17, 1997**  
**9:00 a.m.**  
**226 Dirksen Senate Office Building**

Mr. Chairman Hatch and Mr. Chairman Nighthorse Campbell, Vice Chairmen, and Members of the Committee. I am Kevin Di Gregory, Deputy Assistant Attorney General for the Criminal Division at the Department of Justice. Joining me today is Tom LeClaire, the Director of the Department's Office of Tribal Justice. Thank you for inviting the Department of Justice to present our views regarding the escalating problem of youth gangs in Indian country. The Attorney General considers youth violence and delinquency, especially in Indian country, to be among the most critical issues facing our country at this time. The Administration and the Attorney General appreciate the efforts that both the Judiciary and Indian Affairs Committees have made to foster dialogue on important issues relating to youth violence and criminal gang activity.

**Government-to-Government Relations with Indian Tribes**

Since the formation of the Union, the United States has recognized Indian Tribes as domestic dependent nations, and has guaranteed the right of Indian Tribes to self-government through numerous treaties and statutes. The Administration and the Attorney General respect and honor the commitments of the United States to Indian Tribes. One aspect of this commitment which is relevant to today's hearing, is the unique federal law enforcement responsibility in Indian country.

The Department of Justice has several important roles in

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responding to crime in Indian country. First, twenty-seven 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 the problems of juvenile delinquency and gang violence in their communities. The conditions that permit gangs to arise are conditions that tribal governments are often best suited to address within their communities. Among the most meaningful steps the Department of Justice can take to combat criminal gang activity in Indian country is to help Indian Tribes to strengthen their own justice systems.

Escalating youth violence and criminal gang activity in Indian country have outpaced the development of tribal law enforcement capacity. Although the emergence of gangs in Indian country strains already limited tribal law enforcement resources and threatens the safety and security of many tribal communities, the problem of violence in Indian country encompasses far more than criminal gang activity. We believe that all violence and crime interferes with the ability of Indian tribes to achieve meaningful self-governance and assure peace and stability in their communities.



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### Overview of Violence in Indian country

Information from the FBI, the Bureau of Indian Affairs (BIA), United States 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. During this same time period, however, homicides in Indian Country rose 87 percent.

According to the Indian Health Service, the homicide rate among Indians is the highest among any ethnic group in the United States -- two and one-half times the rate among whites. During 1996, for example, the Navajo Nation endured 46 non-negligent homicides, a rate among our top 20 most violent cities. Numerous tribes record homicide rates that exceed those of notoriously violent urban areas.

Other violent crimes, such as gang violence, domestic violence, and child abuse have paralleled the rise in homicides. During fiscal years 1994 - 1996, 85 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%).

### The State of Tribal Law Enforcement

In a climate of increasing violence, tribal law enforcement faces significant barriers to effective enforcement. Of the

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approximately 1.4 million Indian people who reside on or near reservations, most are under federal law enforcement jurisdiction. The BIA and the FBI share investigative responsibility, while the BIA is responsible for uniformed police and detention. In fiscal year 1996, the BIA absorbed a budget cut of \$121 million, resulting in reductions in force and attrition in all law enforcement areas.

There are half as many law enforcement officers per capita in Indian country as there are in small communities outside Indian country. Due to the vast acreage of Indian country, tribal officers often patrol several hundred thousand acres alone with antiquated equipment and no backup.<sup>1</sup> Even if there were a sufficient number of law enforcement officers and criminal investigators, the lack of detention facilities would interfere with effective law enforcement. Only 70 small jails, most of which are poor condition, serve Indian country including detention and holding facilities. Of the 70 BIA and tribal facilities, only ten detain juveniles while many others detain both adults and juveniles.

#### Youth Violence as One Aspect of Indian Country Crime

Although law enforcement professionals and U.S. Attorneys in Indian Country unanimously agree that the law enforcement

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- (1) juveniles account for an increasing percentage of all serious crimes committed in Indian country;
- (2) juveniles are offending at younger ages;
- (3) gang members in Indian country frequently commit violent offenses and engage in crimes for profit;
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#### The Need for a Uniform Definition

Investigative agencies have found many gangs in Indian country to be loosely organized social groups whose members commit crime during, and in furtherance of, their association with other members of the group. The lack of a universal

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definition for "gangs," however, can interfere with our ability to document the nature and extent of gang related criminal activity. The FBI defines a "violent street gang" as a criminal enterprise having an organizational structure, acting as a continuing criminal conspiracy, which employs violence and any other criminal activity to sustain the enterprise. While Indian country gangs and urban street gangs are distinct in some respects, the FBI's definition serves when discussing gangs in Indian country.

There remains a tremendous amount of information that the Justice Department needs to learn and collect about gangs in tribal communities. Dealing with Indian country criminal gang activity is complex. For example, the distinction between a well-developed gang and a loose-knit group of juvenile delinquents is not always obvious to law enforcement or criminal investigators. Intelligence on Indian youth gangs can be extremely difficult to gather in light of overlapping jurisdiction, geographic remoteness, and understaffed and overworked FBI, BIA, and tribal law enforcement.

Many experienced investigators and prosecutors believe that a focus on gangs may be too narrow. The Justice Department has found it productive, both in terms of intervention and enforcement, to describe youth violence as a continuum that ranges from low-level delinquents to vicious, organized gangs.

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### Indian Country Gangs

The evidence available to the Justice Department, from the FBI, state, and tribal law enforcement agencies, indicates that violent gangs have become a significant problem in Indian country. One survey of tribal law enforcement suggests that while gang activity in Indian country may have begun as early as 1985, a majority of respondents who reported the presence of gangs first noticed gang activity in 1992 and 1993. The FBI reports a dramatic increase in violent crime partly attributable to gangs in Indian country. Reflecting a greater number of prosecutions and convictions, the number of Native American juveniles incarcerated in federal Bureau of Prison's custody for serious offenses has nearly doubled from 78 in 1994 to 143 in 1997.

A 1994 Bureau of Indian Affairs Division of Law Enforcement survey identified more than 181 active gangs on or near Indian country. A follow-up study in 1997, with 132 participating tribes, estimates 375 gangs with approximately 4,650 gang members on or near Indian country. The dramatic results of the survey correspond with reports from federal law enforcement that the number of incidents and severity of gang related criminal activity is on the rise.

The Navajo Nation, for example, reports 55 gangs with about 900 gang members, many of whom are violent and also engage in criminal enterprise for profit. According to the FBI, the West

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Side Crips may be responsible for the theft of about 75 vehicles over the last year. They are sold or taken to a "chop shop" in Gallup, New Mexico, where cars are reworked, reassembled, and resold.

On the Menominee Indian Reservation in Wisconsin, where the Gangster Disciples and Latin Kings are the primary gangs, there was a 293% increase in the number of juveniles arrested between 1990-1994. Between 1995 and 1997, the U.S. Attorneys Office in the District of New Mexico has noted an evolution in its juvenile killings from reckless manslaughters to vicious, intentional killings.

Superficially, Indian gangs often mimic the activity of urban street gangs and several claim names similar to the larger national gangs such as the Crips, Bloods, or Latin Kings. However, gangs in Indian country also manifest some characteristics which distinguish them from inner-city or ethnic gangs. Despite similar names and graffiti, investigation has not shown a high degree of communication or coordination with urban counterparts. Most gangs in Indian country are not motivated by economic enterprise to the same extent as urban street gangs, but can be much more dangerous than enterprise-driven street gangs as they undertake violent acts to acquire status within the ranks of the gang.

#### Contributing Factors

The rise of juvenile crime and emergence of gangs in tribal

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communities during the past several years is fueled by certain realities of life in Indian country. First, basic demographics play a role because the American Indian population is fast-growing and increasingly youthful. Based on the 1990 Census, 33 percent of the Indian population was younger than 15 years old versus 22 percent of the U.S. all races population. The Census Bureau also found that the median age of American Indians was 24.2 years compared with 32.9 years for U.S. all races and estimates that the American Indian population will grow even younger into the next century. What this means for an Indian Tribe like Gila River in Sacaton Arizona, a reservation known for its gang activity, is that approximately one-half of the reservation population is projected to be under the age of 18 by the year 2000.

Second, the legacy of federal termination policies and the constraints of reservation life have made economic sufficiency and traditional culture increasingly difficult to sustain. Today, by any socioeconomic measure, American Indians lag in comparison to the general U.S. population.<sup>4</sup> High rates of adult violent crime, cultural disruption, poverty, chronic unemployment, and disproportionate rates of alcoholism and substance abuse, provide an environment where gangs can take root and flourish.

Third, and perhaps most importantly, the lack of immediate

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<sup>4</sup> BIA Strategic Plan, August, 1997.

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intermediate sanctions at the tribal level directly contributes to the escalation of juvenile delinquent and criminal activity. Juveniles may be arrested, but tribes often lack detention facilities, probation officers, adequate social services, and substance abuse programming, which creates a revolving door for young offenders. The absence of graduated sanctions feeds a perception by young people in Indian country that they can offend or commit crimes with impunity. Tribal judges can adjudicate youthful offenders, but confront a lack of viable options for placement, probation, and incarceration. Juvenile recidivism in Indian country is thus very high and unfortunately many repeat offenders ultimately graduate to more violent or serious crimes and become defendants in the federal criminal justice system.

#### Specific Incidents

Despite the development of the FBI's national gang database, the Violent Gang and Terrorist Organization File, much of our most valuable information regarding the extent and nature of gang activity still derives from individual reports from the FBI and U.S. Attorneys' offices and anecdotal accounts. Some of the incidences of youth violence in Indian country can be shocking:

- One gang member was beaten to death on the Navajo reservation and gang markings carved on his forehead.
- 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.



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- In 1996, four gang members from the Lower Brule Reservation launched a "molotov cocktail" explosive into a person's home.
- In a recent Navajo murder case, a 15-year old gang member stabbed another juvenile more than 100 times because he reportedly said the perpetrator's gang "was not so tough." While stabbing the victim, the perpetrator asked witnesses "Why won't this M...F...die? Where is his heart?" After locating the heart, he continued to stab the victim repeatedly even after part of the knife broke off in his chest. After killing the victim, the gang member told the witnesses that it was the second person he had killed that week.
- On the Salt River Reservation in Arizona, gang activity has increased the number of drive-by shootings 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 Tribe in Arizona, were convicted on May 9, 1997.

Such graphic examples underscore the immediacy of the problem of youth violence in Indian country.

#### **Executive Committee on Law Enforcement Improvements**

Despite the extraordinary diversity of Indian country in

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terms of size, geography, culture, language, government, and law enforcement, tribal leaders consistently express grave concern to the Department of Justice about increasing violence and the frequency of youth violence. The Departments of Justice and Interior have attempted to be responsive to these concerns, but are constantly confronted by the inadequacy of law enforcement resources in Indian country. Tribal police are best situated to gather information about gang affiliation and practices and, for this reason, any meaningful youth violence initiative must enhance tribal law enforcement in Indian country.

This realization led to the Presidential directive of August 25, 1997, to the Attorney General and Secretary of the Interior to develop a comprehensive proposal aimed at finding ways to improve law enforcement and criminal justice in Indian country. The President cited the increasing homicide rates in Indian country and the diminishing number of available law enforcement officers, investigators, and detention facilities as evidence of the critical importance of working to address this problem immediately. As a result of the President's directive, the Attorney General and Secretary Babbitt created the Executive Committee, including tribal leaders, charged with analyzing the law enforcement problem in Indian country and providing them with viable options for improvement. I serve as Co-Chair of the Committee and fully anticipate that youth violence will be among the particular concerns expressed by tribal leaders in the

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consultation process. Presently, U.S. Attorneys are engaged in consultation with Indian tribes across the nation. Due to the President's deadline of December 31, 1997, we will have to work swiftly and efficiently to examine this critically complex and important issue. We simply cannot afford, however, to defer improvements into a later budget cycle.

#### Federal Youth Violence Legislation

Legislation presently under consideration by Congress directly bears on the problems of youth violence and criminal gang activity in Indian country. From the perspective of tribal youth violence, the Youth Violence Legislation under consideration in the Senate is generally encouraging. S. 10, introduced by Chairman Hatch and Senator Sessions and reported out of the Judiciary Committee, creates a separate discretionary program for tribes within the formula block grant, to be administered by the Office of Juvenile Justice. The bill also includes tribes in its definition of unit of local government, making tribes eligible to receive other authorized funds such as those set aside for state and local prosecutors and courts. We appreciate this careful attention to the needs of the tribes, and hope that Members of both Committees will help ensure that these separate funds are not only authorized but appropriated this year.

The Department remains concerned, however, that the primary block grant in S. 10 fails to guarantee any money for juvenile

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crime prevention. While states and localities are permitted to spend on such prevention initiatives, experience has shown that prevention measures often yield to shorter-term, more exigent needs of law enforcement in local budget determinations. Indian tribes in particular are in great need of guaranteed funding for juvenile crime prevention programs.

In terms of federal prosecutions, it seems certain that S. 10, which gives federal prosecutors more discretion to try juveniles as adults, will result in greater numbers of Indian juveniles being tried federally as adults. While the Administration supports giving federal prosecutors this greater flexibility, we are concerned that S. 10 provides no judicial oversight of the decision whatsoever. This is of particular concern because of the disproportionate impact the new prosecutorial discretion may have on Indian juveniles. We hope the Senate will amend the bill to permit judicial review of prosecutors' decisions in all but the most serious cases.

#### Ongoing Efforts to Address Violence

Notwithstanding pending legislation and the recent Presidential directive, the complexity and severity of youth violence and criminal gang activity demand immediate and innovative responses by the federal government. For example, 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

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date, 161 tribes have been approved for estimated funds totalling more than \$48 million. This includes 288 grants in twenty-eight states, with 668 funded police officer positions. While the COPS funded officers have provided needed support to law enforcement programs in Indian country, they cannot fully restore tribal law enforcement programs decimated by BIA budget cuts.

At the direction of the Attorney General, U.S. Attorneys in Indian country have designated Assistant U.S. Attorneys to serve as tribal liaisons and work cooperatively with tribal police, prosecutors, and judges to address criminal issues including youth violence. Also, recognizing that the unique aspects of crime in Indian country require a specialized response, the FBI created an Office of Indian Country Investigations within its Violent Crime and Major Offenders Section in January 1997. This year, an additional thirty FBI agents have been reallocated to Indian country divisions most in need of augmented investigative resources to combat gangs and related violent crime and the FBI will request an additional thirty agents for 1999.

The Office of Indian Country Investigations (OICI) 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. Working with the FBI and other federal agencies to target youth violence, the BIA has developed a Gang Resistance Education and Training (GREAT)

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program which will use tribal police officers in schools to prevent kids from becoming involved with gangs.

The Department's Criminal Division also initiated an Indian Country Justice Initiative in 1994, with two primary goals: (1) to improve the level of safety and quality of life for the citizens of Laguna Pueblo and Northern Cheyenne; (2) to learn from an independent evaluation by the National Institute of Justice which programs and activities worked well and which did not, so that the lessons learned may be disseminated to other Tribes under federal jurisdiction. The Justice Department (the Criminal Division, the Office of Justice Programs, the Office of Tribal Justice, U.S. Attorneys, and the FBI), the Administrative Office of the United States Courts, the Interior Department (including the Bureau of Indian Affairs), the Indian Health Service, and two Indian nations are working together to identify and ameliorate problems that not only span the system, from prevention to post-release supervision, but also affect coordination of federal, tribal, and local justice systems.

The emergence of gangs in Indian country has enhanced the degree of multijurisdictional cooperation, as illustrated by the 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 collectively employ their resources to address violent crime problems in Indian country. Since 1994, we have developed 4 Safe

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Trails Task Force in Indian Country in Arizona, New Mexico, Utah, and Nevada. In New Mexico, the U.S. Attorney's Office, the FBI, the BIA, and the Navajo Department of Public Safety are pursuing a three-part strategy to begin to deal with gang violence on the reservations, which involves close scrutiny of cases for gang-related motives and cooperation with tribal police to develop a database of reservation gang activity.

This May, the U.S. Attorney's Office in Arizona, in conjunction with OJJDP and the Arizona Drug and Gang Prevention Conference, co-sponsored an Arizona American Indian Youth Gang Prevention Conference. In preparation for this event, each of the 21 Arizona Indian Tribes were asked to form a gang prevention team, with representatives from youth services, education, law enforcement, tribal councils, spiritual leaders, and tribal youth. By the close of the conference, each team had prepared a gang prevention program tailored to its reservation.

#### Conclusion

There are few concerns as pressing to tribal state, and federal governments as juvenile justice and youth violence. An effective law enforcement focus on gangs in Indian country must be combined with equally important prevention, suppression, and intervention programs in order to combat the expansion of criminal gang activity. We are convinced that assisting Indian Tribes to strengthen their own justice systems is an essential component of any Indian country gang prevention and intervention

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strategy.

The Justice Department has worked to provide training, technical assistance, and funding to tribal justice institutions, including tribal law enforcement agencies and tribal courts. Strong tribal justice systems can respond rapidly with graduated sanctions and prevent the escalation of delinquent activity into more vicious violent crime. Absent substantive systemic improvements to law enforcement in Indian country, violence is likely to continue to overwhelm tribal justice systems at great costs in lives and property.

Tribal leaders have expressed to the Department that the Native American youth of today carry tomorrow's vision--a vision clouded by juvenile crime and gang activity. We are confident that by working in partnership with tribes on the initiatives which I have described today that we can begin to sustain a vision of safe, healthy, and secure tribal communities.

Mr. Chairmen, that concludes my statement. I would be glad to answer any questions to the extent that I can, and take back other issues to the Department of Justice for later clarification.



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LRM ID: REJ251

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

Monday, September 15, 1997

## LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: James J. Jukes (for) Assistant Director for Legislative Reference

OMB CONTACT: Ronald E. Jones

PHONE: (202)395-3386 FAX: (202)395-3109

SUBJECT: JUSTICE Testimony on Gang Activity in Indian Country

DEADLINE: 10:00 AM  
Tuesday, September 16, 1997

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.

COMMENTS: Testimony is for a joint Indian Affairs and Judiciary Committee hearing. Testimony also comments on S.10, the "Violent and Repeat Juvenile Offender Act of 1997". (pps 13+14)

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**If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.**

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not  
; or  
(2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

**TO: Ronald E. Jones Phone: 395-3386 Fax: 395-3109**  
**Office of Management and Budget**  
**Branch-Wide Line (to reach legislative assistant): 395-3454**

FROM: \_\_\_\_\_ (Date)  
 \_\_\_\_\_ (Name)  
 \_\_\_\_\_ (Agency)  
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**The following is the response of our agency to your request for views on the above-captioned subject:**

**Concur**

           **No Objection**

           **No Comment**

\_\_\_\_\_. See proposed edits on pages

           Other:                                 

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definition for "gangs," however, can interfere with our ability to document the nature and extent of gang related criminal activity. The FBI defines a "violent street gang" as a criminal enterprise having an organizational structure, acting as a continuing criminal conspiracy, which employs violence and any other criminal activity to sustain the enterprise. While Indian country gangs and urban street gangs are distinct in some respects, the FBI's definition serves when discussing gangs in Indian country.

There remains a tremendous amount of information that the Justice Department needs to learn and collect about gangs in tribal communities. Dealing with Indian country criminal gang activity is complex. For example, the distinction between a well-developed gang and a loose-knit group of juvenile delinquents is not always obvious to law enforcement or criminal investigators. Intelligence on Indian youth gangs can be extremely difficult to gather in light of overlapping jurisdiction, geographic remoteness, and understaffed and overworked FBI, BIA, and tribal law enforcement.

Many experienced investigators and prosecutors believe that a focus on gangs may be too narrow. The Justice Department has found it productive, both in terms of intervention and enforcement, to describe youth violence as a continuum that ranges from low-level delinquents to vicious, organized gangs.



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### Indian Country Gangs

The evidence available to the Justice Department, from the FBI, state, and tribal law enforcement agencies, indicates that violent gangs have become a significant problem in Indian country. One survey of tribal law enforcement suggests that while gang activity in Indian country may have begun as early as 1985, a majority of respondents who reported the presence of gangs first noticed gang activity in 1992 and 1993. The FBI reports a dramatic increase in violent crime partly attributable to gangs in Indian country. Reflecting a greater number of prosecutions and convictions, the number of Native American juveniles incarcerated in federal Bureau of Prison's custody for serious offenses has nearly doubled from 78 in 1994 to 143 in 1997.

A 1994 Bureau of Indian Affairs Division of Law Enforcement survey identified more than 181 active gangs on or near Indian country. A follow-up study in 1997, with 132 participating tribes, estimates 375 gangs with approximately 4,650 gang members on or near Indian country. The dramatic results of the survey correspond with reports from federal law enforcement that the number of incidents and severity of gang related criminal activity is on the rise.

The Navajo Nation, for example, reports 55 gangs with about 900 gang members, many of whom are violent and also engage in criminal enterprise for profit. According to the FBI, the West

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Side Crips may be responsible for the theft of about 75 vehicles over the last year. They are sold or taken to a "chop shop" in Gallup, New Mexico, where cars are reworked, reassembled, and resold.

On the Menominee Indian Reservation in Wisconsin, where the Gangster Disciples and Latin Kings are the primary gangs, there was a 293% increase in the number of juveniles arrested between 1990-1994. Between 1995 and 1997, the U.S. Attorneys Office in the District of New Mexico has noted an evolution in its juvenile killings from reckless manslaughters to vicious, intentional killings.

Superficially, Indian gangs often mimic the activity of urban street gangs and several claim names similar to the larger national gangs such as the Crips, Bloods, or Latin Kings. However, gangs in Indian country also manifest some characteristics which distinguish them from inner-city or ethnic gangs. Despite similar names and graffiti, investigation has not shown a high degree of communication or coordination with urban counterparts. Most gangs in Indian country are not motivated by economic enterprise to the same extent as urban street gangs, but can be much more dangerous than enterprise-driven street gangs as they undertake violent acts to acquire status within the ranks of the gang.

#### Contributing Factors

The rise of juvenile crime and emergence of gangs in tribal

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communities during the past several years is fueled by certain realities of life in Indian country. First, basic demographics play a role because the American Indian population is fast growing and increasingly youthful. Based on the 1990 Census, 33 percent of the Indian population was younger than 15 years old versus 22 percent of the U.S. all races population. The Census Bureau also found that the median age of American Indians was 24.2 years compared with 32.9 years for U.S. all races and estimates that the American Indian population will grow even younger into the next century. What this means for an Indian Tribe like Gila River in Sacaton Arizona, a reservation known for its gang activity, is that approximately one-half of the reservation population is projected to be under the age of 18 by the year 2000.

Second, the legacy of federal termination policies and the constraints of reservation life have made economic sufficiency and traditional culture increasingly difficult to sustain. Today, by any socioeconomic measure, American Indians lag in comparison to the general U.S. population.<sup>4</sup> High rates of adult violent crime, cultural disruption, poverty, chronic unemployment, and disproportionate rates of alcoholism and substance abuse, provide an environment where gangs can take root and flourish.

Third, and perhaps most importantly, the lack of immediate

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<sup>4</sup> BIA Strategic Plan, August, 1997.

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intermediate sanctions at the tribal level directly contributes to the escalation of juvenile delinquent and criminal activity. Juveniles may be arrested, but tribes often lack detention facilities, probation officers, adequate social services, and substance abuse programming, which creates a revolving door for young offenders. The absence of graduated sanctions feeds a perception by young people in Indian country that they can offend or commit crimes with impunity. Tribal judges can adjudicate youthful offenders, but confront a lack of viable options for placement, probation, and incarceration. Juvenile recidivism in Indian country is thus very high and unfortunately many repeat offenders ultimately graduate to more violent or serious crimes and become defendants in the federal criminal justice system.

#### Specific Incidents

Despite the development of the FBI's national gang database, the Violent Gang and Terrorist Organization File, much of our most valuable information regarding the extent and nature of gang activity still derives from individual reports from the FBI and U.S. Attorneys' offices and anecdotal accounts. Some of the incidences of youth violence in Indian country can be shocking:

- One gang member was beaten to death on the Navajo reservation and gang markings carved on his forehead.
- 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.

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- In 1996, four gang members from the Lower Brule Reservation launched a "molotov cocktail" explosive into a person's home.
  - In a recent Navajo murder case, a 15-year old gang member stabbed another juvenile more than 100 times because he reportedly said the perpetrator's gang "was not so tough." While stabbing the victim, the perpetrator asked witnesses "Why won't this M...F...die? Where is his heart?" After locating the heart, he continued to stab the victim repeatedly even after part of the knife broke off in his chest. After killing the victim, the gang member told the witnesses that it was the second person he had killed that week.
  - On the Salt River Reservation in Arizona, gang activity has increased the number of drive-by shootings 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 Tribe in Arizona, were convicted on May 9, 1997.
- Such graphic examples underscore the immediacy of the problem of youth violence in Indian country.

**Executive Committee on Law Enforcement Improvements**

Despite the extraordinary diversity of Indian country in

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terms of size, geography, culture, language, government, and law enforcement, tribal leaders consistently express grave concern to the Department of Justice about increasing violence and the frequency of youth violence. The Departments of Justice and Interior have attempted to be responsive to these concerns, but are constantly confronted by the inadequacy of law enforcement resources in Indian country. Tribal police are best situated to gather information about gang affiliation and practices and, for this reason, any meaningful youth violence initiative must enhance tribal law enforcement in Indian country.

This realization led to the Presidential directive of August 25, 1997, to the Attorney General and Secretary of the Interior to develop a comprehensive proposal aimed at finding ways to improve law enforcement and criminal justice in Indian country. The President cited the increasing homicide rates in Indian country and the diminishing number of available law enforcement officers, investigators, and detention facilities as evidence of the critical importance of working to address this problem immediately. As a result of the President's directive, the Attorney General and Secretary Babbitt created the Executive Committee, including tribal leaders, charged with analyzing the law enforcement problem in Indian country and providing them with viable options for improvement. I serve as Co-Chair of the Committee and fully anticipate that youth violence will be among the particular concerns expressed by tribal leaders in the

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consultation process. Presently, U.S. Attorneys are engaged in consultation with Indian tribes across the nation. Due to the President's deadline of December 31, 1997, we will have to work swiftly and efficiently to examine this critically complex and important issue. We simply cannot afford, however, to defer improvements into a later budget cycle.

#### Federal Youth Violence Legislation

Legislation presently under consideration by Congress directly bears on the problems of youth violence and criminal gang activity in Indian country. From the perspective of tribal youth violence, the Youth Violence Legislation under consideration in the Senate is generally encouraging. S. 10, introduced by Chairman Hatch and Senator Sessions and reported out of the Judiciary Committee, creates a separate discretionary program for tribes within the formula block grant, to be administered by the Office of Juvenile Justice. The bill also includes tribes in its definition of unit of local government, making tribes eligible to receive other authorized funds such as those set aside for state and local prosecutors and courts. We appreciate this careful attention to the needs of the tribes, and hope that Members of both Committees will help ensure that these separate funds are not only authorized but appropriated this year.

The Department remains concerned, however, that the primary block grant in S. 10 fails to guarantee any money for juvenile

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crime prevention. While states and localities are permitted to spend on such prevention initiatives, experience has shown that prevention measures often yield to shorter-term, more exigent needs of law enforcement in local budget determinations. Indian tribes in particular are in great need of guaranteed funding for juvenile crime prevention programs.

In terms of federal prosecutions, it seems certain that S. 10, which gives federal prosecutors more discretion to try juveniles as adults, will result in greater numbers of Indian juveniles being tried federally as adults. While the Administration supports giving federal prosecutors this greater flexibility, we are concerned that S. 10 provides no judicial oversight of the decision whatsoever. This is of particular concern because of the disproportionate impact the new prosecutorial discretion may have on Indian juveniles. We hope the Senate will amend the bill to permit judicial review of prosecutors' decisions in all but the most serious cases.

#### Ongoing Efforts to Address Violence

Notwithstanding pending legislation and the recent Presidential directive, the complexity and severity of youth violence and criminal gang activity demand immediate and innovative responses by the federal government. For example, 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



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date, 161 tribes have been approved for estimated funds totalling more than \$48 million. This includes 288 grants in twenty-eight states, with 668 funded police officer positions. While the COPS funded officers have provided needed support to law enforcement programs in Indian country, they cannot fully restore tribal law enforcement programs decimated by BIA budget cuts.

At the direction of the Attorney General, U.S. Attorneys in Indian country have designated Assistant U.S. Attorneys to serve as tribal liaisons and work cooperatively with tribal police, prosecutors, and judges to address criminal issues including youth violence. Also, recognizing that the unique aspects of crime in Indian country require a specialized response, the FBI created an Office of Indian Country Investigations within its Violent Crime and Major Offenders Section in January 1997. This year, an additional thirty FBI agents have been reallocated to Indian country divisions most in need of augmented investigative resources to combat gangs and related violent crime and the FBI will request an additional thirty agents for 1999.

The Office of Indian Country Investigations (OICI) 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. Working with the FBI and other federal agencies to target youth violence, the BIA has developed a Gang Resistance Education and Training (GREAT)

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program which will use tribal police officers in schools to prevent kids from becoming involved with gangs.

The Department's Criminal Division also initiated an Indian Country Justice Initiative in 1994, with two primary goals: (1) to improve the level of safety and quality of life for the citizens of Laguna Pueblo and Northern Cheyenne; (2) to learn from an independent evaluation by the National Institute of Justice which programs and activities worked well and which did not, so that the lessons learned may be disseminated to other Tribes under federal jurisdiction. The Justice Department (the Criminal Division, the Office of Justice Programs, the Office of Tribal Justice, U.S. Attorneys, and the FBI), the Administrative Office of the United States Courts, the Interior Department (including the Bureau of Indian Affairs), the Indian Health Service, and two Indian nations are working together to identify and ameliorate problems that not only span the system, from prevention to post-release supervision, but also affect coordination of federal, tribal, and local justice systems.

The emergence of gangs in Indian country has enhanced the degree of multijurisdictional cooperation, as illustrated by the 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 collectively employ their resources to address violent crime problems in Indian country. Since 1994, we have developed 4 Safe

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Trails Task Force in Indian Country in Arizona, New Mexico, Utah, and Nevada. In New Mexico, the U.S. Attorney's Office, the FBI, the BIA, and the Navajo Department of Public Safety are pursuing a three-part strategy to begin to deal with gang violence on the reservations, which involves close scrutiny of cases for gang-related motives and cooperation with tribal police to develop a database of reservation gang activity.

This May, the U.S. Attorney's Office in Arizona, in conjunction with OJJDP and the Arizona Drug and Gang Prevention Conference, co-sponsored an Arizona American Indian Youth Gang Prevention Conference. In preparation for this event, each of the 21 Arizona Indian Tribes were asked to form a gang prevention team, with representatives from youth services, education, law enforcement, tribal councils, spiritual leaders, and tribal youth. By the close of the conference, each team had prepared a gang prevention program tailored to its reservation.

#### Conclusion

There are few concerns as pressing to tribal state, and federal governments as juvenile justice and youth violence. An effective law enforcement focus on gangs in Indian country must be combined with equally important prevention, suppression, and intervention programs in order to combat the expansion of criminal gang activity. We are convinced that assisting Indian Tribes to strengthen their own justice systems is an essential component of any Indian country gang prevention and intervention

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strategy.

The Justice Department has worked to provide training, technical assistance, and funding to tribal justice institutions, including tribal law enforcement agencies and tribal courts. Strong tribal justice systems can respond rapidly with graduated sanctions and prevent the escalation of delinquent activity into more vicious violent crime. Absent substantive systemic improvements to law enforcement in Indian country, violence is likely to continue to overwhelm tribal justice systems at great costs in lives and property.

Tribal leaders have expressed to the Department that the Native American youth of today carry tomorrow's vision--a vision clouded by juvenile crime and gang activity. We are confident that by working in partnership with tribes on the initiatives which I have described today that we can begin to sustain a vision of safe, healthy, and secure tribal communities.

Mr. Chairmen, that concludes my statement. I would be glad to answer any questions to ~~the extent that I can, and take back~~ other issues to the Department of Justice for later ~~clarification.~~

Jose -  
FYI

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**Elena Kagan**  
**Deputy Assistant to the President**  
**for Domestic Policy**

MESSAGE:

Please call (202) 456-5584 if there are any problems with the transmission.



U. S. Department of Justice

Office of the Deputy Attorney General

Associate Deputy Attorney General

Washington, D.C. 20530

June 27, 1997

MEMORANDUM

TO: Elena Kagan  
Deputy Assistant to the President  
for Domestic Policy

FROM: David W. Ogden  
Associate Deputy Attorney General

SUBJECT: Law Enforcement in Indian Country

As we discussed, I am forwarding for your review a draft Presidential directive on law enforcement in Indian Country. It directs Attorney General Reno and Secretary Babbitt to analyze the public safety crisis in Indian Country and provide their findings and recommendations to the President no later than November 14, 1997.

With apologies for the extremely short notice, I am told that the signed Presidential directive and reprogramming proposal must be sent to the Hill no later than July 3, 1997 in order to be acted upon during the appropriations process. As a practical matter, this means that if at all possible the Presidential directive must be issued no later than July 1, 1997 in order to ensure that this effort can be funded. Our JMD staff has already been in contact with OMB Justice/GSA Branch Chief David Haun. They have incorporated his informal recommendations into their proposal and stand ready to do everything they can to help move this through the process as soon as the directive is signed.

Ideally, we would highlight the issuance of the directive with an event involving the President. Those of us working on this issue have discussed the possibility of a radio address or White House event and are prepared to assist with whatever roll-out effort the DPC deems appropriate. Given the time exigencies, however, we recognize that constraints on the President's schedule will dictate our options. It may be better to announce

the directive through a press release, reserving a larger announcement for the issuance of the recommendations to the President next Fall. In any event, we are ready to assist in whatever kind of announcement is deemed appropriate.

Please call me if you have any concerns or questions about the directive or timing. Thank you for your assistance.

Attachment

cc: Seth P. Waxman  
Acting Deputy Attorney General

Charles F.C. Ruff  
Counsel to the President

Lynn Cutler  
Deputy Assistant to the President and  
Deputy Director of Intergovernmental Affairs

Anne Shields  
Chief of Staff  
Department of the Interior

MEMORANDUM FOR THE ATTORNEY GENERAL AND SECRETARY OF THE INTERIOR

SUBJECT: Law Enforcement in Indian Country

I am proud of this 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 much more violent for the 1.2 million Indian citizens who live on or near reservations. Indian Country homicide rates, for example, have risen dramatically -- over 80 percent, often surpassing the rates in large American cities. Numbers alone cannot convey the tragic impact of such violence on Indian families and their communities. ]?

This and other information you have provided to me make it clear that we need to enhance available resources in Indian Country to address this growing problem. While some tribal governments have developed strong law enforcement programs, many others have encountered significant difficulty in doing so. On a number of reservations, the number of police officers and investigators has diminished to the point that many violent crimes occurring on Indian lands remain not only unsolved, but uninvestigated. Jails are grossly substandard. Many Indian citizens receive police, investigative, and detention services that lag far behind even this country's poorest jurisdictions.

As President, I recognize the federal government's obligation to act, arising from our long-standing trust relationship with Native Americans, and from federal statutes that set forth our law enforcement responsibilities in Indian Country. We cannot look to others to solve this problem. Until we address this problem with resolve, with adequate resources, and with seamless interagency cooperation, the scourge of guns, drugs, domestic violence, and juvenile crimes will continue.

For these reasons, I hereby direct the Attorney General and Secretary of the Interior to analyze the law enforcement crisis and develop a comprehensive proposal for improving public safety and criminal justice in Indian Country. Consistent with the spirit of my September 1994 memo on government-to-government relations and tribal self-governance, Indian tribal leaders should be asked to participate directly in the process of developing solutions. I further direct the Departments of Justice and Interior to submit their recommendations to me no later than November 14, 1997.

Recognizing the dire situation in Indian Country, I ask that you reach out to tribal leaders and others around the country to



work with us toward a viable solution. To this end, I pledge the full support of my Administration to achieving adequate and effective law enforcement services in Indian Country.

William J. Clinton

Total Pages: \_\_\_\_\_

LRM ID: REJ360

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

Friday, February 6, 1998

**LEGISLATIVE REFERRAL MEMORANDUM**

**TO:** Legislative Liaison Officer - See Distribution below

**FROM:** James J. Jukes (for) Assistant Director for Legislative Reference

**OMB CONTACT:** Ronald E. Jones

**PHONE:** (202)395-3386 FAX: (202)395-3109

**SUBJECT:** JUSTICE Qs and As on Gang Activity in Indian Country



**DEADLINE:** 2:00 PM Wednesday, February 11, 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.

**COMMENTS:** This responds to questions posed following a joint hearing of the Senate Committees on Indian Affairs and the Judiciary in September 1997. If we do not hear from you by the deadline, we will assume you have no comments on the proposed responses.

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**SUBJECT: JUSTICE Qs and As on Gang Activity in Indian Country**

FAX RETURN of \_\_\_\_\_ pages, attached to this response sheet

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**U.S. Department of Justice**  
**Office of Legislative Affairs**

**Office of the Assistant Attorney General**

Washington, D.C. 20530

The Honorable Orrin G. Hatch  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510-6275

Dear Mr. Chairman:

Deputy Assistant Attorney General Kevin Di Gregory, Criminal Division, and Director Thomas LeClaire, Office of Tribal Justice, were pleased to present testimony on behalf of the Department of Justice regarding Gangs in Indian Country. We appreciate the important dialogue on the pressing subject of youth violence in Indian communities that both the Committee on the Judiciary and the Committee on Indian Affairs have fostered.

Attached are the Department of Justice responses to the follow-up questions from members of both Committees. We regret the delay in responding.

**Question of Senator Campbell:**

Please discuss the solutions to gang and other violent crime that were discussed at Monday's Executive Committee Meeting.

**Department of Justice Response:**

Escalating youth violence and criminal gang activity in Indian country have outpaced the development of tribal law enforcement capacity. Inadequate funding and a shortage of investigative resources impairs the ability of law enforcement in Indian country to focus adequate resources toward the emerging problems of gangs and youth violence. Proactive criminal investigations that could target Indian youth gangs and violence may be delayed because the current law enforcement resources must react to the high volume of ongoing violent crimes.

The members of the Executive Committee for Indian Country Law Enforcement Improvements agree that law enforcement, as it now exists in many parts of Indian country, fails to meet basic public safety needs. The Executive Committee explored numerous options to improve law enforcement in Indian country,

incorporating responses from consultations with federally recognized tribes. The objective of the Executive Committee's work is aimed at increasing the level of law enforcement services in Indian country to a level comparable to non-Indian rural communities. The increases in the number of uniformed police, criminal investigators, and detention and correction staff and facilities being considered by the Executive Committee would improve the ability of tribal communities to address the problems of youth and gang violence.

**Question of Senator Biden:**

What are the views of the Department of Justice on the constitutionality of the so-called "tribal opt-in" provision contained in 18 U.S.C. § 5032? Does the possibility that a juvenile member of a Native American tribe could receive a lower sentence than a non-member juvenile for a similar crime due to the "opt-in" clause render the clause invalid under the Equal Protection Clause of the Fifth Amendment?

**Department of Justice Response:**

We believe that the "opt-in" provision for Indian tribes set forth in 18 U.S.C. § 5032 represents a constitutional exercise of congressional authority in the field of Indian affairs.

The touchstone for analysis of a Fifth Amendment Equal Protection Clause question concerning federal Indian affairs legislation is the Constitution itself, which singles out Indian tribes and Indians as permissible subjects for federal legislation based on the unique political relations between the United States and Indian tribes. U.S. CONST Art. I, § 8, cl. 3 (Indian Commerce Power). In addition, Article II, § 2, cl. 2, gives the President the power, by and with the advice and consent of the Senate, to make treaties. This has often been the source of the Government's power to deal with Indian tribes. Morton v. Mancari, 417 U.S. 535, 552 (1974). Thus,

[F]ederal legislation with respect to Indian tribes, although relating to Indians as such, is not based upon impermissible racial classifications. Quite the contrary, classifications expressly singling out Indian tribes as subjects of legislation are expressly provided for in the Constitution and supported by the ensuing history of the Federal Government's relations with Indians.

United States v. Antelope, 430 U.S. 641, 645 (1977). Therefore, federal legislation with respect to Indian tribes will be upheld against equal protection challenges as long as such legislation is "tied rationally to the fulfillment of Congress' unique obligations toward the Indians." Morton v. Mancari, 417 U.S.

535, 555 (1974).

Title 18 U.S.C. § 5032 creates a general rule of deference to state authorities<sup>1</sup> in proceedings against juvenile offenders, except for those involving petty offenses committed within the special maritime and territorial jurisdiction of the United States. Unless the Attorney General (or by delegation, the United States Attorney) certifies that state authorities do not have the capacity or willingness to proceed against juvenile offenders or that the offense charged is one of the certain listed offenses and a substantial federal interest is involved, the offenders are surrendered to the state authorities under the § 5032 general rule of deference.

When a juvenile offender is not surrendered and the requisite certification is made, the United States proceeds against the offender in the federal district court. Unless the juvenile requests in writing upon advice of counsel to be prosecuted as an adult, the federal proceeding will begin as a juvenile delinquency proceeding. The juvenile may also be transferred to adult status and criminally prosecuted in federal district court under the following circumstances. First, a juvenile offender who commits an act after his or her 15th birthday that if committed by an adult would be a violent felony or other enumerated felony may be prosecuted as an adult if the federal district court approves the United States' motion requesting leave to prosecute the offender as an adult. Under this provision of § 5032, the tribal affiliation of the juvenile is not considered.

Second, under the 1994 Crime Act Amendment to § 5032, the United States may seek an order transferring a 13 or 14 year-old juvenile to adult status for criminal prosecution if the juvenile offender commits one of the qualifying offenses enumerated in the provision. Those qualifying enumerated offenses are 18 U.S.C. §§ 113(a), 113(b), 113(c) (assaults, now numbered 113(a)(1)-(3)), 1111 (murder), 1113 (attempted murder or manslaughter), or if the juvenile possessed a firearm in the commission of an offense, §§ 2111 (property offenses), 2113 (bank robbery), 2241(a), and 2241(c) (aggravated sexual offenses).<sup>2</sup> It is significant that with the exception of bank robbery, 18 U.S.C. § 2113, all of the enumerated offenses require that the crimes occur within the special maritime and territorial jurisdiction of the United

<sup>1</sup> For 18 U.S.C. § 5032 purposes, the term "state" includes "a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States."

<sup>2</sup> A third provision of § 5032 requires that certain repeat offenders over the age of 16 be transferred to adult status for criminal prosecution.

The 1994 Crime Act also created a tribal "opt-in" provision that establishes a limited rule of deference to Indian tribes and allows the tribe to decide whether 13 and 14 year-old Indian juveniles should be subject to prosecution as adults under the foregoing amendment. See 18 U.S.C. § 5032 § 4. The tribal "opt-in" provision states that no 13 or 14 year-old who is subject to tribal government criminal jurisdiction shall be prosecuted by the United States as an adult for an offense where federal jurisdiction is predicated solely on the occurrence of the offense within Indian country, unless the governing body of the Indian tribe has elected to "opt-in" to such treatment for the 13 and 14-year-olds. Accordingly, the tribal "opt-in" provision applies to all of the enumerated offenses except bank robbery.

Unlike proceedings under the general rule of deference to state prosecutions established by 18 U.S.C. § 5032, however, an Indian tribe's election not to "opt-in" to the federal statutory plan for prosecution of 13 and 14 year-olds does not result in a surrender of the juvenile to the affected Indian tribe for prosecution. Rather, in such circumstances, the United States would proceed against the 13 or 14 year-old Indian offender as a juvenile or, if the state has jurisdiction over Indians in Indian country, surrender the juvenile to state authorities. A juvenile offender found culpable as a result of a federal juvenile proceeding could be retained in federal custody until the age of 21, depending on the penalty for the offense.<sup>3</sup>

As explained above, the tribal "opt-in" provision allows the tribe to determine whether 13 and 14 year-old Indian juveniles who are subject to tribal jurisdiction shall also be subject to a transfer to adult status for criminal prosecution in the federal system for the qualifying enumerated offenses. Thus, it is

3 In addition to any term of detention imposed by the federal government (or by any state government), the affected Indian tribe could, as a separate sovereign, prosecute the Indian offender for an offense against the tribe. United States v. Wheeler, 435 U.S. 313 (1978). If the Indian juvenile were found culpable, the Indian tribal court could impose a consecutive term of tribal imprisonment for one year at the end of the federal detention. Therefore, the one year limitation on tribal government incarceration for any given offense under the Indian Civil Rights Act, 25 U.S.C. §§ 1301 et seq., does not provide the outer limit on the term of detention imposed on an Indian juvenile offender for a crime in Indian country because both the federal and tribal governments could proceed against the juvenile.

possible that Indian and non-Indian juveniles in Indian country<sup>4</sup> may be treated differently in the federal judicial system. This could occur when:

- a 13 or 14 year-old Indian juvenile commits a qualifying enumerated offense in Indian country where the tribe has not "opted in" and, therefore, the juvenile cannot be transferred to adult status and criminally prosecuted;<sup>5</sup> and
- a 13 or 14 year-old non-Indian juvenile commits a qualifying enumerated offense in Indian country against an Indian and the juvenile is transferred to adult status and criminally prosecuted.<sup>6</sup>

It is important to note that potentially different outcomes are also possible in cases involving crimes by non-Indians against non-Indians in Indian country. Federal law permits state governments to exercise jurisdiction over these crimes. United States v. McBratney, 104 U.S. 621 (1882) (Indian Country Crimes Act, 18 U.S.C. § 1152, permits the application of state criminal jurisdiction to crimes between non-Indians in Indian country). Therefore, a 13 or 14 year-old non-Indian juvenile who commits an enumerated offense in Indian country against another non-Indian will not be subject to federal jurisdiction under 18 U.S.C. § 1152. The non-Indian would avoid any federal disposition of

<sup>4</sup> In areas outside Indian country but within the special maritime and territorial jurisdiction of the United States (for example, on an army base), both Indian and non-Indian 13 and 14 year-old juveniles who commit enumerated offenses are subject to transfer to adult status and federal criminal prosecution under 18 U.S.C. § 5032.

<sup>5</sup> The Indian juvenile can still be adjudicated delinquent in the federal system in most areas of Indian country. In some areas, the states have been delegated concurrent jurisdiction over crimes by Indians in Indian country, and in those areas, the Indian juvenile may be surrendered to state authorities. In the "mandatory" Public Law 280 states, the jurisdiction delegated to the state over crimes by Indians in Indian country is exclusive of federal jurisdiction under 18 U.S.C. §§ 1152 and 1153, and in those areas, the Indian juvenile would not be subject to the tribal "opt-in" provision at all. 18 U.S.C. § 1162. Instead, they would be prosecuted by the state and tribal authorities.

<sup>6</sup> As with the Indian juvenile, the non-Indian juvenile could be adjudicated delinquent in the federal system, or if the state has concurrent jurisdiction, surrendered to the state. If the state's jurisdiction is exclusive of federal jurisdiction under 18 U.S.C. §§ 1152 and 1153, the juvenile would not be under federal jurisdiction and the state would proceed against the juvenile.



his case and could receive more lenient treatment than the 13 or 14 year-old Indian youth whose case is determined in a federal delinquency proceeding. These potentially different outcomes are based on longstanding divisions of governmental responsibility in Indian country between the United States, Indian tribes, and states.<sup>7</sup>

The potential differences in the treatment of juvenile offenders that result from the division of federal, tribal, and state governmental responsibility in Indian country under the tribal "opt-in" provision derive not from the race of the juvenile but rather from the quasi-sovereign status of the affected tribe under federal law. The provision is rationally related "to the fulfillment of Congress' unique obligations toward the Indians," Morton v. Mancari, 417 U.S. 535, 555 (1974), and therefore, the provision does not violate the Fifth Amendment.

#### Questions of Senator Hatch

1. You note on page 15 of your written testimony that the Administration's youth violence proposal "would have maintained the current opt-in provisions in reasonably similar form."

The Administration's proposed reform of 18 U.S.C. § 5032, contained in section 5002 of S. 362, includes an opt-in provision that would apply to all juvenile offenses for which there would be federal jurisdiction and alleged to have been committed by Native Americans aged 13 to 16. It is my understanding that the opt-in provision is far narrower than the Administration's proposal. The opt-in provision in current law applies only to juveniles aged 13 to 15 alleged to have committed a crime of violence under sections 113(a), 113(b), 113(c), 1111, [1113] or if the juvenile possessed a firearm during the offense, 2111, 2113, 2241(a) or 2241(c) of title 18.

- A.) Does the Administration continue to support an opt-in

<sup>7</sup> Compare Act of July 22, 1790, ch. 33, 1 Stat. 137 (1790) (extending federal court jurisdiction to crimes by non-Indians against Indians in Indian country) with Ex Parte Crow Dog, 109 U.S. 556 (1883) (crimes between Indians historically were left to Indian tribes for resolution prior to the enactment of the Indian Major Crimes Act, 18 U.S.C. § 1153). A similar statutory division of federal, state, and tribal jurisdiction exists regarding minor crimes by Indians and non-Indians in Indian country. See 18 U.S.C. § 1152 (exception to federal jurisdiction exists for minor offenses committed by Indians); R. Clinton, "Criminal Jurisdiction over Indian country: A Journey Through A Jurisdictional Maze," 18 Ariz. L. Rev. 503 (1976); compare United States v. Quiver, 241 U.S. 602 (1916) with State v. Larson, 455 N.W. 2d 600 (S.D. 1990).

provision broader than the provision in current law?

**Department of Justice Response:**

As discussed in detail above, under current law the tribal "opt-in" provision applies to those statutorily enumerated offenses where federal jurisdiction is predicated solely on the fact that the offense occurred in Indian country. 18 U.S.C. § 5032, ¶ 4. Therefore, the tribal "opt-in" provision applies to 18 U.S.C. §§ 113(a)-(c), 1111, 1113, and if a firearm was possessed by the juvenile offender, §§ 2111, 2241(a) and 2241(c). The "opt-in" provision does not apply to bank robbery, 18 U.S.C. § 2113, because that offense is proscribed throughout the United States based on its federal nature and irrespective of where the offense occurs within the United States.

The Administration proposal would expand the number of offenses for which a 13 or 14-year-old juvenile could be charged as an adult to include all serious violent felonies and drug offenses. While the proposal would expand the tribal "opt-in" provision to some degree by its inclusion of additional crimes under the special maritime and territorial jurisdiction of the United States,<sup>6</sup> the Administration proposal adds a substantial number of other offenses that are proscribed throughout the United States because of the federal interests involved. The tribal "opt-in" provision would not apply to this latter class of offenses, which includes, for example, the murder of a federal officer.

In addition, the Administration proposal includes a comprehensive restructuring of the charging scheme for all juvenile offenders who commit an enumerated offense after age 13 and before age 16. Under the proposed charging scheme, an offender in this age group may be prosecuted as an adult with the approval of the Attorney General or her designee. Such approval may not be granted, however, with respect to the adult prosecution of an Indian juvenile in this age group in Indian country, unless the tribe has elected to allow adult prosecution. The proposed "opt-in" provision, therefore, gives the tribes discretion to determine whether 13, 14, and 15 year-old juveniles can be prosecuted as adults (as opposed to 13 and 14 year-old juveniles under current law).

We continue to support these comprehensive reforms, including the tribal "opt-in" provision.

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<sup>6</sup> As previously noted, these crimes are subject to federal jurisdiction in tribal areas through 18 U.S.C. §§ 1152 and 1153 solely because they occur in Indian country.

B.) What is the Administration's policy basis for supporting the opt-in provision?

**Department of Justice Response:**

As with the "opt-in" provisions contained in the 1994 Crime Act relating to "three strikes" and capital offenses, 18 U.S.C. § 3559 (c)(6) and 18 U.S.C. § 3598, respectively, Indian tribes have expressed their strong preference for the authority to determine whether 13 or 14 year-old juvenile Indians should be transferred to adult status for prosecution in federal district court when they are charged with enumerated crimes in Indian country. This deferral to tribal authority through the "opt-in" provision recognizes that a disproportionately large number of Indians, who are uniquely situated because they reside in federal Indian country jurisdiction, would be adjudicated and sentenced under 18 U.S.C. § 5032.<sup>9</sup> The "opt-in" provision also supports tribal self-government by according to Indian tribes an opportunity to determine certain aspects of juvenile justice policy within their tribal territory. Consistent with the President's Executive Order on Government-to-Government Relations, the Department of Justice supports some form of the "opt-in" provision as consistent with tribal self-government.

C.) What is the Administration's view of the constitutionality of an opt-in provision?

**Department of Justice Response:**

**please see our answer to Senator Biden's question above.**

As set forth in the answer to Senator Biden's question, we believe that the proposed "opt-in" provision for Indian tribes represents a constitutional exercise of Congress' authority in the field of Indian affairs because it is "tied rationally to the fulfillment of Congress' unique obligations toward the Indians." See Norton v. Mancari, 417 U.S. 535, 552 (1974).

2. A.) How many tribes have elected to opt in under the 1994 amendment to 18 U.S.C. 5032?

**Department of Justice Response:**

The Sac and Fox Nation of Oklahoma has opted-in under 18

9 In fact, roughly 60% of the juveniles in federal custody are Indians although Indians comprise only about 1% of our nation's overall population.



requisite certification under 18 U.S.C. § 5032 may be made as a matter of course because "the juvenile court or other appropriate court of a State does not have jurisdiction." 18 U.S.C. § 5032(1). U.S. Attorneys would not decline to proceed against an Indian juvenile for an offense, nor against a non-Indian juvenile for an offense against an Indian, in Indian country under exclusive federal jurisdiction based on an inability to make the requisite certification under 18 U.S.C. § 5032.

In California and some other states, however, Congress has allowed state governments to exercise criminal jurisdiction over crimes by Indians, and by non-Indians against Indians, in Indian country.<sup>11</sup> See Public Law 83-280, 18 U.S.C. §§ 1162, 25 U.S.C. §§ 1321-1326; Nagonsatt v. Samuels, 507 U.S. 99 (1993). In those areas of Indian country, the federal government maintains some concurrent jurisdiction with the states, and U.S. Attorneys may defer to state agencies in proceedings involving Indian juveniles because the state juvenile court or other appropriate court has jurisdiction. See 18 U.S.C. § 5032 (establishing a general rule of deference to state court juvenile proceedings).

After a careful review of the BJS publication referred to in the question, BJS regrettably reports that the publication overstated the known information about the juvenile cases declined by U.S. Attorneys in 1995. DOJ (including BJS) does not have sufficient information about the reasons for the declinations -- either the immediate declinations or those declined later in the process -- to know how many, if any, of these cases were declined because the U.S. Attorney was not able to make the § 5032 certification. There is no indication in the BJS publication or elsewhere that U.S. Attorneys declined to proceed against juveniles, Indian or non-Indian, that they felt should have been prosecuted or adjudicated in federal court. The prosecutions referred to in the BJS publication may well have been declined for case- or suspect-related reasons wholly unrelated to jurisdiction or other factors involved in the certification under 18 U.S.C. § 5032.<sup>12</sup> Accordingly, BJS has reprinted this report, expunging the clause "because the U.S.

<sup>11</sup> Indian tribes have jurisdiction over crimes by Indians in Indian country in those states as well. Walker v. Rushing, 898 F.2d 672 (8th Cir. 1990).

<sup>12</sup> Notably, this assessment is constant whether or not a tribe has elected to "opt in" under the 1994 amendment to 18 U.S.C. § 5032. The "opt-in" provision concerns only federal prosecution as adults of juveniles aged 13 and 14 years-old who commit certain enumerated offenses where federal jurisdiction is based solely on their occurrence in Indian country. By contrast, the certification requirement concerns the jurisdictional threshold of federal adjudication of juveniles at all.

Attorney was unable to make the necessary certification in Federal court."

#### Questions of Senator Thurmond

- 1) Mr. Di Gregory, what are the differences between gang activities and violence in Indian country and urban street gangs, or are they very similar?

#### Department of Justice Response:

While the lack of uniform reporting and data collection in Indian country undermines our ability to compile precise statistics, law enforcement reports and anecdotal information do suggest certain characteristics regarding gang activity in Indian country. Investigative agencies have found many gangs in Indian country to be loosely organized social groups whose members commit crime during, and in furtherance of, their association with other members of the group.

Superficially, Indian gangs often mimic the activity of urban street gangs and several claim names similar to the larger national gangs such as the Crips and Bloods. However, gangs in Indian country also manifest some characteristics which distinguish them from inner-city or ethnic gangs. Despite similar names and graffiti, investigation has not shown a high degree of communication or coordination with urban counterparts. 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 than enterprise-driven street gangs as they undertake violent acts to acquire status within the ranks of the gang. Some gangs in Indian country have exhibited a high level of organization and criminal enterprise, evidenced by recent convictions of members of the East Side Crips Rolling 30's for violations of the Racketeer Influenced and Corrupt Organizations (RICO) statute in federal court.

There may be another difference between urban gangs and gangs on Indian reservations that stems from the notably youthful population of Native Americans. In speaking to FBI Special Agents who report gang activity within their jurisdictions in Indian country, most report that unlike many urban street gangs, the typical Indian gang consists primarily of juveniles, with few adult members. It seems that Indian country gangs consist of juveniles who are not engaged in criminal income-producing activities but engage in acts of violence motivated by "turf" and the perception of disrespect.

- 2) Mr. Di Gregory, you state in your testimony that the Juvenile Justice Bill, S. 10, should guarantee money for juvenile crime prevention. However, since much of the money in S. 10 is based on block grants, can't the Indian tribes choose to spend S.

10 money on prevention programs?

**Department of Justice Response:**

Although the bulk of the money authorized in S. 10 is to be distributed through a block grant, 60% of that money is already earmarked, depriving tribes and other jurisdictions of any discretion whatsoever over more than half of the funds they might receive. Specifically, S. 10 requires grant recipients to use 35% of their grants for juvenile facilities and graduated sanctions, 15% of their grants for juvenile drug testing (but not treatment), and 10% of their grants for juvenile recordkeeping.

With regard to the remaining 40%, tribes and other recipients may use those funds for crime prevention programs, but experience shows that, in fact, long-term investment in crime prevention rarely wins out in local budgetary determinations. For example, under the Local Law Enforcement Block Grant program, in FY 1996, a mere 9% of funding went to prevention activities. By contrast, over 80% of the funds went to law enforcement personnel, overtime, and equipment.

Similarly, the Byrne Formula Grant Program, administered since 1986, shows that crime prevention cannot compete with the short-term, exigent needs of law enforcement. In FY 1995, the most recent year for which spending figures are available, only 28 states committed Byrne funds to prevention activities, totalling just over \$17 million. By contrast, 45 states funded multijurisdictional task forces, totalling over \$153 million.

Research bears out this observation. The 1997 University of Maryland crime prevention study, authored by Professor Lawrence Sherman, concludes that formula (or block) grants may not be the best method to reduce crime because they do not permit funds to be targeted where and how they are needed most.

For all of these reasons, the Department urges the Committee not simply to permit but to guarantee funds for crime prevention. Such funding is critical to tribes, whose juvenile crime problems are particularly acute.

3) Mr. Di Gregory, do you believe it is better for investigators and prosecutors to focus on youth gangs apart from juvenile crime, or is it better to view youth violence as a continuum?

**Department of Justice Response:**

Investigators and prosecutors must, of necessity, focus on the investigation and prosecution of crime, including crimes committed by members of youth gangs. Targeting youth gang

members and gang leaders is a proven strategy to disrupt gang activity and deter youth who are not yet committed to a gang lifestyle from joining or remaining in gangs. However, we recognize that violence is a learned behavior and that it is neither cost-effective nor wise in terms of the development of youth to wait until violent behavior occurs before we address it. Consequently, youth violence should be viewed on a continuum and addressed through programs that work with parents who are at a high risk of abusing or neglecting their children, provide training in parenting skills, teach conflict resolution, and seek other ways to prevent or reduce violence by children.

\* \* \* \* \*

Thank you for the opportunity to respond to your questions. If we may be of additional assistance, we trust that you will not hesitate to call upon us. The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this report.

Sincerely,

Andrew Foia  
Assistant Attorney General

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