

LAW ENFORCEMENT ISSUES IN THE BUREAU OF INDIAN AFFAIRS

OVERSIGHT HEARING BEFORE THE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS OF THE COMMITTEE ON NATURAL RESOURCES HOUSE OF REPRESENTATIVES ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

**THE INDIAN LAW ENFORCEMENT REFORM ACT OF
1990, LAW ENFORCEMENT ISSUES IN INDIAN COUN-
TRY, AND RECENT ALLEGATIONS OF POLICE BRU-
TALITY**

MARCH 18, 1994—WASHINGTON, DC

Serial No. 103-74

Printed for the use of the Committee on Natural Resources



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1995

88-060cc **

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-046796-9

COMMITTEE ON NATURAL RESOURCES

GEORGE MILLER, California, *Chairman*

PHILIP R. SHARP, Indiana	DON YOUNG, Alaska,
EDWARD J. MARKEY, Massachusetts	<i>Ranking Republican Member</i>
AUSTIN J. MURPHY, Pennsylvania	JAMES V. HANSEN, Utah
NICK JOE RAHALL II, West Virginia	BARBARA F. VUCANOVICH, Nevada
BRUCE F. VENTO, Minnesota	ELTON, GALLEGLY, California
PAT WILLIAMS, Montana	ROBERT F. SMITH, Oregon
RON DE LUGO, Virgin Islands	CRAIG THOMAS, Wyoming
SAM GEJDENSON, Connecticut	JOHN J. DUNCAN, Jr., Tennessee
RICHARD H. LEHMAN, California	JOEL HEFLEY, Colorado
BILL RICHARDSON, New Mexico	JOHN T. DOOLITTLE, California
PETER A. DEFAZIO, Oregon	WAYNE ALLARD, Colorado
ENI F.H. FALEOMAVAEGA, American Samoa	RICHARD H. BAKER, Louisiana
TIM JOHNSON, South Dakota	KEN CALVERT, California
LARRY LAROCCO, Idaho	SCOTT McINNIS, Colorado
NEIL ABERCROMBIE, Hawaii	RICHARD W. POMBO, California
CALVIN M. DOOLEY, California	JAY DICKEY, Arkansas
CARLOS ROMERO-BARCELO, Puerto Rico	
KARAN ENGLISH, Arizona	
KAREN SHEPHERD, Utah	
NATHAN DEAL, Georgia	
MAURICE D. HINCHEY, New York	
ROBERT A. UNDERWOOD, Guam	
HOWARD L. BERMAN, California	
LANE EVANS, Illinois	
PATSY T. MINK, Hawaii	
THOMAS J. BARLOW III, Kentucky	
THOMAS M. BARRETT, Wisconsin	

JOHN LAWRENCE, *Staff Director*
RICHARD MELTZER, *General Counsel*
DANIEL VAL KISH, *Republican Staff Director*

SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS

BILL RICHARDSON, New Mexico, *Chairman*

PAT WILLIAMS, Montana	CRAIG THOMAS, Wyoming
SAM GEJDENSON, Connecticut	<i>Ranking Republican Member</i>
ENI F.H. FALEOMAVAEGA, American Samoa	DON YOUNG, Alaska
TIM JOHNSON, South Dakota	RICHARD H. BAKER, Louisiana
NEIL ABERCROMBIE, Hawaii	KEN CALVERT, California
KARAN ENGLISH, Arizona	

TADD JOHNSON, *Staff Director*
MARIE HOWARD, *Professional Staff Member*
BARBARA ROBLES, *Clerk*
RICHARD HOUGHTON, *Republican Counsel on Native American Affairs*

CONTENTS

	Page
Hearing held March 18, 1994	1
Statement of Members:	
Calvert, Hon. Ken, a U.S. Representative from California	4
Johnson, Hon. Tim, a U.S. Representative from South Dakota	3
Richardson, Hon. Bill, a U.S. Representative from New Mexico, and Chairman, Subcommittee on Native American Affairs	1
Thomas, Hon. Craig, a U.S. Representative from Wyoming	2
Williams, Hon. Pat, a U.S. Representative from Montana	5
Statement of Witnesses:	
Babby, Wyman, Acting Deputy Commissioner of Indian Affairs, Bureau of Indian Affairs, U.S. Department of the Interior	39
Brun, Gerald, Chairman, Red Lake Band of Chippewa Indians Tribal Council (prepared statement with attachments)	144
Bordeaux, Wilma, Chairperson and Commissioner, Law Enforcement Commission, Rosebud Sioux Tribe, South Dakota	7, 10
Cox, Connie, Law Enforcement Administrator, Rosebud Sioux Tribe	7
Francis, Walter M., Associate Professor, Criminal Justice and Sociology, Central Wyoming College	27, 29
Prepared statement with attachments	101
Hillgartner, Billy F., investigator, Office of Criminal Investigations, Nav- ajo Division of Public Safety, Shiprock Police District, Shiprock, NM	27, 31
Lewis, Rod, Tribal Attorney, Gila River Indian Community	7, 12
Matthews, William, Deputy Director for Administration, Police Founda- tion	27
Phillips, Floyd, Councilman, Shoshone Business Council, Fort Washakie, WY	7
Quasula, Theodore R., Chief, Division of Law Enforcement, Department of the Interior	39
Spoonhunter, Harvey, Chairman, Arapahoe Business Council, Fort Washakie, WY	7
Spotted Elk, Clara, Chairman, Ad Hoc Committee on Law Enforcement, Northern Cheyenne Tribe, Lame Deer, MT	7, 13
Prepared statement	90
Thomas, Mary V., Governor, Gila River Indian Community, Sacaton, AZ	7, 11
Prepared statement	83
Whitesell, Richard, Director, Billings Area Office, Montana, Department of the Interior	39
Woodenlegs, John, Tribal Councilman and Ad Hoc Committee Member, Northern Cheyenne Tribe	7
Additional material supplied:	
BIA: Statistics chart on laws broken	81
Hillgartner, Billy F.: Letter of March 11, 1994, to Hon. Bill Richardson	142
Interior Department: Excerpt from General Session dated April 29, 1992, of Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Af- fairs Reorganization	153
Kelley, Matt:	
Article of November 6, 1993, entitled, "BIA police beat suspect, but go unpunished"	71
Article of November 6, 1993, entitled, "What happened at Ft. Washakie"	74
Richardson, Hon. Bill:	
Article entitled: "Brutality by BIA debated,"	64

IV

	Page
Additional material supplied—Continued	
Richardson, Hon. Bill—Continued	
Article entitled—Continued	
“Congressmen seek investigation of BIA police,” dated November 24, 1993	63
“Wind River brutality denied,” dated November 11, 1993	60
Background information for hearing	58
Superintendent, BIA (DOI): News Release of November 15, 1993	75
Rosebud Sioux Tribe: Costs chart	82
Communications submitted:	
Anonymous:	
Letter of November 16, 1993, to Hon. Craig Thomas	77
Letter of October 14, 1993, to Assistant Secretary Deer	79
Deer, Ada E. (DOI): Letter of December 17, 1993, to Hon. Craig Thomas ..	68
Thomas, Hon. Craig:	
Letter of November 10, 1993, to Hon. Ada Deer	66
Letter of November 18, 1993, together with Hon. Tim Johnson to Hon. Bill Richardson	65

LAW ENFORCEMENT ISSUES IN THE BUREAU OF INDIAN AFFAIRS

FRIDAY, MARCH 18, 1994

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS,
COMMITTEE ON NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to call, at 10:05 a.m. in room 1324, Longworth House Office Building, Hon. Bill Richardson [chairman of the subcommittee] presiding.

STATEMENT OF HON. BILL RICHARDSON, A U.S. REPRESENTATIVE FROM NEW MEXICO, AND CHAIRMAN, SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS

Mr. RICHARDSON. The committee will come to order.

Today's hearing is on law enforcement issues in Indian country. Representatives Thomas and Johnson have requested this hearing because of recent allegations of police brutality on several reservations. I note that there are hundreds of excellent law enforcement officers serving Indian country. However, if there is truth to the allegations, the subcommittee will take some action.

On August 18, 1990, Congress enacted the Indian Law Enforcement Reform Act. This law marked the first comprehensive statutory scheme governing BIA law enforcement activities on Indian lands. Despite the enactment of this law, there remains serious problems in BIA law enforcement.

There have been increasing complaints regarding the excessive use of force by BIA law enforcement officers. These complaints have been the focus after a great deal of media attention. Although the numbers of allegations of police brutality against BIA may not reflect a significant problem, the manner with which the BIA has responded to complaints against BIA officers does present a significant problem.

Under the current system, the agency superintendent has direct supervisory authority over BIA police on the reservation. There is no requirement that an agency superintendent supervising BIA law enforcement officers have any training or background in law enforcement. The superintendent is the BIA official charged with reviewing allegations of brutality or other citizen complaints made against BIA law enforcement officers. The superintendent is also the BIA official who has the responsibility for disciplining any law enforcement officer for misconduct. Yet, BIA superintendents are not law enforcement officers nor have they received any formal law enforcement training.

Until February of this year, there was no independent mechanism for investigating and processing a complaint made against a BIA police officer. The BIA law enforcement program, unlike any law enforcement agency in the Nation, had no internal affairs division to investigate complaints made against BIA officers.

In February of this year, the Assistant Secretary approved a plan to establish an internal affairs division in BIA to investigate complaints made against BIA police.

Other problems in the current BIA law enforcement program include lack of resources and staff. Most BIA and tribal law enforcement programs are without the staff necessary to police large, remote reservations. These staffing patterns result in police officers being placed in potentially dangerous situations without adequate backup; police officers unable to respond to emergency calls on the reservation because of a shortage of officers. In addition, police officers on Indian reservations make less money than do State or other Federal law enforcement officers. We will explore these and other issues today.

All witnesses will have five minutes to make a presentation. I ask that you summarize your statement and note that your full written statement will be made part of the record. The record will be open for two weeks. I will also ask unanimous consent that the press clippings and the background which the members have in their packets be made part of the record.

[The background and a sample of the press clippings may be found at end of hearing; and the remainder were placed in the hearing record files of the Committee.]

Mr. RICHARDSON. Let me state also that this hearing is part of the subcommittee oversight activities, but it has been requested by two specific subcommittee members, the gentleman from Wyoming and Mr. Johnson. The Chair recognizes the Ranking Minority Member.

STATEMENT OF HON. CRAIG THOMAS, A U.S. REPRESENTATIVE FROM WYOMING

Mr. THOMAS. Thank you, Mr. Chairman, and thank you for holding this hearing today. I think this is an important topic and a serious one. Although most tribes have their own police departments, about 61 have BIA police forces. Officers, all Native Americans, are hired and trained by the BIA, and the entire force is under the supervision of the agency superintendent.

There have been complaints of abuse and brutality on different reservations over the years. Once a charge of abuse is made, an institutional problem arises. Because each BIA police force is self-contained, when an officer is accused of abuse the accusations are often investigated by the head of the reservation police force. This can lead to the perception that such an in-house investigation may be biased because the force will protect its own and not thoroughly investigate the charges. It is this institutional shortcoming that we are here to examine today.

This entire issue came to a head last November when a series of AP articles appeared alleging systemic brutality on the part of BIA police on several reservations. These articles raised some serious concerns in my mind. As a result, I wrote Assistant Secretary

Deer on November 9th asking her to outline "what steps the BIA undertakes to curb this type of abuse, the mechanisms in place to investigate an allegation of abuse, and any plans that the Bureau has to improve and insulate from such accusations of partiality the conduct of such investigations."

On November 18, in conjunction with the gentleman from South Dakota in whose district there have been similar problems, I asked the Chairman to conduct an oversight hearing on this issue. He was quick to respond affirmatively, for which I thank him.

On December 18, Deer replied to my earlier letter. She asked every field director to provide a full report on every allegation in the AP story, which the BIA will analyze thoroughly. More importantly, however, she directed the BIA to immediately establish an internal affairs unit, separate from the constituent BIA police forces. The unit is to have three to five staffers, and will be located in Artesia, New Mexico, home of the BIA police training facility.

Mr. Chairman, today we will hear from the tribes, the Bureau, law enforcement specialists on this issue. I believe that the focus of our inquiry should be prospective rather than retrospective. Instead of rehashing each separate allegation of abuse in the AP articles, which would be counterproductive in my mind especially since an investigation of these events is still pending, I hope we look into how such abuses can be curbed and examine how the BIA plans to deal with the problem in the future.

I look forward to the witnesses' testimony. I would especially like to welcome those who came from Wyoming to be with us: the Honorable Harvey Spoonhunter, Chairman of the Arapaho Business Council; The Honorable Darwin St. Clair, Chairman, Shoshone Business Council; Councilman Floyd Phillips, Shoshone Business Council; and Dr. Walter Francis, the Director of the Criminal Justice Program at Central Wyoming College in Riverton, which is adjacent to the reservation.

Thank you, Mr. Chairman.

[Material submitted for the record may be found at end of hearing.]

Mr. RICHARDSON. I thank the gentleman. The Chair recognizes the gentleman from South Dakota and one of the prime initiators of this hearing.

STATEMENT OF HON. TIM JOHNSON, A U.S. REPRESENTATIVE FROM SOUTH DAKOTA

Mr. JOHNSON. Thank you, Mr. Chairman.

I ask unanimous consent that my statement be included in the record in full.

Mr. Chairman, I want to thank you for holding today's hearings and thank Mr. Thomas, the gentleman from Wyoming as well, for his interest and concern about this matter. In November, Representative Thomas and I requested this hearing, and I appreciate, Mr. Chairman, your responsiveness to our request for our subcommittee to inquire into this critically important matter.

I first became aware of alleged problems with the BIA police when I read Associated Press stories a few months ago that claimed that BIA police officers were rarely reprimanded for rou-

tinely using excessive force while making arrests. Alarming allegations in South Dakota and in Montana were cited.

How a sovereign metes out justice is the linchpin for a free society. The residents of any community must have faith in their judicial system. For many the police is the first experience one may have with the criminal justice system and if there is no faith in the police, then it is a sure bet that problems may develop further in the community.

In short, if the police are to be effective, then the police must be respected by all. The BIA police, as with every law enforcement agency, must earn that respect, and in order to achieve that respect, the BIA police have to be properly recruited, trained, compensated and supervised. We cannot expect quality policing if the necessary tools are not in place.

I am looking forward to hearing from our witnesses on what, if anything, they believe we on Capitol Hill should be doing relative to this situation. Is it merely a matter of underfunding, or is there more to it than that? I am especially eager to hear if anyone thinks that better coordination between Federal and local police would help the BIA police better perform their job.

Mr. Chairman, I am also especially interested in hearing from the BIA witnesses as to whether they believe there is a need to improve the quality of policing that occurs on Indian lands, and if so, what changes are needed.

I think we need to hear, as well, about accountability, and by that I mean how far is the Bureau willing to go relative to local communities working with the BIA police to ensure that when problems do arise, that the citizenry will be heard and not ignored.

Lastly, I want to welcome from my State, Wilma Bordeaux, Chairperson and Commissioner of the Rosebud Sioux Tribes Law Enforcement Commission, and thank her for her contributions to what is a difficult but very important issue that we are working on on this subcommittee.

So thank you, Mr. Chairman.

Mr. RICHARDSON. I thank the gentleman.

Let me just announce to the other members of the subcommittee that I will be recognizing that before the witnesses step up we will be watching a brief 40 second video of an incident that has been raised on this issue.

The Chair recognizes the very active member from California, Mr. Calvert.

STATEMENT OF HON. KEN CALVERT, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. CALVERT. Thank you, Mr. Chairman.

Today's hearing on law enforcement issues in the Bureau of Indian Affairs is very timely. With our constituents troubled by alarming increases in criminal activities, our reliance on law enforcement authorities has been magnified. Police brutality and abusive behavior by law enforcement officials violates the inherent trust that we are supposed to have in these officials.

In Riverside County, where I represent the 43rd district, many different tribes and bands of Native Americans reside. Ninety-four federally-recognized tribes exist in California. With such varied law

enforcement systems in place, a heavy dependence on the BIA for assistance in these matters has evolved.

I look forward to hearing from our witnesses this morning. I hope we can come up with some solutions to these very serious concern.

Thank you, Mr. Chairman, for holding this hearing.

Mr. RICHARDSON. I thank the gentleman. Equally so, a very active member of this subcommittee, the gentleman from Montana, Mr. Williams.

**STATEMENT OF HON. PAT WILLIAMS, A U.S. REPRESENTATIVE
FROM MONTANA**

Mr. WILLIAMS. Thank you, Mr. Chairman. I first want to welcome my fellow Montanans who are here to help us try to sort out what is clearly a difficult situation. We passed a major reform in 1990, the Indian Law Enforcement Reform Act. It was the first comprehensive look at the law enforcement problems on the reservations, but despite that good attempt, the committee does believe, or I guess speaking for this individual member, I continue to believe that serious problems permeate BIA's law enforcement and criminal investigation activities: excessive force, lack of due process, violation of civil rights, property damage, clear manifestations of a law enforcement system that is marked by lack of accountability.

There are many tangible signs of this system not working, but perhaps the saddest and most tangible sign is that, sadly, in Indian country, there is a loss of confidence and trust in law enforcement. That is the worst thing that can happen in a society with regard to the people's connection to those public officials who are entrusted with the very safety of those people.

Let me give you a guess about what is wrong. We have a law enforcement system that is allowed to police itself. BIA superintendents are in charge both of investigating complaints against law enforcement officers, and then charged with disciplining officers who act improperly. As we all know, in many situations, the BIA superintendent has understandably, particularly in these rural areas, a close, personal relationship with the officer that that superintendent is investigating.

While a plan has been approved establishing an internal affairs division to handle the complaints within BIA law enforcement, it is not known when this office will be operational or whether or not it will be adequately staffed. It seems to me the Bureau has to prioritize the establishment and operation of that internal affairs division, but in the meantime, perhaps some other steps can be taken that will enhance BIA's law enforcement credibility and accountability.

Let me give a couple of suggestions, Mr. Chairman. Require BIA law enforcement to work more closely with tribal government and tribal law and order committees to identify problem areas and move to improve their accountability.

The second suggestion would be to use outside law enforcement agencies, perhaps from other reservations, to investigate complaints against BIA law enforcement on the reservations.

And finally, maybe we could provide a means of ensuring that area criminal investigators adequately investigate criminal com-

plaints and make a final disposition within a timely period. Everyone in this room I think would agree that some criminal complaints languish for years unadjusted, and that, too, creates this problem on the reservations of folks having no faith in those charged with protecting them.

I think one of the shames in America is that the first Americans who choose to live where they grew up, that is at home in a place that other folks call a reservation are without an effective and accountable law enforcement assistance in that place, their home. Americans shouldn't have to live like that, let alone the first Americans.

And so, Mr. Chairman, it is very important that we are holding this hearing and even more important that either the BIA or the Congress move to correct what is a shameful situation and one that I think is correctable if we move with thoroughness and thoughtfulness.

Thank you.

Mr. RICHARDSON. I thank the gentleman. We will now move ahead to watch the 35 second video.

[Showing video].

Mr. RICHARDSON. This was an incident on the Wind River Reservation in Wyoming, and Mr. Thomas is very obviously concerned about this.

And I think before we call the witnesses, does the gentleman wish to say anything about this?

Mr. THOMAS. I am inclined to think that the purpose here—and this is, of course, illustrative of something that came to be allowed to happen. But as I said before, I think we ought to be prospective; I think we ought to be looking at the systematic generic changes that need to be here, and there is little use in spending a lot of time rehashing each separate case. But that is illustrative of the fact that we need to be here and make changes in the system.

Mr. RICHARDSON. I thank the gentleman.

Let me just say one more thing. Last night in the crime bill we were able, through the efforts primarily of Mr. Synar and others, to exclude tribes—or to give tribes the proper sovereignty jurisdiction in the provisions that dealt with Indian teenagers and “three strikes you're out”, basically giving the tribes sovereignty that they deserve and that they have received in other law enforcement issues. But it is going to be very hard in terms of our credibility of the BIA law enforcement to be able to administer provisions like that when we have these allegations dealing with BIA law enforcement, and I think it is critically important that we deal with these issues that are being heard today.

For the first panel, we would like to invite Mr.—the Honorable Harvey Spoonhunter to step up from Wyoming, the Honorable Floyd Phillips, Councilman Phillips, and the Honorable Mary Thomas. Please step up to the podium and take your seats.

Let me say that Mary Thomas will be accompanied by Mr. Rod Lewis, the tribal attorney, the Honorable Clara Spotted Elk, and we will also have the Honorable John Woodenlegs, the Honorable Wilma Bordeaux from the Rosebud Sioux Tribe in South Dakota, and Connie Cox, Law Enforcement Administrator.

First to this distinguished panel, welcome. I also, as the Chairman, wish to thank you for the hospitality that your representative in Congress offered me during the recent trip to your reservation, Mr. Thomas, and I was treated—the subcommittee was treated very positively. We held a hearing there, and again, our thanks.

We will proceed first with Chairman Spoonhunter.

STATEMENTS OF HON. HARVEY SPOONHUNTER, CHAIRMAN, ARAPAHOE BUSINESS COUNCIL, FORT WASHAKIE, WYOMING; HON. FLOYD PHILLIPS, COUNCILMAN, SHOSHONE BUSINESS COUNCIL, FORT WASHAKIE, WYOMING; HON. MARY V. THOMAS, GOVERNOR, GILA RIVER INDIAN COMMUNITY, SACATON, ARIZONA, ACCOMPANIED BY ROD LEWIS, TRIBAL ATTORNEY; HON. CLARA SPOTTED ELK, CHAIRMAN, AD HOC COMMITTEE ON LAW ENFORCEMENT, NORTHERN CHEYENNE TRIBE, LAME DEER, MONTANA, ACCOMPANIED BY: HON. JOHN WOODENLEGS, TRIBAL COUNCILMAN AND AD HOC COMMITTEE MEMBER; HON. WILMA BORDEAUX, CHAIRPERSON AND COMMISSIONER, LAW ENFORCEMENT COMMISSION, ROSEBUD SIOUX TRIBE, SOUTH DAKOTA, ACCOMPANIED BY CONNIE COX, LAW ENFORCEMENT ADMINISTRATOR

STATEMENT OF FLOYD PHILLIPS

Mr. SPOONHUNTER. Thank you, Mr. Chairman.

At this time, Mr. Floyd Phillips will present our testimony on behalf of the Eastern Shoshone and Arapahoe tribes.

Mr. PHILLIPS. Mr. Chairman, thank you for the opportunity to present the Eastern Shoshone and North Arapahoe Tribes' view on law enforcement on and near the Wind River Reservation.

I am a member of the Shoshone Business Council, and as Mr. Spoonhunter has pointed out, that he is the Chairman of the Northern Arapahoe Business Council whose tribe shares the Wind River Reservation with my tribe. The testimony I will deliver is joined in by the Northern Arapahoe Tribe.

The tribes appreciate the Chairman's calling this hearing to discuss the issue of law enforcement in Indian country. We also would like to thank Mr. Thomas for suggesting our tribes as witnesses on this important issue.

Responsive, effective and proper law enforcement is a critical concern of the elected officials of the Eastern Shoshone tribe and Northern Arapahoe Tribes. A safe living environment is fundamental to a healthy community and is essential to create a positive atmosphere in which to raise our children.

The tribes want to protect our tribal members from becoming victims of crime. Quality law enforcement is a key element in providing a safe environment. Another part of maintaining a healthy environment, however, is also ensuring that the system of law enforcement used to protect the community has not itself become a source of abuse or brutality.

More than 80 percent of the offenses committed on the Wind River Reservation are committed by repeat offenders and involve alcohol and substance abuse. The cases arising on our reservation over the last three years are summarized in the table attached to our testimony. Law enforcement officers deal with cases ranging

from assault and battery and theft to child abuse and contributing to the delinquency of a minor.

Over the years, we as elected officials and leaders of the community have received complaints concerning improper law enforcement by the Bureau of Indian affairs police officers, as well as other local law enforcement officers. The Business Council has made efforts to ensure that each complaint was properly and promptly investigated and resolved.

Recognizing that there are two sides to each incident, we have attempted to make sure that all facts are gathered, and that if the police acted improperly, proper discipline or other actions were taken against the officer. The tribes recognize that the use of force is sometimes necessary in order to provide effective law enforcement, but the force must be consistent with the need to maintain order in a given situation. Excessive force is not to be tolerated.

As the subcommittee gathers facts on reservation law enforcement, problems with law enforcement by non-BIA law enforcement agencies should also be considered. We also receive complaints from improper use of force by officers in both non-Indian communities off-reservation and dependent Indian communities on-reservation that have their own police departments.

At times, our tribal members seem to have been singled out for disparate treatment. As the subcommittee looks at ways of improving quality law enforcement on reservations, the subcommittee should address law enforcement problems in non-Indian or dependent Indian communities on or near the reservations.

There are a number of things the subcommittee can pursue which will increase the quality of law enforcement on reservations and prevent unlawful police actions. Preventing instances of improper police activity should be pursued along two tracts: prevention and enforcement.

Adequate prevention measures can reduce the likelihood that excess force will be used in the first place. There must be adequate numbers of trained officers. The first defense against police abuse is to make sure that the law enforcement officers are properly trained in the handling of potentially violent situations.

The BIA police officers on our reservation are currently trained at the Arizona training facility. In addition to this training, we believe it is important for officers to receive on-reservation training. Each reservation has unique law enforcement concerns and cultural values that impact on effective law enforcement. Failure to properly train officers regarding local conditions and methods of resolving conflicts can create potentially violent situations where none may have otherwise occurred.

Not only must the officers be adequately trained, but there must be enough officers. The Wind River Reservation covers approximately 3600 square miles. The area is currently patrolled by 17 officers. With such a vast area to cover, situations where force must be used by our officers arise because of the long response time involved once a crime or situation has been reported.

In many cases where alcohol or drugs are involved, a problem which was more easily controlled when the call was made requires force to preserve the peace by the time the officers arrive on the

scene. Shortened response times also will result in fewer and less severe injuries to the victims.

In addition, with such a large area, it is difficult to maintain a visible police presence to act as a deterrent to crime. We have made efforts to house police in some of our housing areas, but even those officers cannot be on duty 24-hours a day. We urge Congress to provide resources to provide adequate law enforcement officers to meet the need on the reservations. For example, five more officers on our reservations would go a long way toward addressing these concerns and providing a pool in reserve if a major crime situation occurs.

Moreover, there is a need on our reservation, and possibly other reservations, for a subagency, which would be staffed with law enforcement officers, dispatchers and holding cell guards. The subagency would keep the officers in closer proximity to the reservation communities. Under the current system, all officers are based out of the agency headquarters and must drive a considerable distance to their work areas. This does present a major problem on our reservation.

I would like to now turn my attention to recommendations about what to do once a complaint has been made about the conduct of a police officer. The tribes do support an independent internal review affairs board within the BIA.

Under the current system on our reservation, when the superintendent receives a report of abuse, he requests the police and the FBI to investigate the complaint. We believe, however, that a separate entity who specializes in reviewing police activities would be more beneficial. The internal affairs board should be responsible for reviewing all allegations, not just those where excess force is involved.

For example, if an officer is suspected of criminal activity, the board should have authority to conduct the investigation. The review board should also have authority to investigate complaints made against non-BIA law enforcement officers, for improper law enforcement when arresting or subduing tribal members. That is one complaint, that normally the off-reservation police are arresting members in an unreasonable manner. In addition, it must be adequately funded and staffed to meet the criteria established.

As the final point, the tribes would urge you to support continued and increased funding for programs which help prevent crime in our communities. Full funding is needed for alcohol and drug treatment facilities in the local communities, adequate funding for youth programs, and support for social services programs that address children in need of care.

We are also asking that a juvenile facility on the reservation will not only prevent detaining juveniles in adult facilities, a dangerous and disapproved measure, but will provide opportunities on work with troubled youth in combination with existing community programs for youth. Breaking the cycle of repeat offenders in the criminal justice system when they are youths will reduce the long-term crime levels on our reservation.

In conclusion, dealing with improper law enforcement must happen on many levels. As the subcommittee addresses this problem, it should focus not only on what occurs after a complaint has been

filed, but also on ways to prevent situations of excessive force from occurring.

In addition, efforts should be made in areas that reduce crime as a whole on the reservation. The problems on our reservation are going—it is key that all the business councils, law enforcement agencies, the housing boards, we all have to work together in combating the problems that exist currently on our reservation.

On behalf of the tribes, I thank you for the opportunity to present our views.

[The chart attached to the statement of Mr. Phillips may be found at end of hearing.]

Mr. RICHARDSON. Thank you. The Chair recognizes the Honorable Wilma Bordeaux, Chairperson and Commissioner of the Law Enforcement Commission, Rosebud Sioux Tribe of South Dakota.

Madam chairperson, please proceed.

STATEMENT OF HON. WILMA BORDEAUX

Ms. BORDEAUX. Mr. Chairman and honorable members of the committee, I am honored to be here to present witness testimony on behalf of the Rosebud Sioux tribe.

The Rosebud Sioux Tribe commenced contracting the uniformed and dispatched units of the Rosebud Police Department on March 5, 1993. As of October 1, 1993, the criminal investigation and detention components were additionally contracted. This was mandated by public concerns regarding civil rights violations, the number of patrolling personnel, law enforcement rapport with the public and the development of crime prevention programs.

As of the end of the first contract year, reported civil rights violations have been reduced by 90 percent and the number of patrolling personnel has doubled. Of the total number of calls responded to, approximately 14 percent were non-criminal assistance to citizens, such as aid to a stranded motorist during adverse weather conditions.

The Rosebud Sioux Tribal Police Department and the public share a strong commitment to the development of crime prevention programs. A number of communities have implemented neighborhood crime prevention programs and the law enforcement program, in conjunction with our tribal agencies, have initiated a security watch in the tribal residential areas.

The Rosebud Sioux Indian reservation, located in south central South Dakota encompasses 1,263,800 acres. Our coverage extends over a five county area serving in excess of 18,000 tribal members with a sizable portion of the population located in 20 reservation communities. Officers dispatched from headquarters may travel a distance up to 120 miles one way when responding to a call.

The Rosebud Sioux Reservation has been recognized as an economically depressed area since World War II and, as with other economically depressed areas, it has an exceptionally high rate of crime. Violent crime on the Rosebud is at least five times greater than that of the State of South Dakota. The Rosebud Sioux tribal officers responded to a total of 20,850 calls during the contract year.

Current needs. We are requesting funding which exceeds the previous allocation to address current needs and in anticipation of per-

ceived future needs in law enforcement on the Rosebud Sioux Reservation. As previously mentioned, the area of coverage and the volume of calls require additional personnel and equipment upgrade to maintain the quality of services provided to the people of the Rosebud Sioux Tribe.

With the additional funding, 10 patrolmen and two criminal investigators will be added to the force as well as life insurance and benefits for all of the officers. These benefits currently are not available under the existing funding conditions.

Equipment upgrade will include a variety of needed items, such as: fingerprint kits, portable breath testers, camera/recording equipment, and other miscellaneous investigations materials and radio communications equipment. The radio communications equipment is very crucial because the current system does not fully cover the area served. As a result, officers are out of touch with the department while on call to distant locations.

Future needs. The most significant perceived future needs for law enforcement on the Rosebud Sioux Reservation deal with the youth of our tribe. In all of the reservation communities, concerns have been expressed about the young people and their problems. Violence among young people has increased and ranges from simple assault to murder. Gang organization is also spreading through the reservation communities and has even reached the elementary schools.

Fifteen percent of all arrests made during the last contract year were youth-related. Since the Rosebud Sioux tribe recognizes that the young people are the future of the tribe, these concerns are of utmost importance.

Three of the additional officers and one of the criminal investigators will be assigned to work with youth-related crime and prevention programs. If the additional funding is provided, it is the intent to decentralize law enforcement to provide sub-stations in outlying communities. This will provide additional support through deterrence to the proposed youth-related crime and prevention programs.

For the first time in the history of the Rosebud Sioux Reservation, the tribe has undertaken the responsibility of law enforcement. This has been a monumental task and has only been possible with the support of the tribal membership. The only way tribal sovereignty can be fully realized is through the undertaking of this responsibility and with the continued support of this committee, we look forward to a long future in this endeavor.

Thank you.

[The statistic sheet attached to the statement of Ms. Bordeaux may be found at end of hearing.]

Mr. RICHARDSON. The Chair recognizes the Honorable Floyd Phillips, Councilman.

I am sorry, Mary Thomas. A very welcome and noted and frequent visitor to this committee.

Welcome, Mary.

STATEMENT OF HON. MARY V. THOMAS

Ms. THOMAS. Always a pleasure to see you.

Good morning, distinguished members of the committee. In your questions about abuse on the part of the police force, BIA in particular, in Gila River, we had an incident a few years ago where it went to the extreme. We had a police officer who shot two of our community members. He was quickly transferred and he is now on another reservation.

This incident has never been brought forth to us in its entirety, so we do not know what the circumstances fully were or what happened after that, if there was any disciplinary action. We have small reports, nothing documented or written down, but there have been reports on minor confrontation with police officers where there appears to be maybe a broken arm or bruises inflicted, but nothing written down because they figure nothing is going to happen.

Some issues surrounding our police force in Gila River have come to a point where the whole community is very frustrated and that is what I bring to you today. I guess our main concern has been in the area of training.

There is a lot of issues on Gila River where the lack of training is apparent. Some specialized focuses I guess should be made on child abuse cases. In the past two months I have counted 19 child sex abuse cases on Gila River and these take a lot of time and effort on the part of investigators to follow through with these. There have also been four assaults on police officers because of their frustration in figuring if they can bring attention to injuring our police force, then maybe something will be done.

The lack of management is also another issue. We are fortunate that our superintendent does have some law enforcement background, but this is not enough. He is not afforded, I believe, the opportunity to upgrade those skills, and he has other duties to perform because he watches over two other reservations. The apparent lack of supervisory training is apparent.

Another is the issue of budgets. We try to stretch our money as far as we can, but with mismanagement we lose a lot of that money because we do not have the proper staffing. The community became so frustrated that they have decided to attend a 638 program.

Right now we are being told by the BIA that a lot of officers won't come to the reservation because of our intent, so there are a lot of vacancies there in Gila River. We feel that that is not the problem.

We have been designated as one of the highest crime-rated reservations in the country. We are also the fourth largest Indian populated reservation in the country. And so with inadequate police staffing, training, and budgets, we are at a dilemma, and we hope that with our 638 process we will have better control.

I would like to turn the rest of my time over to Mr. Lewis.

[The statement of Ms. Thomas may be found at end of hearing.]

STATEMENT OF ROD LEWIS

Mr. LEWIS. Mr. Chairman, members of the subcommittee, I just have a few thoughts to add to what Governor Thomas expressed, and I think one of the main problems we have with BIA law enforcement on Gila River is simply the lack of training. This is reflected in a variety of ways.

One of the ways in which it is reflected is a lack of response to tribal court orders and policies. The problem is if you have Federal officers in tribal court officials or tribal court orders, there tends to be a feeling on the part of many BIA law enforcement officials that they do not have to comply with tribal court orders or tribal court policies. That is a major kind of a problem.

The second major kind of a problem that is apparent and reflects the lack of training is simply routine kinds of investigations. Unfortunately, whether it be the lack of training at the training academies or a simple lack of discipline and supervision of these police officers, we don't have a lot of officers who, when they respond to calls, write up their—write up incident reports adequately making sure that they are covering all of the essential details, making sure that for prosecution purposes that the elements of a crime are covered.

So that seems to be a major factor, and again, whether it is lack of training or a manner of simply providing this information for prosecutions seems to be a sad defect among many of the others that are on Indian reservations.

I really would like to make one major final point and that is child sex abuse on Indian reservations. We simply don't have the trained investigators to handle this very sensitive area. This is a major problem which we all face, and what happens if we don't have good, intensive, sympathetic interviews, we don't have good prosecutions and we don't have people facing penalties that a court may dole out. This happens, this occurs and hurts prosecutions in tribal courts, in State courts and in Federal courts. It is a major problem, I believe, throughout Indian country.

Mr. RICHARDSON. The Chair recognizes the Honorable Clara Spotted Elk.

Let me say that I am going to ask the gentleman from South Dakota to temporarily chair. I will be returning shortly.

STATEMENT OF HON. CLARA SPOTTED ELK

Ms. SPOTTED ELK. Mr. Chairman and members of the Committee, we really want to thank you for having us here today and for convening this hearing.

I appreciate you being here, Pat, to hear what we have to say. We began looking at this issue last fall. I and my other council members had been receiving so many complaints about law enforcement. We tried to deal with it at the local level with the superintendent and he basically told us, look, all you have got here is a bunch of drunks, a bunch of bad people that are mad because they got arrested. We have got the best police force in Montana, there is no problem. Just forget about it, we will take care of it. But we kept getting a lot of complaints. Because you know when Indian people or anybody have complaints about cops, they don't go to the Federal Government, they come to the elected officials.

Most elected officials find that they can deal with it. We found we can't, because it is under the BIA. So last September I introduced legislation into the council to create an ad hoc committee on law enforcement which passed unanimously. The ad hoc committee has been working since then.

We had three things we were supposed to do: look into whether or not the tribes should contract the police under 638 was one of them; the second was to try and develop a local police commission; the third was to generally work with the police to identify specific ways that we could improve law enforcement on our reservation. Naively, we thought we could get that done in about a month. We extended our life and we are going to make our final report to the council in April. By the way, the tribe has funded this to the tune of about \$10,000. It shows how important it is to our community, I think.

One of the things we didn't anticipate is getting involved in complaints. What happened when the ad hoc committee got set up is all kinds of people started coming to us and saying, I have this incident and I want to complain about it. So we consulted—we worked very closely with the BIA at all levels on this.

So we consulted with them. Initially we said, well, look, there is a complaint procedure, why don't you deal with the Bureau independently. Overwhelmingly, people said no. We have tried it and they haven't done anything. We don't believe they will do anything, and most alarming, they were afraid, just flat afraid. They said if we put in a complaint against a cop, they are going to get us.

So that is why we decided to address these complaints. We got together with the BIA, all the way up to Mr. Whitesell—I see he is here today and I am sure he will confirm this—to say what should we do about these. The first thing we were told, we can only deal with written complaints.

OK. That is fine. Well, Mr. Quasula told us yesterday they have to by regulation deal with oral complaints, but they told us only in writing. What you have to understand is that is hard for a lot of Indian people to do. Nevertheless, we said to people we will only deal with written complaints. Get them notarized.

And secondly, we said we developed a privacy waiver with our lawyers, because that is the only way our bureau could tell the committee anything about the complaint. And then the committee formally transmitted the complaints. We have over 30 written complaints and dozens and dozens of oral complaints.

In the exhibits here we have given you a good sampling of some of those complaints. They are very alarming. There is a wide range to them. Some from people just being mad about how a cop treats them because he is rude. There are complaints about policeman using their position for personal vendettas. One kid in here, you can read it, his car was totally destroyed, he was thrown in jail for 13 days, lost his job, all the complaints related dismissed, because the cop didn't like him over a woman.

Complaints about the BIA refusing to serve a State felony warrant against a BIA employee. Allegations of BIA police officers fraternizing with women when they are on duty. All kinds of things in here. We—the BIA agreed that they would look into these complaints and give us a report.

Now, we expected they are probably going to throw most of them out. We thought maybe they would pick one or two and say yes, the cops were wrong. But so far, with the exception of one complaint, they have simply interviewed the officer and sent us a letter

back and said the cops exercised good judgments and were right. Those letters are in this exhibit.

I would like you to look at them. We don't think that is good enough. We assumed that they would call in the witness—the complainant, the witness, and the policeman, talk to all of them, but apparently that is not how it is handled.

I am also sorry to report to you that some of these community fears about harassment have occurred through this process. So we are not happy. We are not satisfied with the way these complaints are handled. We said when we started out, let's give the local boys a chance to deal with this. It hasn't happened.

Yet this week we brought these complaints, gave them to Mr. Quasula here in Washington. He told us: I don't deal with these things; I only deal with criminal investigations. So, Mr. Quasula, who ultimately in the BIA is responsible for these complaints? Well, he said, we are really not sure.

So we are going to give them to you. We have put ourselves on the line and told our people, we are going to make sure these complaints are looked into. We didn't say we are going to make sure the cops are guilty. We said you as a tribal citizen have a right, if you file a complaint, it ought to be looked into, and we are still waiting to see if that gets done and we are going to have to ask for your help.

Our committee is going to go to the council in April and make our report and we are going to recommend that we 638 the police program. We have had district hearings in our five districts. Overwhelmingly, the people want us to do this, because they think we can do a better job. Interestingly enough, several of the policeman have independently approached us and said yes, if you can give us the same wages and benefits, please take it back.

The one point I want to make about these complaints is that they all center around a small group of officers. We have some good cops at Lame Deer, but unfortunately these small groups are protected and they are actually the superintendent's favorite officers.

I hope that the council does vote to 638 the program, otherwise I am afraid the ad hoc committee will either be impeached or in jail, one of the two.

We have some recommendations in our testimony. I would just like to briefly mention them.

We think you guys need to do some legislation to address these problems. We would like to see you amend the law to require that BIA police departments work with local tribal police commissions, and those commissions could be very helpful in three areas.

First of all, hiring and firing police officers. We have a right to say who works on our reservation and who serves our people.

Second, making sure that complaints are handled; and third, working cooperatively with the police to improve things. Our ad hoc committee has made a little progress in that the police are doing more things with juveniles in our youth center, they are improving conditions at the jail, which is—a lot of problems with the jail that creates problems for them, and they are trying to improve that, we are trying to improve it.

The second thing is we would like you to annually cause each BIA police department to be evaluated by an external source, and

we would like those evaluations to be shared with the local government, along with identifying strengths and weaknesses, and that can be used as a planning tool. The tribes need to be involved in the planning as well as solving problems.

I agree with the other witnesses, we need more money, particularly in the area of training. You might be aware that BIA police officers can serve up to one year without receiving training. We think that creates problems, especially when you have these young, aggressive officers.

A final area is you have got a very important law called the Indian Civil Rights Act on the books. That is supposed to protect us from these basic violations. And yet we have been told very frankly by Jerome Main, the head criminal investigator, that BIA is not responsible to investigate civil rights complaints. The FBI has to do that, the Justice Department has to do that.

As a matter of practice, they don't do it. It is a very low priority. They don't even investigate a lot of major crimes, let alone a complaint against a police officer. So you guys are going to have to take some steps. If we have that law on the books, you are going to have to say how can we enforce it if there is a legitimate complaint. I don't know the answer to that. But the reality is, they are not enforced right now.

So in summary, thank you again. We think that the system is not held accountable to Indian people. Right now on our reservation, you go there, the common sentiment is the cops are the enemies of the people, the kids call them terminators, for goodness sakes.

Cops are there to protect and serve. The point we want to make, they are there to protect and serve, not the BIA, they are there to protect and serve Indian people. It is not happening now on a lot of reservations and that is what we are asking you to help us change.

I would like to give my colleague, John Woodenlegs, just a few moments if the committee would indulge us. Thank you.

[The statement of Ms. Spotted Elk may be found at end of hearing; and the exhibit materials were placed in the hearing record files of the Committee.]

Mr. WOODENLEGS. Mr. Chairman, committee members, we have a high rate of alcoholism, substance abuse, mental, physical, sexual abuse on our reservation. We have a small facility, a temporarily, not for long-term. We are looking toward more of prevention and rehabilitation, and we need a larger facility in Lame Deer.

We visited one in South Dakota, which we were impressed, and it is supposed to be opening up this month. And we need help to try to get a facility like that on our reservation so that we can get back into life to help our youth, juveniles. We don't have a facility for them. They are just locked up for 72 hours and let out and there is no rehabilitation or anything. And we need help in these areas. Our youth are our future, and that is what we are focusing on now.

I want to thank you for the time and for having this hearing. Thank you.

Mr. JOHNSON. [Presiding.] I want to thank all the members of the panel for your insights and your contributions, your willingness to join us here as we work on what is a very difficult issue.

Ms. Bordeaux, I was particularly intrigued at a portion of your testimony, where you were indicating that on the Rosebud, you have contracted out law enforcement, it no longer is BIA police on the Rosebud, that in fact the tribe has contracted out to handle its own law enforcement, and that within one year civil rights violation allegations have declined by 90 percent.

Now, there is a need for additional funding for all kinds of different things, as virtually everyone on the panel has indicated, but apparently there are some interpersonal matters that were able to be resolved rather quickly by simply an administrative change on the Rosebud.

And I wonder if you could elaborate for us, why it would be that a change like that would lead to such a startling reduction in civil rights violations claims.

Ms. BORDEAUX. Yes, Mr. Chairman, and committee Members. Our tribe has contracted, it has been one year now by way of 638. What led up to this was a lot of the concern from the tribal membership in regard to, along with, you know, the untrained officers and inadequate number of personnel, there was a large outcry of civil rights violations.

And we obtained a grant to survey the reservation communities and a large percentage of the return that we received indicated that brutality was a number one concern with the officers. And that primarily being that officers were from other reservations, other tribes, they were detailed, we were told even by the Bureau of Indian Affairs, that Rosebud was kind of the last place that people were sent within the Bureau system, and you would have people coming in that maybe were transferred from a reservation in North Dakota, they would come to our area, they wouldn't be familiar with our tribal code.

I think there was a lot of, you know, variables that were involved here that people, you know, they weren't—we would have maybe between seven and twelve Bureau of Indian Affairs officers handling the whole reservation, and we have quite a few communities, long distances into Gregory County even, from all the way in Todd County.

So there just was an inadequate number of personnel and we had also taken a—we went into the communities with a forum, we established community assessment by way of a forum, in addition to the surveys. And people all had a loud, you know, just really expressed a loud concern about brutality.

And there has been so many incidents of where people have actually died of beatings. From the time that I became active working on the Judiciary Committee for the tribe initially, we had people say that, you know, their ear drums were broken by blows to the head.

And when we would tell the people, well, you know, go through the process of the civil rights investigations, then they would come back, there would be a number of whole families that were brutalized, they come back that the officers hadn't, you know, hadn't per-

formed any—had performed according to the Bureau and hadn't had any misconduct.

And just in the short year, like there has been many accomplishments. And we have really utilized the committees. You know, we went into the communities and said what are you going to actively do if the tribe goes ahead and contracts? And we contracted in half of the fiscal year, we came into contracting like March 5th and half of the money was already expended by the Bureau of Indian Affairs, but aside from all of those odds, we have really accomplished a lot I feel in the first year by way of actually communities becoming involved, them implementing neighborhood crime watch programs, reducing the civil rights allegations by 90 percent, and we have had some with our tribal officers coming on largely untrained now, we have—and in the Bureau, it was like they were almost pressuring us, saying you have, within a year, if you don't get these officers trained, you know, you could lose the contract.

And right from the onset we were threatened with, you know, we would hear that the Bureau was going to take back law enforcement, you know. And against all odds, like I said, you know, we have kind of persevered this year and we have had some allegations of civil rights against our tribal officers now, but they aren't for force. They are privacy violations, they are maybe a person says that, you know, they had some money missing, you know, in regard to a jailer. So they aren't force issues.

So we have really emphasized, strongly emphasized that we will not tolerate brutality from our officers.

Mr. JOHNSON. What I find particularly interesting is that while I think we all concede that there is a need for more officers and more resources and more facilities and more training, that the remarkable achievement has been accomplished on the Rosebud without any of those to date.

Now, hopefully we will get more in place, but the main thrust of what has radically improved the circumstances in the Rosebud has been a much greater orientation toward community-based law enforcement using your own people who understand the traditions and the personalities and the culture of the Rosebud, and getting the communities involved themselves in their crime watch and so on.

And is that a fair statement, that the officers you have now are not particularly better trained than the BIA officers before in terms of formal training, and you don't have any more officers to speak of than you had before particularly?

The real thrust of the difference is that it is much more community oriented, community-based law enforcement that you have now. Is that fair to say?

Ms. BORDEAUX. Yes, it is. And some of our—what we have, we have, you know, required the communities is to take responsibility themselves. And the communities have wanted to take that responsibility because now they operate on a volunteer basis, like the neighborhood crime programs, and we have gone into an agreement with the housing authority, they have obtained a grant for security personnel, so we have gone into agreement with them to provide and train security personnel.

But a lot of it is the communities and the people themselves taking the responsibility. And that is one way that when we came in, like I said, with, you know, half of the resources, the people really had to make up the difference. You know, they have had to assist the personnel.

Now, we have seven officers that have gone off to training in New Mexico and so I think a lot of it has been the people have been real supportive and have taken that initiative to implement these crime prevention programs. And we have had like, tragically, within this summer, we had a young person killed by his peers, and I think the people realized the escalation of crime over the years, like in any economically depressed area, you have that high crime rate, and people realize that they have to start taking responsibility themselves.

So because of that kind of a public outcry in regard to the crime and adequate quality law enforcement services, you know, the people have really taken that initiative, which has really helped. We have really done a lot of public relations type of work. We have established rapport with the communities.

There is a nine member commission which I am a part of that oversees, and we have had to take steps whereas we operate also our government within our tribal government, we have problems where oftentimes it is like, well, that will be OK, you know, or something.

But we have had to really stand our ground and if we have had officers that initially weren't performing well within their 90-day probationary period, we have taken a real close evaluation, look at their performance, and then some of them we haven't retained and we have had to take a lot of, you know, people saying, well, you know, this person needs a job and then I would say, well, we need adequate law enforcement personnel, you know.

Mr. JOHNSON. All right. Well, thank you. I have some other questions, but I think we should go to other Members of the panel who I know have some issues that they want to raise as well.

And so I recognize the gentleman from Wyoming who was very instrumental in raising the visibility of the need for Congress to focus on this issue.

And I turn to Mr. Thomas.

Mr. THOMAS. Thank you, Mr. Chairman. Let me just do several questions fairly quickly.

Chairman Spoonhunter or Mr. Phillips, these allegations in the press basically came in November. What is your view of the allegations in terms of brutality?

Mr. PHILLIPS. Mr. Thomas, our views since we have been on the business councils for approximately two years, we have not had any reports by our tribal members as far as the issues that were brought to light in that newscast. And we urge our people to, if there are any type of issues such as that, to report it to us as the tribal leaders to properly address that with our superintendent. And it can properly be handled. But as far as—

Mr. THOMAS. You have not had any complaints or any concerns then about police activities or brutality?

Mr. PHILLIPS. No, not in the two years that we have been on the business councils. Previously, the last five years, there has been

three instances of—one that I am aware of a person's arm was broken, and that was taken through the proper process and the victim was awarded a settlement in that issue.

But the other two instances, they were handled properly, but it has been some time since we have had any allegations of brutality.

Mr. THOMAS. If you or any of the others—according again to the allegations, there have been 17 incidents and in not one case has the officer been disciplined. How do you react to that?

Mr. PHILLIPS. If I could have Mr. Spoonhunter—

Mr. SPOONHUNTER. On the Northern Arapahoe Business Council, we have been—since we have been taking—since we took office, we have only had three incidents that we were aware of. And those were before we took office.

And the last one was just due to the response time of the officer, officers being called. And as far as the officers, no action taken on that, we urge our tribal members to come to the business councils, the joint business councils, and we can inquire as to what action or anything is being followed up.

And there are procedures that the superintendent follows when there is allegations on officers.

Mr. THOMAS. Is it up to the superintendent to do it, you don't have any other arrangements, you don't have a committee? Does the business council concern themselves with it or do complaints just go to the superintendent?

Mr. SPOONHUNTER. As of now they go to the superintendent.

Mr. THOMAS. I see. Ms. Spotted Elk, you apparently have had a little different experience. What is your reaction to the fact that, if indeed it is true, there are 17 incidents, and that in none, in no occasion, were the officers disciplined?

Ms. SPOTTED ELK. Speaking from our own experience, Congressman, we had asked when we got into this complaint business, that the BIA give us a written report on investigating each complaint, including whether or not there was merit to it, and if there was what disciplinary action they would take.

The position our local superintendent has taken is that they cannot share that information with us because personnel matters are confidential. So we do not know what if any disciplinary actions have been taken on our reservation.

But the other point I would like to make is on the number of complaints, I think it is hard to hang your hat on a number. I know that investigative series said 17 nationwide. When we first started the superintendent told us he had less than a handful at Northern Cheyenne.

We have got over 30 written complaints and dozens and dozens of oral complaints, so how do you count them? I don't know.

Mr. THOMAS. Apparently, if I might interject, apparently the 17 were to have included police brutality. Your complaints may or may not be brutality; is that fair?

Ms. SPOTTED ELK. Yes.

Mr. THOMAS. So yours go beyond that. I was interested in—I think you indicated a relative lack of response from the BIA to your complaints, be they written or oral.

Is that a fair observation?

Ms. SPOTTED ELK. Initially. They have since responded to the ad hoc committee. We met with them and we agreed on this procedure of how we would handle them.

It is the quality of the response that we are not happy with. You know, like I said earlier, it seems that all they have done is go interview the officer and say this is his story and we agree with him. But they have responded to the majority of our complaints.

Mr. THOMAS. Who is responsible for the operation of the police on your reservation?

Ms. SPOTTED ELK. We have a captain of police who is the day-to-day authority. He is supervised by the superintendent. The superintendent in turn is supervised by the area director.

Yesterday when we met with Mr. Quasula and his assistant, I can't remember his name, we asked the same question, who do we go to? OK, we are not happy with what happened in Lame Deer on these complaints. We met with the area director, he assured us they would all be looked into.

We think he hasn't followed up on that commitment as much as he should have, so who do we go to next? And he said, well, that is a good question. I guess you wind up with the Assistant Secretary of Indian Affairs. He didn't answer our question, so I don't know.

Mr. THOMAS. The Assistant Secretary of Indian Affairs is quite a long stretch from Lame Deer, Montana, isn't it?

Ms. SPOTTED ELK. I think so. And in one of the press clippings, you know, they said, well, you can always go to your Congressman. We in Montana have one Congressman, as do you in Wyoming, and I know Pat has a lot of other things to do than to try to get somebody to look into these complaints.

Mr. THOMAS. Well, we are more than happy to deal with that, of course, but that isn't our job, you know, to micromanage the police operations on a reservation. And it just seems to me there ought to be somebody who is willing to come to the snubbing post and be responsible for the operation in that reservation, or any other reservation operating of course within policies that are set by the Assistant Secretary.

But to suggest that that is where you have to go to deal with an operational problem seems to me to be a long stretch.

Mr. Chairman, I will let somebody else take a shot.

Mr. RICHARDSON. [Presiding.] The gentleman from Montana.

Mr. WILLIAMS. Thank you.

Councilman Phillips, you testified that 17 officers are responsible for an area of 3,600 square miles. How many people live in that area?

Mr. PHILLIPS. Approximately 12,000 people.

Mr. Williams.

Mr. WILLIAMS. 12,000 people, 17 officers. Chairperson Bordeaux, you testified, if I understood it correctly, that there are 18,000 members. Are they all on the reservation?

Ms. BORDEAUX. Mr. Williams, yes, they are.

Mr. WILLIAMS. How many officers?

Ms. BORDEAUX. This contract year we had 22.

Mr. WILLIAMS. Twenty-two?

Ms. BORDEAUX. Yes.

Mr. WILLIAMS. Seventeen officers for 12,000 people, 22 officers for 18,000 people, probably about the same ratio. How big is your reservation, Madam Chairman?

Ms. BORDEAUX. 1 million acres, plus. 1 million plus acres.

Mr. WILLIAMS. Maybe two or more of you could—would have the answer to this. I sense that you are probably going to have to just give me your judgment of it, unless you have done an analysis.

Are the members of your tribes more concerned about violation of their rights on the reservation or when they are off the reservation? Clara, what about the Northern Cheyenne, are they—how would they—if we could take a poll of all the folks down there, how would they answer that, do you think?

Ms. SPOTTED ELK. I feel pretty confident in saying, Congressman Williams, that people on a reservation feel that there—it is worse to get picked up by a reservation cop than it is an off reservation cop.

Mr. WILLIAMS. They would rather be arrested off the reservation than on?

Ms. SPOTTED ELK. Yes.

Mr. WILLIAMS. When you say it is worse, is it the complaints are less likely to be followed quickly or is it the brutality matter, or what is it that is worse?

Ms. SPOTTED ELK. Well, I think people on the reservation feel that, and I want to stress this, we have 14 cops, and these complaints we have center around about three of them. And you just want to hope and pray that it is not one of the three that pick you up.

I think people on the reservation feel that the reservation cops can get away with anything they want, that they can arrest you and throw you in jail and you might as well plead guilty because they are going to stick with it, and it is the people against the cops, those type of cops. I know that—I will give you an example.

One of my fellow councilmen, Andy Elk Shoulder, who you may know, brought this up. He had a complaint against a Rosebud county cop. One complaint, took that complaint to the county commissioners, and it was dealt with. The officer was reprimanded and everybody was satisfied. You know, we have had all these other people come to us and we can't do anything.

People have a lack of confidence. I have to agree 100 percent with what you said earlier, when people have a lack of confidence in police, it is a terrible thing.

Mr. WILLIAMS. Yes, that is a terrible thing. John, is that your sense of it, that your friends and neighbors would feel more comfortable being arrested when they get off the reservation by non-reservation police, than being arrested on the reservation?

Mr. WOODENLEGS. It is fairer when you do get picked up off the reservation, you know, you have a chance. You are not guilty until proven out there. But here, on the reservation, you are guilty right off the bat and there is nowhere to go.

Mr. WILLIAMS. Most of you testified that about difficulties with regard to lack of training, administrative problems, following up complaints in a timely fashion, a shortage of police officers.

Only a couple of you have indicated that brutality, unnecessary—well, brutality, unnecessary discipline, is a problem. Let me ask,

starting with you, Councilman Phillips, to just go down the table there and tell me if whether or not you think brutality on your reservation—police brutality on your reservation is a problem.

Mr. PHILLIPS. Mr. Williams, I think due to the professionalism of our police force, that is the reason why we do not have the reports of the brutality. So I would have to say that we do not have that problem on our reservation. It is mainly the surrounding communities that we get the complaints.

Mr. WILLIAMS. Thank you.

Governor Thomas?

Ms. THOMAS. I believe the issue on brutality is not that strong on Gila River because we don't have enough police officers. I believe we only have nine who are police officers and three sergeants and five of those have been vacant for several years.

So they are taking their chances out there, and I haven't heard anything about police brutality, other than the one I mentioned about the taking of life.

Mr. WILLIAMS. Thank you.

Clara.

Ms. SPOTTED ELK. Overall, I would say no. However, I believe that there are specific incidences where there has been brutality. I think it is limited to a few officers. I think overall what people in our community are most up in arms about is the conduct of police, that the police think that they can—they are rude, they are overbearing, that they can do anything they want.

But yes, I think there are some incidents of brutality, but overall, not all the cops are running around beating up people.

Mr. WILLIAMS. Thank you.

Chairperson Bordeaux.

Ms. BORDEAUX. Mr. Williams, brutality was the main issue that prompted the tribe taking the step to contract law enforcement. And to kind of maybe get back to your other question about tribal members feared off reservation if they were arrested, our tribe spans five counties, and oftentimes we do hear of some tribal members that do have—like they have some concerns with maybe some of the counties, say like Gregory or Tripp County, but what they are are just kind of jurisdictional, you know, can that officer talk to us, but they don't fear brutality from off reservation law enforcement personnel.

Mr. WILLIAMS. Thank you. Mr. Chairman, I have to leave to visit with a couple of constituents. I do want to hear from either/or both of the remaining panels, and I will come back as quickly as I can.

Mr. RICHARDSON. I thank the gentleman. Let me ask the panel, and this is really the heart of the hearing, do you think that your area superintendents and law enforcement directors are adequately trained in law enforcement? Would you prefer to see a better line authority to BIA law enforcement in the central office?

Maybe I will start with Councilwoman Spotted Elk first.

Ms. SPOTTED ELK. Let me clarify first that I am not speaking just of our individual superintendent. I do have to go back home and live with the guy. No, I do not think—they are not required to have any training in law enforcement. And under the present system we are then subject to that particular individual's philosophy.

At Lame Deer, his philosophy is I want some young real aggressive cops with high arrest rates. That is not what the council wants. We don't agree with that, but that is what we have got. I don't think the area directors have to have training in law enforcement.

I know Dick has had quite a bit of experience, but I think you need professional law enforcement people to run law enforcement. While you were out of the room, Mr. Chairman, I was explaining our meeting with Mr. Quasula yesterday and it seems unclear once you get past the superintendent and the area director who in the BIA ultimately is in charge of police. We came away from that meeting not knowing the answer to that.

I think you should have a professional police force in charge of police.

Mr. RICHARDSON. Mr. Lewis.

Mr. LEWIS. Mr. Chairman, I concur with the remarks just made.

It just seems to me that if we are going to have professional police forces, effective police forces operating on the reservation, we need to have professional supervisors. And that must start with the area office and come down through the superintendent. That simply is the only way in which we are going to be able to effectively fight crime.

Mr. RICHARDSON. Chairperson Bordeaux, do you wish to say anything on this?

Ms. BORDEAUX. Mr. Chairman, I would like to have Ms. Cox respond to that, because we do have, you know, an opinion on that.

Ms. COX. Yes, to benefit law enforcement for our area, it would be very, very important that the Agency superintendent have experience in law enforcement. For our reservation, our area director is very, very experienced, but our superintendent is minimally experienced, and one problem that our area has with the Bureau of Indian Affairs is in a recent Associated Press release they stated that they weren't releasing information about civil rights violations that had been committed, allegedly committed by their bureau officers, because our people were not interested.

That type of attitude between the Bureau and our tribal members is what causes a lot of problems, that we are not interested in what happens, and that is completely untrue.

Mr. RICHARDSON. Does the gentleman from South Dakota wish to follow up on this?

Mr. JOHNSON. Well, Mr. Chairman, we had some discussion while you were absent relative to the rationale for the Rosebud contracting out and simply taking law enforcement into their own hands and taking it outside of the BIA in order to gain greater control and in more of a community-based kind of law enforcement and the remarkable success it has had in reducing the level of civil rights claims.

But I think Ms. Cox has a good point, that the training nonetheless and experience is a critical factor to the degree that the BIA is involved in law enforcement.

Mr. RICHARDSON. Governor Thomas, do you want to say anything?

Ms. THOMAS. Just that I believe that, to reiterate what some of the other members of the panel have said, that both police officers

and investigators, particularly in Gila River, should be supervised by the same qualified locally police law enforcement officer. And especially in the area of management, it is just not there.

Mr. RICHARDSON. Chairman Spoonhunter or Councilman Phillips?

Mr. SPOONHUNTER. Our officers on the Wind River receive the same type of training as the State officers, and they also attend 14-week course in Arizona.

Mr. RICHARDSON. Well, what is clear here is that we have untrained BIA superintendents supervising BIA cops. And I would hope with my colleagues that we can consider some steps to take. It just seems to me we need some legislation, for one, mandating proper training, and secondly, guaranteeing line authority and proper supervision in the internal affairs of some of these issues.

It just strikes—I didn't realize the situation was so abysmal. And I want to commend the two gentlemen for raising this issue before the subcommittee.

Mr. THOMAS. Would the Chairman yield?

Mr. RICHARDSON. Yes, of course I would.

Mr. THOMAS. I agree with what you are saying, but it seems to me that despite training, you still have a question of some sort of an independent review procedure. Regardless of how much you know about it, if you are going to supervise yourself, self-analysis is seldom critical.

And so even with training, there needs to be some sort of an appeal process to someone who is outside of that line of authority, it seems to me, at some level.

Mr. JOHNSON. If the gentleman will yield.

Mr. THOMAS. Surely.

Mr. JOHNSON. Could that relate as well to a very knotty and difficult issue which we have only touched upon briefly in the past, and that is there a need for an independent judiciary in our tribal court systems in order to separate it from the political environment of the tribal council?

Can people really feel they have a meaningful appellate right to be heard honestly, so long as the judiciary is not a truly independent entity?

Mr. RICHARDSON. Well, let me say that these are some constructive suggestions, and I agree with the gentleman from Wyoming, that you need that independent appeals process, but it strikes me that what we have here is untrained supervisors with little authority from their central office, little involvement and knowledge of law enforcement issues, acting as cops.

And we also have some violations of human rights and it strikes me that we need to take some legislative action. I would like to recognize the gentleman from American Samoa, a very valuable Member of the subcommittee. And we wish to congratulate him on his initiative on behalf of human rights and Japanese Americans that he recently undertook in the case of Mr. Yamashita, who was featured in The Washington Post this morning.

The gentleman from American Samoa.

Mr. FALEOMAVEGA. Thank you, Mr. Chairman.

I appreciate the commendation, but really it should go to the members of the Hawaii congressional delegation for their efforts of

the past five years to correct this real injustice against a Japanese American. When he was trying to qualify for the officers candidate school, one for which I was very disappointed the commandant of the U.S. Marine Corps said that minorities cannot shoot, swim, or even use a compass.

I can't believe this, especially for many of my relatives and friends who are proud members of and an integral part of our armed services. But I was very happy that today was a happy occasion at which Bruce Yamashita now has been officially commissioned as a Captain in the U.S. Marine Corps.

Aside from that, Mr. Chairman, I want to commend you and thank you for calling this hearing for this very important issue that we are to undertake. It seems to me that perhaps before undertaking any real efforts to draft the legislation, as it is the tendency of most of us here on the Hill to cure an ill, pass a law, but I wonder perhaps if we hear from our friends at the BIA administratively as to what their problems are.

The fact that we only have 300 law enforcement officers run by the BIA, if the problem really is one of more administration and one of leadership and one that can do, make any real serious effort within the Bureau of Indian Affairs to correct some of these deficiencies administratively, and perhaps our good friend the Assistant Secretary, Ada Deere, will seriously address this issue with members of her staff and those who are given this responsibility, and see where we need to go.

This problem is not a new problem. The years that I have served on this committee, we have always heard of the brutality against Indian citizens within the reservations, but this time particularly now by officers that are under the administration of the BIA and this is certainly something that I look forward to hearing from the witnesses and from your leadership and see where we need to go.

Mr. RICHARDSON. I thank the gentleman and we will hear from the BIA, but let me just say that every time you turn a solution to the BIA, it gets worse. That has been the record with this subcommittee.

So we will listen to the BIA, but beyond them asking for more resources, we have had—let me just tell the gentleman, let me put the BIA on notice, this subcommittee passed a tribal courts bill. Mr. Thomas, myself, all of us worked very hard on it.

The BIA has failed to implement it. They have not funded the office, they have not even followed the statutory requirement that they set up a tribal courts office within the BIA with the proper jurisdiction and authority.

Let me just say that we are going to loosen a bunch of inspectors and a lot of funding amendments on them unless they follow the subcommittee. And I think the Congress is tired of the BIA trying to run their own shop and trying to not follow the laws of the Congress.

They think that because this is a Democratic administration and there are Democrats that are Chairmen, that nobody is going to go after them. Well, I am serving notice to the BIA that unless we see some corrective action in terms of following the laws imposed by the subcommittee, they are going to hear about it.

Mr. FALEOMAVAEGA. I thank the Chairman.

Mr. RICHARDSON. I want to thank this very excellent set of witnesses.

STATEMENTS OF WILLIAM MATTHEWS, DEPUTY DIRECTOR FOR ADMINISTRATION, POLICE FOUNDATION; DR. WALTER M. FRANCIS, ASSOCIATE PROFESSOR, CRIMINAL JUSTICE AND SOCIOLOGY, CENTRAL WYOMING COLLEGE; AND BILLY F. HILLGARTNER, INVESTIGATOR, OFFICE OF CRIMINAL INVESTIGATIONS, NAVAJO DIVISION OF PUBLIC SAFETY, SHIPROCK POLICE DISTRICT, SHIPROCK, NM

Mr. RICHARDSON. We will now move on to our second panel, Mr. William Matthews, the Deputy Director for Administration for the Police Foundation, Dr. Walter M. Francis, the Associate Professor of Criminal Justice and Sociology, Central Wyoming College, and Mr. Billy F. Hillgartner, the Office of Criminal Investigations, Navaho Division of Public Safety, from the Shiprock Police District.

Gentlemen, please proceed to the panel. You are most welcome today. We will abide by the five-minute rule. And we will await the—I want to thank the gentleman from South Dakota who has to go home to his constituents and who has been the driving force along with Mr. Thomas on this hearing, and I want to thank the gentleman for alerting us to these issues.

Deputy Director Matthews from the Police Foundation, please proceed.

STATEMENT OF WILLIAM MATTHEWS

Mr. MATTHEWS. Thank you very much for inviting the foundation to these deliberations. We are pleased to be here. I am going to keep my comments really short so that we have an opportunity, more opportunity, for some questions and answers.

And let me just start off by saying that the problem of brutality in the United States is one that has been with us for a long time. As a matter of fact, probably since government was first introduced and police was introduced as a component of government there has been brutality.

And I am sorry to say that here in 1994 we are still unable to really measure it. We still don't know how much brutality exists out there with respect to our police officers. And there are a lot of different reasons for that. We don't have the tools to measure it, the reporting of brutality is sparse in a lot of areas of the country and grossly inadequate.

So we really don't know whether we are looking at the tip of the iceberg or—we don't have any idea of the magnitude of the problem. We know about complaints, and we also know that less than 15 percent of all the complaints of police brutality is sustained.

And we don't know whether or not this occurrence is because for the most part police departments all across the country, with internal affairs divisions, investigate their own officers. But we do know that over the last 10 years the rate of the complaints and the incidents of police brutality received in most major cities has declined.

Now, we have some incidents and of course the Rodney King incident is something that everybody is aware of. But that incident also illustrates the problem of identifying what brutality really is.

I mean that looked to me to be brutality, and a lot of people viewed it as brutality.

But as we could see during the deliberations of the jury, sometimes even what is obvious can be obscure. So we are really at the cutting edge right now of really trying to determine what brutality is in terms of a definition that we can measure and record so that we can develop systems to really combat it.

But there are some things we have been doing in law enforcement. It was mentioned just a few minutes ago, probably during the last hour, that training is the key. And training, training, training is the key. Recruitment, selection and training of officers is probably one of the most important things that any law enforcement agency or community can do to combat brutality and excessive use of force.

And yet those areas are often areas that get the ax first. Or even here in Washington, D.C., problems associated with police corruption and brutality and other things, can be linked directly back to inadequate training. So we do know that that is one of the areas that we really do need attention.

There is in the country now a slow revolution in law enforcement toward community policing. And a realization that the police can't do it themselves and that what we are really talking about is community orienting government. And in those areas, even very difficult areas of our country where we are now trying to implement community policing, instances of police brutality and as measured through complaints decrease.

So there is one thing that is very interesting that you should know, HUD over the last five years has given a lot of money out through its drug elimination program and just recently has also entered into agreements with Justice to encourage training in the area of community policing.

And yet when we inquired as to whether or not this has been extended to Indian lands, and of course there are a number of housing authority properties on Indian lands, we learned that HUD really wasn't staffed up to do it.

So there is a problem of coordination, even within the Federal Government between Interior, HUD, Justice and Treasury, all of which have some sort of responsibility for law enforcement, be it training or responsibility for housing or responsibility for the quality of life on Indian lands.

So there is a lot of work to be done and it starts really with research. We really don't know a whole lot about the problem. And it is very hard to fix something that you really don't know very much about. But we do know that we do need on Indian reservations and other Indian lands to encourage an assessment of law enforcement agencies there, the assessment of policies, practices and procedures, and to make sure that those policies and practices and procedures are at least up to speed with respect to what the contemporary thinking is.

Mr. RICHARDSON. Mr. Matthews, thank you for your testimony. And I do want you when we get into the questions, I want more solutions than just research. And I agree that we need to do that, because what I have heard this morning is a bit startling, and yes, we need to know more facts, but as you know this society and the

Congress is responding very rapidly to the problems of crime, and I just hope that—and I look forward to reading your report on the police use of force which I am going to see if we can insert in the record, if it isn't—how long is it?

Mr. MATTHEWS. It is extensive, 300 pages plus.

Mr. RICHARDSON. Well, I ask unanimous consent that the executive summary of your report be made part of this record, but think about some solutions beyond research.

[The two volumes of the report were placed in the hearing record files of the Committee.]

STATEMENT OF DR. WALTER M. FRANCIS

Mr. RICHARDSON. Mr. Francis.

Mr. FRANCIS. Thank you for the opportunity to be here today. In my five years living on the Wind River Reservation and teaching at a college there, just because there are no complaints to the tribal commissions or to the administrator, from my students probably 20 to 30 percent of my students are Native American students, and I hear of several major complaints a year, and I think just because there aren't complaints, you can't say there aren't any complaints of police misconduct there.

That may be the biggest indicator of anything, because when police are doing their job properly, they get a lot of complaints. So I would look at that side of the issue also.

Basically, I think what needs to be done, it is a management issue of not necessarily more resources, but effective and efficient use of what resources these people have today. This is indicative of an attitude I think of the lack of proper values in policing on this particular reservation that I am familiar with, in terms of social issues, helping people, constitutional due process oriented policing, where the police are problem solvers and they are dealing—you hear community oriented policing talked about today, there is no doubt that that needs to be done to a bigger degree than it is, but I see this as a management issue.

I don't care who is running the police department anywhere, whether it is tribal police or city or county police, it is a management issue and the management of a police department has to be accountable to the local population. And the management has to set the tone for what is done in the community by its officers. And in terms of solutions that you asked for, basically this accountability is determined by a written directive system, written policies which spell out what is required of officers, what they should and should not do, a written code of conduct, and built around the written directive system is a system of discipline that is fair to the officers but which they can be held accountable for their actions.

Accountability also deals with training which we have also heard about today. It includes basic training for police officers, not just in hardware such as guns and handcuffs, it deals with people skills, communication skills, teaching de-escalation tactics.

Don't put yourself in a situation where you have to use deadly force unless you absolutely have to. Oftentimes police officers create the situation that they find themselves having to use some type of force up to and including deadly force. A type of field training officer program that is used in most police departments today,

where positive role models are selected for on-the-job training after the recruit returns from the academy. And some type of continuous training locally with local departments, city agencies and college people like myself that have the resources available to do these things.

On top of that, there needs to be a proactive program to find and prevent these type of activities. And this panel, it may not be just police brutality, you are talking about misconduct of other types such as rudeness and not being courteous and verbal harassment, which are just as important as brutality, they often lead to brutality if the officers are not held accountable for their actions.

You need to have internally a complaint process of some type that is open to the public, easy to use, very thorough, the public is kept abreast of what is being done in the investigation, and once the investigation is finalized, you have to tell the people the results. If the police, you go to the superintendent or the police captain and they say I will look into it and I will get back to you, and if they never get back to you, that is worse than if you get back to them with a negative answer.

You have to keep the process moving along and you have to have set time limits. And I don't care who the internal investigators are, they can be local, there should be somebody on the staff that is trained in this type of investigation.

I don't see how this proposed five person internal affairs unit behaved out in New Mexico, are they supposed to fly around to all the reservations and deal with these complaints? And what type of complaints are they going to deal in? There has to be—that may be good for some major incidents of real brutality, but I don't see how they can deal with anything on the local basis.

And then there needs to be some type of accountability through the internal management of the police department, which I call self-initiated reliability tests, to ferret out officers who are dealing in all kinds of misconduct, not just brutality, but corruption activities.

And by this, I mean there needs to be local audits, there needs to be audits out of the regional offices, compliance initiatives to see if the police are actually doing what they are saying they are doing.

Do they respond to the calls they say they do? You can do call backs, supervisors can do call backs and go back to the people that received the police services to find out if they even went to the calls. They may be not documenting the reports properly.

The Rodney King case, when they went to the mobile digital terminal data systems, they found all types of derogatory information being passed from car to car. But this should be part of the process on a regular basis and the internal affairs people should be staff inspections people also.

You are not going to be investigating complaints all the time hopefully. And you need to do some inspection things and go out and talk to people and see what is happening, undercover operatives if necessary even. The police use these type of measures on the public every day, undercover informants, putting officers into drug buy situations. Why cannot we do that in police departments and ferret out these type of activities?

And there may be some corruption activities that are also going on. Some type of sting activity possibly to check officers' activities. But there are—these are not necessarily novel ideas that I am presenting, they are done every day in nontribal police departments, and I think there can be a lot learned if resources such as police foundation, colleges, people like myself, would be utilized.

I might say I did go to the local area superintendent on the Wind River Reservation about this issue right after the newspaper reports came out, and he indicated, I think like others have said today, he was the de facto police chief, he did not have the captain even in the room, and he basically said we don't have any problems. And we have not heard from him since.

So thank, you very much.

Mr. RICHARDSON. Thank you.

[The statement of Dr. Walter M. Francis may be found at end of hearing.]

STATEMENT OF BILLY F. HILLGARTNER

Mr. RICHARDSON. The Chair recognizes a person who is right on the ground on this issue, an investigator, the Office of Criminal Investigations, the Navaho Division of Public Safety, The Shiprock Police District, Mr. Billy F. Hillgartner.

Mr. HILLGARTNER. Thank you, Mr. Chairman.

Dr. Francis is exactly right, one of the most glaring things that I got from the earlier panel coming out here today was the lack of faith in their police department. The Navaho National Tribal Police Department is a 638 department. We have our own law enforcement academy. We have our own judicial system. We have our own internal affairs, you know, program within our agency.

We have our own criminal investigations unit within our agency. And we still have problems with violations of civil rights, although maybe they are not as glaring as what was presented here today. But the mechanism that we have in place within the Navaho Nation is quite effective.

Upon receipt of a complaint, you know, we—whoever receives it, be a district commander, sergeant, what have you, it is immediately addressed and referred to our internal affairs. Depending on the magnitude, whether it is a brutality matter or a civil rights violations or a matter of conduct, will determine whether it is shipped on to the Federal Bureau of Investigations for subsequent further investigations.

One of the biggest problems that we find in our particular department is associated to the supervisory training our particular—we have a basic police academy, but our supervisory enforcement training has been, in the history of the Navaho Nation, provided by the Bureau of Indian Affairs.

And this is where we find that our biggest problem as far as violations of civil rights come from, is the lack of knowledge or action on behalf of our older supervisory enforcement officers who were trained by the Bureau of Indian Affairs.

And this is where the system breaks down. They do not recognize certain civil rights issues, you know, enter in effect when they are out there to enforce the laws of the Navaho nation. But through

our own system, we still are capable of going through disciplinary actions against these individuals.

One of the greatest things that I would like to address here is that, you know, the Anti-Crime Act and what have you is a very beneficial thing to law enforcement, but what we are looking for also that must be included in there with a greater degree, and one of the things that came out in the panel before, is the frustrations of the law enforcement.

One of the most glaring reasons that we have associated to violations of civil rights by our police officers is the stress and what have you. With more emphasis being put on law enforcement and what have you, we are going to need some assistance to deal with the psychological factors affecting these police officers which are now confronted with greater responsibilities.

It goes along with the training that the doctor has spoke of. We must have—I see it on a daily basis, the officers going out there and their conduct is greatly impacted by the level of stress that they have been undergoing for years, with no mechanism for assistance in our particular situation.

I am hoping that somewhere along the line, maybe in the health care act that they are proposing, that they will include a mechanism for psychological assistance for police officers. Because this is a very integral part of the problems that have been identified here today, is the stress the officers have been subjected to.

Furthermore, one of the—to address the problem of training, you know, I say we have our own basic police academy and it is working quite well. We are accredited by the States of New Mexico, Arizona, Utah, as well as the BIA as far as the basic police academy goes. We have an excellent program.

And what my feelings are is that, like the lady at the end of the panel earlier said, that they just recently contracted to do law enforcement, they brought their own law enforcement officers into their own tribal entity and the incidents of civil rights violations have dramatically reduced.

Well, this is what I feel should happen, that the police officers from the tribes should be trained by tribal instructors, police instructors. And this—the vicinity of Indian country—these tribes—presently the Native American tribes, with the exception of the Navaho, are sent to Arizona or New Mexico, to Artesia, to BIA, or to Glynco in Georgia under the FLETC, with the Department of Treasury.

They are trained, you know, in the Federal system, but not at Indian law, how to apply Indian law and stuff like this. And this is where that I believe that Navaho Nation's program needs to be adopted and expanded into a Native American law enforcement training facility for Native American police officers, be they by the officers or tribal officers.

And I think that that would greatly assist in the problems back in their home countries, being trained by their own Native American officers.

Thank you, sir.

[A letter submitted by Mr. Hillgartner may be found at end of hearing.]

Mr. RICHARDSON. Let me start out with a question to you, Billy.

What we are looking at now is there are 1,000 tribal cops and 300 BIA cops is what the staff is telling me. Two questions.

In your view, how well are tribal cops trained? And secondly, are you suggesting that perhaps we consider a national tribal police academy as part of this legislative effort to correct this problem?

Mr. HILLGARTNER. Mr. Chairman, most of the tribal police officers that you refer to outside of the BIA are BIA-trained officers, with the exception of the Navajo. They have been trained by the Bureau of Indian Affairs. And there has been a definite shortfall in the level and quality of that training offered to these tribal officers. The 300 BIA officers that you are referring to, they have gone to the same academy.

And they receive the same shortcomings. And yes, sir, I am suggesting or recommending the creation of a national Native American law enforcement training academy.

Mr. RICHARDSON. Mr. Matthews, Mr. Francis, give me some legislative solutions. We have had a little discussion here among the subcommittee members. It strikes me that the fact that BIA policemen are being trained by and supervised by untrained people in the Washington office.

Obviously, we can all agree that this is not good. Mr. Matthews, give me some solutions beyond your research component, which I am not denigrating, but it seems to me we need some direction here.

Mr. MATTHEWS. Well, you know, everyone can agree that you can't supervise anybody unless—especially personnel that have specific skills and specific technical skills unless you have been trained also in that area or have an awareness in that area. So there definitely needs to be trained supervisors.

But the problem really goes beyond that, and I am saying that because there are agencies out here in this country where you have trained supervisors, and you have all the training we are talking about and you still have a brutality problem or you still have the perception of a brutality problem, which is even worse because it is more difficult to fix that. So I guess I am thinking the solutions to be more in the strategy of law enforcement that the Indian police undertake. I mean that is going to determine how it is administered.

I will give you an example. In community policing, there are 10 principles. Let me tell you what they are. Problem solving. We heard some of that today in testimony. Empowerment, we heard a lot about that. Service, partnership, collaboration, trust, accountability, vision, and quality and change.

Now, we found as we have gone out to law enforcement agencies off the reservations and said, implement this, it has required the agencies to change. In training, how they are organized, it has required them to decentralize. It has required them to look at their policies, practices and procedures and rewrite them. It has required them to go to the community and help and encourage the community to help them rewrite them.

It has encouraged the kind of change that ultimately leads to less police brutality and unnecessary force. So I guess what I am saying is, I see the change necessary taking place in the philosophy of what they are supposed to be doing in the first place. I do agree

that they do need a strong internal affairs unit, but I cannot—I don't know a model that would suggest that you could have a centralized internal affairs unit that could effectively investigate things that are happening on the ground.

Rather, perhaps, that centralized internal affairs unit can be used to review and to—what is happening on the ground and have the authority to open cases that have been closed on the ground. And then with a final review even beyond that unit.

So I am essentially in agreement with my fellow panelists, that the problem, in order to fix it, has a lot to do with people, and not necessarily with systems. If, in fact, the BIA with 300 police have a mission that is impossible for them to undertake with 300 people, then either we have to give them more people or change the mission.

Now, I mean changing the mission isn't all that bad either, if in fact there is something to replace it, and that is why I am saying that a lot of thought needs to go into this before even we get to the point of legislation. It may, in fact, be that the Treasury, Justice, HUD, and Interior should have themselves a panel. Because they have some sort of jurisdiction and funding authority with respect to the interests of Indian reservations. So maybe they should have a panel and they should be the ones that will come up with plans that can, in fact, be coordinated between the agencies.

Mr. RICHARDSON. Very good. Just instructed the staff to do that in the bill. Excellent. And you would be available to assist the subcommittee in drafting this?

Mr. MATTHEWS. Yes.

Mr. RICHARDSON. Mr. Francis?

Mr. FRANCIS. I think if there is one thing that could be done, even in BIA-policed reservations, I think there needs to be some type of local control. Nothing extremely formal, but something that is to exist, whether it is an ad hoc committee—it would be nice to have some legislation requiring that, even in BIA-policed reservations to have something, where local people can't just complain.

They need to be at the front end of the process in terms of policy input, what are the officers doing, what types of services they are doing, integrated services like he just talked about. Police deal with social problems. Most of their time is taken up on other things besides law enforcement activities.

But the people need to have some input. And I see that as—if you can only do one thing, some way mandate some type of local control mechanism. And I don't mean just complaint process. Complaint process is reactive, after something has happened.

You want to prevent it in the first place and you need to open the door so that these people feel like they have a valuable part and do have a valuable part in the process of policing, and you will get the police to do a better job for the public and the community being served by these people will also help them and get involved in what is going on. And that is what I see in the Wind River Reservation is this lack of community support and response. Not brutality, per se. It is the lack of feeling between the two parties. It truly is a "we versus they" type of situation, and there has got to be some local input. Maybe the business councils could do more formally to get involved in this type of thing.

Mr. RICHARDSON. Thank you.

The gentleman from Wyoming.

Mr. THOMAS. Thank you, Mr. Chairman.

As you were speaking, Dr. Francis, I was thinking, there is some structural impediment, apparently, in most communities, and the Indian country communities are not unlike any other communities, come up with pretty efficient police kinds of things. The BIA arrangement must make this unique and make it different. I guess I am interested in—you said being accountable to the community.

Is it likely, or is it an impediment, is it a difficulty when the enforcement is run by the BIA to develop this community thing? Let me expand just a little further. I suppose the responsibility for law enforcement when it is run by the BIA is upward to bureaucracy rather than outward to the community. Is that a problem, or does that make sense?

Mr. FRANCIS. Right. That is exactly the problem. In most big cities, this is not a unique issue to Indian country policing, it is indicative of policing in general in big cities, and other communities have gone into community-oriented solving strategies. We have, you are probably aware of a housing project right outside of River-ton, the Beaver Creek Housing Project. It is a fairly good-sized area and it is probably 20 or 30 minutes response time from the Fort Washakie police headquarters.

Why aren't the resources used to have somebody out in that area? Maybe live there, and I think somebody does live there, but get them active in the community of Beaver Creek and deal with some of the—if they see these issues, if the public that lives there sees what is going on with this person wanting to help them, the barrier could be broken down. I see it as a use of resources issue. It is really—up there is reactive-related policing which is typical of things done from the period of 1930 up until the 1970's and early 1980's.

Mr. THOMAS. You implied at least that perhaps there is more feeling of difficulty among tribal members than is reported to the officials. Why do you think that is?

Mr. FRANCIS. I think it goes back to the same issue. The fear of retaliation is part of it; feeling that nothing will be done if I do report it, and the lack of support for the police in general.

Mr. THOMAS. There is—according to one of the other witnesses in many places the complaints flow more readily to the business councils and others, not necessarily to the police. But there was no indication from—in that reservation that that was happening either.

Mr. FRANCIS. The same impediments may be there. And there is no formal process.

Mr. THOMAS. I see.

Mr. FRANCIS. I think if somebody would have a hearing up there, I have thought of even of having it at the college, away from the reservation itself, for people that want to come and talk about the issue, to have some type of a public forum to at least start off, and not just rehashing the past in terms of incidents. But some forum needs to be available for them.

Mr. THOMAS. Mr. Matthews, you spoke and the Chairman mentioned that you spoke a good deal about training and that sort of

thing. That is not a new idea. Everyone would accept that idea. So there must be something else lacking. There must be a management lack, there must be a lack of mission or a lack of definition of mission, or a lack of accountability. How do you read that?

Mr. MATTHEWS. That is exactly true.

See, when we speak of training traditionally, we are talking about traditionally shooting, driving, writing reports. And now when we are talking about training, we are talking about communicating, collaborating, organizing. That is different.

That is not the sexy kind of thing that we see on TV when we traditionally think of a police academy. That is different. It also requires different people up front in terms of the people that you are going to train, having the willingness to want to undertake that kind of training and use it.

It requires a management system that is more outcome-oriented than it is input-oriented. And this is what I mean by that. A management system that rewards folks who don't make an arrest because they prevent them, as opposed to a system that rewards people and promotes people for making an arrest.

So when we are talking about training we are talking about a different kind of training, and partnered with police training, we are talking about training the community, training the community on what their role is, how to participate in this partnership, what empowerment actually really means. So when we talk about training, we are talking about training that promotes and facilitates organizational changes and the kind of structural changes that you are really talking about.

Mr. THOMAS. I see. It makes sense.

I got listening to you so much I forgot what my next question was. Probably mercifully for all of us.

Mr. Hillgartner, you described sort of a unique arrangement, because you have a very large tribe.

Mr. HILLGARTNER. That is correct. Even though we have all of these things, you know, one of the most difficult problems we have now in today's police era is bringing about this change going back to the community concept, community-based policing. Traditionally, in the past, before we had our academies, we were trained by the Bureau of Indian Affairs, and it was essentially the guns, the bullets, the handcuffs and the high-speed pursuit kind of thing.

Now it is extremely difficult to try to instill—it is virtually impossible to instill into the older officers that you need to have compassion and concern about the welfare of the community. You must be in the community and communicate with them to identify what problems are going on so that you may address these problems. This is one of the greatest things—problems we are having right now is to bring about this in the older generation of law enforcement officers.

The judiciary system within the Navajo Nation, I guess, is perhaps the greatest thing that stands as a protective measure between the citizen and the law enforcement officer, because if I or any other police officer violates an individual's civil rights, be it brutality as you were speaking of, or be it, you know, illegal search and seizure, that individual can go to a tribal judiciary legal service system and bring about litigation against the tribal officer.

In the case where the BIA is at, they are removed in a sense from the tribal level. And it seems to me it serves like a buffer. It gives them a little protection, because they are further removed from the ground level.

Mr. THOMAS. Just a final observation. One would have to say that somewhere in the Federal Government, there is expertise in police work. I guess what you might say is there is, as usual, in the Federal Government, there is damn little coordination or cooperation among the BIA and other agencies. It's sort of law enforcement isolated from the rest of the world. Is that a correct observation?

Mr. MATTHEWS. Yes. I would say that is correct.

Mr. THOMAS. OK. Thank you very much, Mr. Chairman.

Mr. RICHARDSON. The gentleman from American Samoa.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

I guess I will say that still in anticipation of Mr. Babby's statement that will be made later on, the only thing that worries me is the fact that Mr. Babby is currently Acting Deputy Commissioner, and I had my experience over the years that I have served as a member of this committee, we always keep having acting deputies or acting directors, and to the point where after making the testimony, and then the person disappears and then you never hear from them as far as really having any real serious input into the problems that are affecting Native American communities. So I say that with a caveat and hopefully that we will get some substantive responses from the Interior Department concerning this issue.

I have been listening with some interest to the testimony that has been provided. Mr. Hillgartner, it is quite obvious that with a Navajo Nation of 120,000 members of the tribe you would have to have some kind of a formal structure as far as law enforcement is concerned, and I would submit that even the most trained or well-trained law enforcement officers can also be very abusive.

Mr. HILLGARTNER. Yes, sir.

Mr. FALEOMAVAEGA. So it isn't just the fact that you give a technical training and expect that person to be effective, and I was wondering if by some way in suggesting what the Chairman had suggested earlier, what about the idea of subjecting these BIA officers to the word of the tribal council, and if he doesn't cut muster, then simply put notice to the BIA, we don't want this officer, reassign him somewhere else. I don't know if that is a cop-out.

I wonder if a problem might be that some of these officers are assigned to the wrong tribe. I mean if BIA assigns a Navajo law enforcement officer to a Cheyenne reservation, you definitely have a cultural problem. He doesn't speak Cheyenne, perhaps, but there really is a strong cultural difference here among the different tribes.

I wonder, Mr. Matthews, if—I didn't hear you give any sense of recognition—there definitely is a cultural problem even among the law enforcement officers.

Mr. MATTHEWS. Oh, there is no question about that. As a matter of fact, just three weeks ago I was in Chicago and we were at a training session with Chicago Housing Authority police, all of which, except one person, was black.

Mr. FALEOMAVAEGA. Welcome to the club.

Mr. MATTHEWS. And it was a sensitivity problem about dealing with folks in public housing. And there was even some cultural problems can exist among people of the same color. I mean so we are—you know, we are talking about, you know, we are getting into areas now of how do we select, train and teach people and assist people, how do we service people and get along with people, and how do we develop those administrative systems to make sure that that happens.

And the move now is to decentralize, and centralized systems do things very well. One of the things a centralized system does very well is it Monday morning quarterbacks, so why not give it that role of a Monday morning quarterback of arbitration and assessment and of doing the things that a centralized unit can actually do, and given the responsibility and accountability, to get down where the folks are, where it can be effective and where people can get justice immediately.

Mr. THOMAS. Would the gentleman yield just a second?

Mr. FALEOMAVAEGA. I would be happy to yield.

Mr. THOMAS. I don't disagree with what you are saying, it is an important point. But I want to share with you that I had a little conversation about this, and there is another point of view. That is that sometimes it is difficult, particularly in smaller groups, smaller reservations where you have relatives and everyone is very close, and it becomes difficult to enforce the law against people that are close to your own family or at least friends. So that, sometimes, is the other side of that issue.

Mr. FALEOMAVAEGA. I couldn't agree more with the gentleman in that observation. I know in my own island situation with small communities and small villages. Mr. Hillgartner suggested that perhaps the model is with the Navajo tribal structure and organization as far as law enforcement is concerned.

But it is my experience also in working with the Native Americans that there is a sense of pride. If I was a Cheyenne, why should I go to the Navajos is to learn to be a law enforcement officer. I would rather go to New Mexico, you know what I mean? It is almost a put down for me as a Cheyenne to go to a Navajo reservation.

So it is not in any way a degradation of what you are saying, Mr. Hillgartner, but there is that problem, too, that we are faced with.

Mr. HILLGARTNER. Right.

Mr. FALEOMAVAEGA. So I suppose that we have officers that come and learn at the FBI academy at Quantico and that is another possibility, that maybe on an interagency council, perhaps on the national level where the officers can be given proper training, and given that sense of sensitivity to see how this system can be more effective.

I just want to express those thoughts. I agree with the gentleman from Wyoming about the smallness of some of our tribal organizations, and it is very difficult to put the ax on your friends and say you must leave.

On the other hand, where do we go from there if we don't stop this very serious problem affecting the civil rights of the communities in the different reservations.

Mr. Chairman, thank you.

Mr. RICHARDSON. Thank you. I want to once again thank this panel. It has been a very valuable one. Mr. Matthews, especially you. I understand you came on very short notice and we appreciate that very much, your quick response to the subcommittee.

Thank you so much to the three witnesses.

We will now move on and our third panel, Mr. Wyman Babby, the Acting Deputy Commissioner of Indian Affairs at the BIA, accompanied by Mr. Richard Whitesell, the Director of the Billings Area Office, Montana, and Mr. Theodore Quasula, Chief of the Division of Law Enforcement.

Gentlemen, welcome, and I will ask you to observe the five-minute rule that we have. I understand, Mr. Babby, you will have an opening statement and Mr. Whitesell and Mr. Quasula would be available for questions.

STATEMENT OF WYMAN BABBY, ACTING DEPUTY COMMISSIONER OF INDIAN AFFAIRS, BUREAU OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY: RICHARD WHITESELL, DIRECTOR, BILLINGS AREA OFFICE, MONTANA, AND THEODORE R. QUASULA, CHIEF, DIVISION OF LAW ENFORCEMENT

Mr. BABBY. Thank you, Mr. Chairman.

Mr. RICHARDSON. Yes. Mr. Babby, please proceed. I think before you do, I am going to ask the gentleman from American Samoa—I have to make a seven-minute exit and I will return. Please proceed.

Mr. BABBY. I wish to read the statement that we have prepared. The contents of it are important and the material really, I believe, responds to the questions and problems; the issues that have been raised here this morning.

I am pleased to be here to discuss alleged police brutality and other law enforcement issues in the Bureau of Indian Affairs. I have with me today Mr. Richard Whitesell, Director of the Billings Area Office, and Mr. Ted Quasula, Chief of the Division of Law Enforcement Services for the BIA here to assist me in responding to your questions.

Let me say right up front that the BIA does not and will not tolerate any misconduct by its law enforcement officers. Let me also say that we strongly disagree with the Associated Press (AP) articles that claim BIA officers routinely use excessive force when arresting suspects. To say that BIA police officers routinely use excessive force is a gross injustice to our law enforcement program and its many outstanding and dedicated police officers, and a demonstration of the lack of knowledge by the AP of both the program and its employees. Many tribal leaders have also questioned the allegations. In fact, we believe if abuse was widespread, tribal leaders and others would have brought this to the attention of the Congress and the administration long ago. I also understand that the issue is now before us and must be addressed and we are anxious to do so here.

I personally know a great many of our officers. I do not know any who are not dedicated to their jobs and service to the community in preserving the peace and protecting the rights of all people.

Often, many good deeds are performed that go unnoticed and unrecognized by the public. Our officers face the same harsh realities of crime and other social ills that permeate communities throughout America. In fact, in many cases they work alone in very isolated areas and in the most dangerous of situations, with backup help many, many miles away.

More tribes are taking over law enforcement and detention services programs through Indian self-determination and self-governance compacts. We promote and support this as it goes further in strengthening tribal governments. Today, there are 61 reservations in 16 States where the BIA provides law enforcement through 336 uniformed officers, all of whom are American Indians. For the record, no tribe has ever come to the BIA and told us they are taking over the BIA's law enforcement program due to police brutality.

The BIA law enforcement program has three components: first, the uniformed police service; second, detention services; and third, criminal investigations. The majority of the staff are uniformed police officers who, for the most part, enforce tribal law and order codes. They are the first responders to any call for help. There are 155 detention personnel to operate 25 jails. The BIA also employs 100 criminal investigators who investigate Federal major crimes on 166 reservations, along with the Federal Bureau of Investigation.

BIA area directors and agency superintendents are responsible for the uniformed police operations and detention services activities. Pursuant to the Indian Law Enforcement Reform Act, area office supervisory criminal investigators report directly to the Division of Law Enforcement Services at the central office in Washington, D.C., and in turn, directly supervise all agency level criminal investigators.

BIA police officer qualification standards and hiring processes are similar to those of other police agencies. In addition to medical, physical and age requirements, officers must also meet certain education and experience requirements. Like most Federal law enforcement agencies in the Department of Interior, we do not administer psychological or polygraph examinations, although these screening processes are under consideration.

The BIA has always undertaken a measured and purposeful effort to ensure that only the most qualified and reliable personnel are employed in our law enforcement programs. This includes conducting in-depth background investigations on all applicants. The United States Office of Personnel Management conducts the background checks. Our own professional security staff adjudicates the investigative findings to determine employee suitability.

In 1984, the BIA formed a partnership with the United States Department of the Treasury's Federal Law Enforcement Training Center, it is called FLETC, to train law enforcement and detention officers in Indian country. FLETC assists the BIA Indian Police Academy with instructors and curriculum development. FLETC, with headquarters in Glynco, Georgia, provides training to 72 other Federal law enforcement agencies. The BIA Indian Police Academy is located in Artesia, New Mexico, and just had its 25th anniversary.

After police officers are hired, they must successfully complete the 14-week basic police training course offered by the Indian po-

lice academy. Similar training requirements apply to criminal investigators and detention officers. Thereafter, each officer is required to maintain firearms qualification/certification semi-annually and must undergo 40 hours of annual in-service training. In addition to the previously mentioned course, the academy provides numerous police training programs, such as child abuse and exploitation, jail management, radio dispatch, Drug Abuse Resistance Education, and firearms proficiency. And just recently, a new program targeted to the needs of the captains of police was instituted.

In fiscal year 1993, the academy trained 1,532 BIA and tribal law enforcement personnel for a total of 172,740 student hours. In the past two years, the demand for training of law enforcement officers by BIA agencies and tribes has increased tremendously. We are making every effort to accommodate all training needs, although we have a backlog.

The Indian Police Academy's curriculum is updated on a continual basis. Courses are reviewed and updated every two years by panels of program managers, past trainees, instructors, and other subject matter experts to assure that all courses are state-of-the-art and consistent with the law. Both BIA and tribal officers are properly trained and instructed to exercise restraint in handling serious situations. The training provided at the Indian Police Academy is similar to that provided to other Federal law enforcement agencies.

There have been incidents in which the use of force may have been justified, but were handled by our officers with sensitivity and restraint. This can be verified by most United States Attorneys who prosecute cases in which BIA police officers are assaulted in the line of duty.

We are very happy to report that a BIA police officer, Officer Irving Young, a Rosebud Sioux, stationed at Battle Mountain, Nevada, is well on the way to recovery after being shot in the back when responding to a suspicious person call on November 3, 1993. Although seriously wounded, Officer Young returned gunfire, then gave chase to the fleeing suspect who was apprehended by the Nevada Highway Patrol shortly thereafter. We believe this BIA officer's actions exemplify the dedication and professionalism present throughout our law enforcement program.

When allegations of brutality are made against a BIA police officer, it is the responsibility of the agency superintendent to ensure that a proper investigation is conducted, then initiate any personnel action against the officer involved if deemed necessary and appropriate. A local supervisor may conduct an investigation and provide a report; or the superintendent may request, through the area director, that an investigator from another BIA location conduct the investigation; or in the third case, the superintendent may request that an investigation be conducted by the Division of Law Enforcement Services here in Washington.

Most important, our policy, as well as regulations, require that all allegations of civil rights violations be referred immediately to the FBI which has statutory authority to investigate civil rights cases. Their findings are furnished to appropriate United States Attorneys and to the Justice Department's Civil Rights Division for review and prosecutive determination.

We firmly believe every complaint must be reviewed in a timely fashion by professionals and appropriate administrative action taken, if warranted. Supervisors or others in charge of local police programs who fail to respond to citizen complaints as required, are held accountable for their actions.

Since the early 1800's, police use of force has been brought into question by the public. Indian police are no exception. Police force options range from mere verbalization to use of deadly force. BIA policy directs officers to use only that amount and type of force that is reasonable and necessary under the circumstances. Police officers are trained to take control of situations which may otherwise escalate out of control. A 1992 study by the FBI on officers killed in the line of duty indicates that the most predominant behavior pattern characterizing officers killed in the duty appears to be their good natured demeanor and conservative use of physical force. Law enforcement officers continually face the challenge of assessing the appropriate degree of authority to be asserted in maintaining control of any potentially dangerous or explosive encounter.

The 1992 FBI uniform crime report says that 167 police officers within the Department of the Interior were assaulted in the line of duty. Of these, 110 were with the BIA.

Law enforcement is universally a very difficult and stressful job. Officers are required to make split-second life or death decisions. Officers are human and consequently, occasional errors in judgment may occur, resulting in the use of excessive or unwarranted force. I think we would be remiss not to address some of the AP stories which report alleged police brutality.

In the highly publicized case involving a female prisoner on the Wind River Indian Reservation, we acknowledge that the prisoner was grabbed by the hair and pushed into a wall. We believe the matter could have been better handled by the officer. The case is being reviewed and appropriate action will be taken when the reports are received.

Another case on the Wind River Indian Reservation in which a prisoner had his arm broken occurred as a result of the prisoner resisting the arresting officers. While attempting to handcuff the prisoner, both officers and the prisoner fell to the ground causing the injury. The prisoner was provided medical attention as a result of the injury. We believe that the level of force in this case was appropriate.

Another case mentioned in the AP news stories concerned a man who suffered a broken tailbone. The prisoner did not mention to authorities any injury during his stay in the detention facility. He sought medical attention four days after the initial arrest. The entire arrest sequence involving this person lasted 12 minutes, including time to conduct field sobriety tests on the driver of the vehicle in which this person was a passenger.

The case mentioned in the AP news articles regarding an officer on the Ute Mountain Ute Indian Reservation striking a female juvenile does not mention the fact that the officer was arresting the juvenile on violation of a tribal court order. The boyfriend of the female juvenile interfered with the arrest. As the officer was distracted by the boyfriend, the female juvenile tried to seize the officer's holstered service revolver. She then ran from the officer and

tried to steal the officer's police vehicle. She became extremely combative with the officer, kicking him in the chest and striking him in the face with her closed fist. She had to be physically restrained by the officer to prevent her from further assaulting the officer and trying to escape. She was subsequently placed in handcuffs. We believe the officer took appropriate steps to avert a potential life-threatening situation.

In some of the cases reported, supervisors and superintendent's probably could have handled the complaints better and more timely. We are working on new directives to address this problem.

Further, since the newspaper stories, we have conducted a one-week in-service training course for BIA police captains with special emphasis on use of force, liability, and civil rights. It is difficult to determine the exact cause of injury in some cases, particularly when subjects are under the influence of alcohol and/or drugs and are being combative. This is especially difficult when subjects have been fighting and possibly injured before police arrive. When there is resistance to arrest, the chances of injury are always much greater both to the subject and to the officer.

As previously stated, we firmly believe that all complaints of police misconduct must be investigated in a creditable and timely fashion. Equally important, the complaining party must be fully apprised of investigative findings. We intend to accomplish this through a newly authorized Internal Affairs Branch reporting directly to the Chief of the Division of Law Enforcement Services in Washington, D.C., serving both BIA and tribal needs. A special third party investigation capability, separated apart from the regular program and staffed by trained professionals, has been demonstrated to be successful by many other law enforcement agencies.

The resources for this program will be obtained from within existing tribal services funds. The Internal Affairs Branch will work closely, in addition to its other work, with the Indian Police Academy to incorporate investigative findings into the overall training curriculum without any delay.

Finally, we would like to address the new supervisory line authority over criminal investigators implemented in the BIA as directed by the Indian Law Enforcement Reform Act. The Act has considerably strengthened and clarified the authority of Indian country law enforcement officers. We commend all of those involved with this legislation.

Before assuming direct supervisory control of criminal investigators, the Division of Law Enforcement Services conducted reviews of each BIA case file where the BIA had criminal investigators. Copies of the two reviews covering two separate periods of time are being provided with this testimony as requested by Chairman Richardson in his March 8th, 1993 letter to the Assistant Secretary for Indian affairs. Based on the reviews, clearly there was a need to improve in some areas. These two reports are here and will be available for you.

While there has been some difficulty with separating the criminal investigation functions from the uniformed operations, we believe there has been marked overall improvement in the criminal investigations. Training and accountability have been stressed. The Indian Affairs Subcommittee of the Attorney General's Advisory

Committee and the FBI are supportive of the change. We, too, believe it is an important step toward professionalizing the BIA's response to investigating Federal major crimes that are reported in Indian country. We have developed new criminal investigator position descriptions and performance appraisal standards, academy-based in-service training, case reporting guidelines, and automated case tracking.

High on the list of accomplishments is the November 1993 Memorandum of Understanding (MOU) established by the Secretary of the Interior and the Attorney General. The MOU establishes the first-ever formal working standards and guidelines for the BIA, FBI, and United States Attorneys. It signifies our commitment for better service to those we serve.

This concludes my prepared statement. We would be pleased to respond to any questions that you might have.

Mr. RICHARDSON. I thank the gentleman. I thank the gentleman from American Samoa for temporarily chairing the hearing.

The Chair recognizes the gentleman from Wyoming.

Mr. THOMAS. Thank you, Mr. Chairman.

We have heard a number of complaints from tribal leaders and others that BIA disciplines its officers for wrongdoing by transfers to other locations, and I wish you would respond to that. Specifically in these articles that were published, there were a number of incidents, I believe 17, and according to the article, none of the officers involved had any discipline. Would you comment on that, please?

Mr. BABBY. I will ask Mr. Quasula to respond to the questions as he feels appropriate. But I have these comments that I would like to make.

There is something significant about these 17 cases, in my view. The 17 cases are identified on six reservations where the study was carried out. On those same six reservations over the same three-year period of time, we have a record of 40,000 arrests having been made. In response to the specific question of whether or not an officer is disciplined, I would need to convey the information that over the same three-year period of time, 57 officers were disciplined in the Bureau.

Mr. Quasula?

Mr. QUASULA. I don't have anything to add to that.

Mr. THOMAS. Well, let me ask a little more specifically then. The 17, were any of those officers disciplined?

Mr. QUASULA. At the time, yes, one. More recently, the officer involved in the video that was shown earlier.

Mr. THOMAS. You mentioned the video, and you mentioned in your statement that something would be done when the investigation is completed. When was that incident?

Mr. QUASULA. That incident was investigated shortly after it occurred.

Mr. THOMAS. When did it occur?

Mr. QUASULA. I don't have the exact date.

Mr. THOMAS. I will help you. It was February of 1993.

Mr. QUASULA. OK. It was investigated shortly after it occurred. The investigator and the superintendent at first did not take any action. Since the newspaper articles, the Assistant Secretary for In-

dian Affairs, Mr. Babby, and I reviewed the video. Subsequently, we decided that the area director and the superintendent should review the matter and we suggested that some sort of action be taken, and since then, I understand that has occurred. The officer has received additional training on handling prisoners.

Mr. THOMAS. You indicate in your statement that the report hadn't been received, and I believe, Mr. Whitesell, you signed a report saying nothing more needs to be done.

Mr. WHITESELL. I don't recall signing any report like that.

Mr. THOMAS. June 10th, 1993.

Mr. WHITESELL. I don't recall that.

Mr. THOMAS. All right. Well, that is all right. Let me ask you about the transfer thing.

Mr. Babby and Mr. Whitesell, you are both from Billings. I believe the Fort Peck tribes on two occasions asked that a captain be changed, and that was a long time in coming. Did that happen, and where is the captain today?

Mr. BABBY. I have had several discussions with the governing body on the question of the captaincy; that is correct. I have also worked with the governing body in response to those requests over a long period of time, always in an attempt to find an answer or resolve the issues that were raised.

I have been aware that making a change in the captaincy was important, and have worked together with the area director in Billings to find the solution that we needed. I am informed that the captain who is the subject of those actions by the council has, in fact, been transferred from Fort Peck.

Mr. THOMAS. And is now in Billings?

Mr. BABBY. And is now in Billings.

Mr. THOMAS. In charge of the other police operations?

Mr. BABBY. That is correct.

Mr. THOMAS. That is the way you responded to a complaint about police activity, put him in charge?

Mr. WHITESELL. I don't know that I had a charge of police brutality.

Mr. THOMAS. No, I am not talking about—

Mr. WHITESELL. I had a situation where a tribal council was unhappy with how the captain of the police conducted himself on the reservation.

Mr. THOMAS. OK. You mentioned in your testimony that complaints go to the FBI on—

Mr. BABBY. On civil rights complaints, yes.

Mr. THOMAS. I understand that to be the case. However, the gentleman—let me quote. The individuals whom you know—"We are having individuals who know one another pretty good making an investigation of one another", said Jerome Main, the Supervisor of Investigations in the Billings office. "BIA officials are required to refer brutality allegations to the FBI", Deer wrote, "but in practice, BIA officials often decide whether or not the complaint involves a charge of civil rights that should be investigated."

So there is a subjective decision made; is that correct?

Mr. BABBY. There shouldn't be any subjectivity in it. I wouldn't really know what Mr. Main is referring to, but our instructions at the agency level are fairly clear, not fairly clear. They are clear in

any incident involving anything that could be construed as a civil rights violation.

Mr. THOMAS. Who decides that? Who makes that decision?

Mr. BABBY. I would indicate to you the practice that I followed as an agency superintendent. I consult with my agency criminal investigator and if necessary, I go on to the area criminal investigator and act on the basis of their counsel. Their counsel normally will be provided after they have checked with the U.S. Attorney and discussed the incident there. The advice that I receive then hopefully is always premised on the best input that we can get. I have left an important player out of this. Part of that consultation also includes the FBI.

Mr. THOMAS. How can they be included if it is not reported to them?

Mr. BABBY. It is. In any case, any time an incident is brought to us, I will bring the agency criminal investigator into it and immediately the criminal investigator will make the report, make contact with the FBI.

Mr. THOMAS. That is not what your man says in Billings. He says they are not always reported. Let me go on.

Mr. BABBY. Yes. I can't account for what he says.

Mr. THOMAS. Just one final question. The response in the case of the Rosebud testimony earlier, or lack of response from the office to their list of complaints, which is hardly—there is a bunch. And they indicated that they seldom get a response, or that nothing has been done basically in the case of these officers.

Mr. BABBY. Sir, do you mean a Rosebud or a Northern Cheyenne?

Mr. THOMAS. Well, let me check. The lady, Ms. Spotted Elk, Northern Cheyenne. I am sorry, I apologize.

Mr. BABBY. Mr. Whitesell?

Mr. WHITESELL. Congressman, I have met with Clara and her ad hoc committee shortly after they were set up and the number of complaints that they brought in were handed to me. I believe at that time there were 17. Our initial effort was to ask the agency superintendent and the criminal investigator at the agency to conduct a preliminary review and to give us a report. We promised at that time that we would get back in writing on each one of the allegations to the ad hoc committee. We have done that.

Mr. THOMAS. And you have in each case said the officer was justified.

Mr. WHITESELL. At this point, yes.

Mr. THOMAS. I have no further questions.

Mr. RICHARDSON. Mr. Whitesell, did I just hear you say in an answer to Mr. Thomas's question that you did not sign a document on June 10th, 1993 that said you would not conduct any further investigation on the Rachel Moss incident, and that the allegations were unfounded?

Mr. WHITESELL. I said I didn't recall signing that.

Mr. RICHARDSON. You didn't recall.

Mr. WHITESELL. I don't recall signing that.

Mr. RICHARDSON. You saw that video, did you not?

Mr. WHITESELL. Yes, I did.

Mr. RICHARDSON. In your judgment, was there police brutality in that video?

Mr. WHITESELL. In my judgment, no, there was not. I believe that the officer had an error in judgment, and I believe that the officer acted inappropriately, but I do not believe that I could term that as police brutality.

Mr. RICHARDSON. So you are telling me that you don't recall, but it is possible that you might have signed such a document?

Mr. WHITESELL. Yes, sir.

Mr. RICHARDSON. Well, I have the document in which you signed. It is a memorandum from the area director to you, the Superintendent of Wind River Agency, where you specifically say, this is what you signed: "We will not conduct any further investigation into this matter."

In fact, I will read you what this memorandum says so that you are aware of what you signed or you don't recall signing: "Attached is a copy of an internal investigation conducted on the above officer by the Rocky Boy's Agency Criminal Investigator, Mr. Glenn Littlebird.

"The results of the investigation indicate that the allegations made against Mr. Ducheneaux are unfounded. The victim, Ms. Rachel Moss, accused Mr. Ducheneaux of hitting her with a nightstick, kicking her and dragging her by the hair when she was placed under arrest. The injuries Miss Moss reported were sustained previous to the arrest by Mr. Ducheneaux.

"We will not conduct any further investigation into the matter. Richard Whitesell."

Is that you?

Mr. WHITESELL. Yes. Yes, sir, it is.

Mr. RICHARDSON. So how do you explain this discrepancy or this failure to recall if this is the subject of a hearing like this?

Mr. WHITESELL. I don't know that I failed to recall. I don't recall signing that piece of correspondence directly related to what happened on the video. I do remember signing the piece of correspondence after an investigation was done by the superintendent regarding other allegations that do not appear on the video.

Mr. RICHARDSON. Now, it is my understanding that there were 17 allegations of police brutality, and we know from Mr. Quasula, one officer was disciplined. Is that correct?

Mr. QUASULA. Yes. It was a detention officer.

Mr. RICHARDSON. And what was the disciplinary decision? How was that officer disciplined?

Mr. QUASULA. I don't have that.

Mr. RICHARDSON. You don't know?

Mr. QUASULA. No.

Mr. RICHARDSON. Mr. Whitesell?

Mr. WHITESELL. The officer that I know about, the one in the Moss case, has received training and has received a letter of instruction and I believe that that is what our action has been.

Mr. RICHARDSON. So a letter of reprimand?

Mr. WHITESELL. A letter of instruction.

Mr. RICHARDSON. What is the difference?

Mr. WHITESELL. A letter of reprimand is an official adverse action. A letter of instruction is on the proper behavior, and the kinds

of behavior that would be expected of that officer in carrying out his duties.

Mr. RICHARDSON. What happened to the 17 others? They were not disciplined?

Mr. WHITESELL. I don't have 17 others.

Mr. RICHARDSON. What do you mean you don't have them?

Mr. WHITESELL. Well, the allegation that I am concerned with in the Billings area is the one that occurred at Wind River.

Mr. RICHARDSON. OK. Well, all right. Mr. Babby, 17 allegations, one disciplinary action; is that correct?

Mr. BABBY. That is the status of it at this point, yes.

Mr. RICHARDSON. OK. So 17 times charges were wrong and one, they were correct, and the time they were correct, the letter of instruction, is that correct?

Mr. BABBY. That is what was used.

Mr. RICHARDSON. Do you think that is—do you stand behind that; do you think that is good oversight of this program?

Mr. BABBY. I believe that every one of those incidents was carefully examined by professional law enforcement staff at several levels within the Bureau, and an effort was made to validate the conclusions that were drawn through consultation with, I believe, the FBI. I believe that the conclusions that were reached were, yes, in fact, valid.

Mr. RICHARDSON. Now, Mr. Babby, you saw the video, too; have you not?

Mr. BABBY. Yes, I have.

Mr. RICHARDSON. Is it your view also that there was no police brutality in this incident?

Mr. BABBY. No, I have said, as is presented in my statement, my view, that the conduct of the officer in that incident was not necessarily correct. You do not act that way.

Mr. RICHARDSON. Mr. Babby, Mr. Whitesell, and Mr. Quasula, would you please briefly describe your law enforcement education, training and experience in law enforcement?

Mr. Quasula.

Mr. QUASULA. I have a little over 20 years of law enforcement experience, starting out as a patrol officer in the city of Flagstaff, Arizona. I have both a Bachelor's and a Master's degree in Police Science. I have been with the Bureau a little over 20 years. I have completed the FBI National Academy, the Treasury Department's Criminal Investigator School; I spent a year with the Interior Department's Manager Development Program, and I would estimate a little over 2,000 hours of in-service training, aside from that I just mentioned.

Mr. RICHARDSON. Mr. Babby.

Mr. BABBY. I am not a professional law enforcement person. I have worked in the Bureau of Indian Affairs at the field level, at the area level and in the central office for the past 30 years. I have worked in a number of different program positions in the Bureau including agency superintendent and agency administrative officer. I am knowledgeable of the law enforcement programs on Indian reservations, particularly our law enforcement program in the Bureau of Indian Affairs. I have not had any formal academic training in law enforcement services.

Mr. RICHARDSON. Mr. Whitesell.

Mr. WHITESELL. I also have no formal training in law enforcement. All I have got is 16 years of OJT.

Mr. RICHARDSON. Doesn't this strike you as being a problem, that you two key policymakers on this issue don't have any training for this?

Mr. WHITESELL. I don't know if that causes me that much of a problem, Congressman, in that I probably have supervision over 20 or 25 different programs. I have technical experts that are responsible for the operation of those programs. As a generalist, I have the responsibility to know enough about the programs to ensure that the services are being provided and carried out and that I am providing adequate supervision to the technical people responsible for supervising those programs.

Mr. RICHARDSON. You don't think that if you had had some law enforcement training that you might have seen that the video described here was an incident of police brutality?

Mr. WHITESELL. I don't believe so, no, I don't.

Mr. RICHARDSON. So you stand by your view that there was no police brutality in that incident?

Mr. WHITESELL. That was my statement, yes.

Mr. RICHARDSON. And you realize that Mr. Babby disagrees with you?

Mr. WHITESELL. That is correct.

Mr. RICHARDSON. And that I would suspect that most people that view the video disagree with you?

Mr. BABBY. If I may, Congressman, I would like to clarify what I have said. Apparently it is necessary. My comments or my response to the question was my view that the conduct of the officer was not what it should have been. I did not intend that to mean that that meant that brutality was evident.

Mr. RICHARDSON. Would you submit for the record all of the data, memorandums relating to this incident, and also the 17 other police brutality incidents that are the subject of this hearing and the decisionmaking process that was arrived at in determining that these were not incidents of police brutality? The subcommittee would like to review those. And I assume that this will be provided in a timely fashion.

[The information can be located in the Committee files.]

Mr. RICHARDSON. Let me, before I recognize the gentleman from American Samoa, let me ask Mr. Whitesell, what should you or the superintendents do in the event that a citizen files a complaint against a BIA police officer under your command? Describe for me an action that you would determine might be a civil rights violation by a police officer, Mr. Whitesell.

Mr. WHITESELL. A situation involved in an arrest like we have heard here; the possibility of improper search and seizure; the stopping of a vehicle without probable cause; a number of situations like that. If someone came in and made a complaint, the position Mr. Babby laid out as an agency superintendent would probably be the same thing that I would do if I was at the agency.

I would call together my technical experts and give them the facts. The current policy, as we have it within the Billings area, is that it is reported to the FBI and it is also sent to the area office.

From the area office, we then assign an investigator from another jurisdiction to investigate the alleged complaint.

Based upon the information that we get back from our investigation—and we make that available to the FBI also—if we determine that there has been something wrong, I believe that it is our responsibility to take the administrative action to correct that, no matter what that may be in terms of reprimand, suspension, or removal from service. As for the FBI, I am not sure what they do with it once they get a civil rights complaint, but that is the process that we would use.

Mr. RICHARDSON. Now—

Mr. BABBY. Congressman, may I—

Mr. RICHARDSON. Yes, yes.

Mr. BABBY. I believe that it is important at this point in all of the responses that we have provided to you, to clarify something.

We are not opposed nor are we resisting the idea, the concept that proper or needed training for either superintendents or area directors, those involved in line management carrying line responsibility for the program, receive training. We are now trying to put our plan together to begin to do just that, following a similar kind of effort being made in the National Park Service.

Mr. RICHARDSON. Well, Mr. Babby, I don't seem to understand, because what I sense here is, is it not correct that neither superintendents nor area directors are required to have any training, any education, or any experience as serving law enforcement officers on Indian lands? Isn't that correct? You don't have to have the training to be the chief law enforcement officer, right?

Mr. BABBY. No.

Mr. RICHARDSON. OK. So what you are saying—and I just glanced at your testimony—it seems to me that what you are telling us is that systems are in place outlining police training, hiring and other general policy practices. You are saying that these—that there are hiring standards; you say the training is similar to that of law enforcement agencies, and you are saying that there are systems in place for the public to file complaints against the police.

So it sounds like there are no real reasons for problems, other than the people that you have running the police forces have no training, no experience or education in law enforcement operations.

How is this supposed to work? I don't seem to understand.

You are saying—you just made a statement saying that you are trying to set some systems in place, but that previously your written testimony says that there are really no problems. Maybe in the time I went to take a phone call, I missed your testimony.

Mr. BABBY. I would not have intended anything in my testimony here today to indicate that we do not have problems. Certainly we do. And we are committed and dedicated to applying ourselves to what needs to be done to correct them.

I have acknowledged to you that an academic background in law enforcement has not been a requirement in the position of agency superintendent or area director, but that it would not be different in any of the other programs for which those people are responsible. They are responsible in identical ways for managing forestry programs, for social services programs, for engineering and con-

struction programs; they came out of one or another of those disciplines, but they do not have academic backgrounds in all of them.

Mr. RICHARDSON. Well, you know, you keep emphasizing academic background. I mean, wouldn't it make sense to have somebody like Billy, with direct experience, involved in some of these issues? No wonder the Navajos have gone a different route.

Let me ask you an incident. Both of you, as I understand it, Mr. Babby and Mr. Whitesell, were from the Billings area of the BIA. The Assiniboine and Sioux tribes of Fort Peck initiated not one but two tribal resolutions ordering the BIA captain off the reservation. In fact, this captain is mentioned in the AP article as being charged with misconduct.

You two were the officers in charge. What did you do? Where is that officer working today? Where is that captain working today?

Mr. WHITESELL. The captain is currently working in the Billings area office as head of the law enforcement division for the Billings area.

Mr. RICHARDSON. So nothing happened to him, right?

Mr. WHITESELL. Nothing needed to happen to him. There were resolutions by the tribal council to move this officer.

During the time Mr. Babby was there, Mr. Babby investigated the allegations and counseled with the officer. He then suggested to me that we not move the officer. We held off on that stand for about two years, until finally we believed that it was in the best interest of the officer to move him.

Mr. RICHARDSON. Did you move him up or down or sideways?

Mr. WHITESELL. Sideways.

Mr. RICHARDSON. He was not promoted?

Mr. WHITESELL. No, he was not.

Mr. RICHARDSON. Doesn't it mean something, if there is a tribal resolution from two tribes, ordering this man off the reservation? I mean, doesn't it seem that you would feel that you should respond to your constituents the way I do, that maybe that has something to say about this captain?

Mr. Whitesell.

Mr. WHITESELL. Congressman, if we get a tribal resolution, we take a look at the situation. If there is wrongdoing on the part of the employee, we take care of the situation.

Mr. RICHARDSON. Well, in this case, did you?

Mr. WHITESELL. We investigated, or the superintendent investigated, and we sent people up on occasion to take a look also. We could find no wrongdoing to justify the moving of the captain.

Mr. RICHARDSON. So the tribe was totally wrong, in other words? Two tribes were totally wrong; is that right?

Mr. WHITESELL. There are not two tribes. There are two tribes living there, but they have one business council that comes together.

Mr. RICHARDSON. All right. So they were totally wrong?

Mr. WHITESELL. In this situation, Congressman, yes, they were.

Mr. RICHARDSON. And the tribes and the Indians are totally wrong in the 17 other times that there were incidents of police brutality?

Mr. WHITESELL. I can't talk to the other 17. I can only talk to the one I know about. In this situation, the officer was technically

correct in the things that he was doing. Unfortunately, he stepped on people's toes, who were related to other people; and as a result, we had something called a tribal resolution.

Mr. RICHARDSON. Oh, so it was politics by the tribe?

Mr. WHITESELL. Beg your pardon?

Mr. RICHARDSON. It was politics by the tribe?

Mr. WHITESELL. I believe there was an awful lot of politics involved in the situation, yes.

Mr. RICHARDSON. And there is no politics involved in the BIA law enforcement system that you head?

Mr. WHITESELL. We have politics in everything we do, Congressman.

Mr. RICHARDSON. I am going to recognize the gentleman from American Samoa and ask him to conclude the hearing.

Mr. FALEOMAVAEGA. [Presiding.] Thank you, Mr. Chairman.

I want to thank Mr. Babby for his testimony. I do have a couple of questions and wonder if he could enlighten us on this. Am I given the bottom line, Mr. Babby, by your testimony and your associates', that all these incidents that have been reported by the press and the media and the tribal councils, they are absolutely wrong as far as you are concerned? The BIA law enforcement program is doing its job and these reportings are way off? Just a bunch of wackos? They really don't know what they are talking about?

Am I to understand that this is your testimony this morning, Mr. Babby?

Mr. BABBY. I am hopeful that I will be able to articulate my response to this correctly.

You know, we have listened to the witnesses this morning describe a set of circumstances that work in Indian communities, that make it kind of tough, kind of difficult to be involved with these activities, with this program. And I acknowledge that. I understand that fully.

There are reasons to believe that the officers involved in these incidents probably could have handled things better than they were, and I have said that in my testimony today. On the basis of the reviews of each of those incidents by those who are employed or part of our organization—to do certain things by virtue of their academic background, their training, their experience, the responsibility that they carry—on the basis of the reviews that have been done by those people, wrongdoing is not involved.

Mr. FALEOMAVAEGA. I notice also, Mr. Babby, if I could catch the essence of your statement earlier saying that your sense of complaint, it is that all these allegations, it seems that the tribal leaders among the 61 reservations are not the ones complaining. I want to ask the gentleman from Wyoming if, in fact, the complaints really do come from tribal chairmen of the various tribes concerning this serious problem.

Mr. THOMAS. Well, the tribal chairmen were here, of course, earlier from the Wind River Reservation, and had relatively little complaint. But I think we did make the discovery—or the point, not a discovery, that there isn't the kind of communication between tribal members and people in authority that there might be. So I suspect, and I think you would agree, that in some cases there is

a reluctance on the part of tribal members who do feel that things aren't going well to complain. And that, in itself, is a problem.

Mr. FALEOMAVAEGA. And in most instances, tribal leaders get along very well with the BIA police officers? Am I correct in that?

Mr. BABBY. Our officers, especially those in supervisory job roles, the captains at the agency level do; yes, that is a daily part of their job.

Mr. FALEOMAVAEGA. The real serious problem is what do you do with the individual citizens, when their rights are violated, if there is this sense of brutality in the conduct, on the part of the police officers?

I want to lead into the question, you made mention earlier that the cases—for example, if I was a citizen on a reservation, and I feel that the police really did me in and I file a complaint, I think you have indicated earlier that the case is then referred to the FBI?

Mr. BABBY. If the conclusion is drawn that we have the elements of a civil rights issue involved, yes, it will go immediately.

Mr. FALEOMAVAEGA. Am I to understand that you are the final arbitrator on any matters pertaining to law enforcement?

Mr. BABBY. I do not—I don't interact with my—when I say my, the criminal investigator at my location, in that way. That is a judgment to be made by professional law enforcement people, and I expect them and permit them, that is their business; I want them to do that.

Mr. FALEOMAVAEGA. How often are cases referred then for you, for decisionmaking, as far as law enforcement is concerned? Does it go to Mr. Quasula or where does—in other words, how many cases really are referred to you for consideration?

Let's say for the last year, have there been any cases, specific cases?

Mr. BABBY. Well, not for me in the past year.

Mr. FALEOMAVAEGA. So in other words, everything is handled in the superintendent or the regional director level?

Mr. BABBY. Yes.

Mr. FALEOMAVAEGA. So it really doesn't come to your attention?

Mr. BABBY. Those kinds of incidents have not risen to our level here, no.

Mr. FALEOMAVAEGA. I would like to ask Mr. Whitesell, how many cases have been referred to the FBI under your supervision as a regional director?

Mr. WHITESELL. I wouldn't have the answer to that. Because if it is determined to be a civil rights violation, the criminal investigator turns it over to the FBI. That isn't information that is given to me unless I specifically ask for the information relative to the incident.

Mr. FALEOMAVAEGA. Are the citizens of the reservations aware that they have that privilege and that to know that this case will be referred to the FBI for investigations if the area superintendent doesn't do anything about this?

Mr. WHITESELL. I am not sure that the information is widespread. I think those people who have issued complaints or have worked at the agency or have had contact with people, is the way

the word probably gets around. I would think that the information is not widespread.

Mr. FALCOMAVAEGA. Now, when you say the FBI, does this also include the U.S. Attorney's Office inform the region of that given State?

Mr. WHITESELL. Yes, sir.

Mr. FALCOMAVAEGA. I definitely recall sometime last year we held a hearing about this problem. And the worst part of the whole process in the investigative aspects of this is that the U.S. Attorney's office and the FBI are the least of all of the Federal agencies, in my experience, in dealing with this issue, really have not and just simply could not respond to the cases being referred for them for investigation. And the simple reason, they say about this, is that limited resources—they just don't have the means.

So what I am saying is that here this poor citizen on the reservation, hoping they will have an investigation by the FBI, the case just dies.

Now, do you think that perhaps that in your capacity, Mr. Babby, that this ought to be brought more forthrightly to the committee, perhaps even to the Department, that because of the limited resources available to the U.S. Attorney's office and—as well as the FBI, cases brought to the forefront now, it just seems it is just not going to be handled, there is no follow through on this? Would you agree with me on this?

Mr. BABBY. Oh, yes. I want nothing more than to see those things that are needed to correct the deficiencies in our program. I have been aware of the kinds of things we have talked about here today for a long time—haven't always had the answers, but I have always tried to find them.

You know, the idea of a citizen's grievance committee is not new. We have addressed this approach in the Bureau; between the Bureau and the tribal governments; going back in time over many, many years. It was tried at Pine Ridge back in the 1970's. I don't know whether that is still together, but they put it together and started to try to use this.

Today we are trying to pick up very aggressively on the idea of the community police officer approach, get these officers out in the community, as they are doing in the cities, all over our country.

The third part of it that I wanted to throw into the mix of things here is the idea that the important role the superintendent plays is the interaction that occurs at the reservation level between the Bureau and that governing body. It isn't always the general council.

Many of the tribes have law and order committees, they are usually called, and they are active on a daily basis. I know that it doesn't work the same on every reservation, but where those committees are active, and it is in the majority of the cases, the superintendent and oftentimes the area director spend a lot of time over in front of those committees answering questions that have been brought there by the citizens.

Mr. FALCOMAVAEGA. But in fairness to the superintendents and the regional directors—and I think we have all come to some sense of admission that you don't have the technical training, you are not trained in law enforcement—do you think that perhaps there has

got to be a better procedure, so that when a citizen does file a complaint and he would like to hope or she would like to hope and think and believe that when that complaint is filed that some agency or somebody is going to seriously investigate and make recommendations so that that person's civil rights are protected.

And what I am suggesting here, do you think that perhaps the FBI regional area should have some group dedicated for this very reason, to help the Indian tribes? Because they are technical people, they know more about law enforcement than our area superintendents and regional directors.

In other words, you are putting the wrong people in there to do this, as far as the appeals process is concerned.

And I would like to ask Mr. Quasula, who is well-qualified, being a FBI trainee; I mean, have you seen this as a problem, Mr. Quasula? Am I wrong in my raising this question? You are putting in people who are not qualified as far as law enforcement is concerned, and it is unfair to them. What about the involvement of the regional office of the FBI to be of help in that sense? Since it is a violation of Federal law, the reservation is under the trust responsibility of the Congress and the Federal Government, certainly not the responsibility of the State.

Mr. QUASULA. In any case, you know, a citizen's complaint has to be investigated. Sometimes they are founded, sometimes they are not. There are varying degrees of citizen complaints, anywhere from an officer looked at me, he glared at me, he gave me a dirty look, all the way up to a Rodney King-type situation. You know, there is just that spectrum there. But in any case, law enforcement has the responsibility to look into that.

The citizen should not be required to put it in writing at all. You know, they can put it in writing, they can tell you verbally. In fact, a great many of the complaints we get are anonymous and—

Mr. FALEOMAVAEGA. Well, but Mr. Quasula, I know my time is running, I don't mean to get into all the spectrum—what I am saying is, in fairness to Mr. Babby and Mr. Whitesell, they are getting the heat of this simply because this is the way the bureaucracy and the BIA is structured. You are putting people in there who are good and honest and doing it for the wrong reasons.

What I am suggesting is, could there be some way—Janet Reno is the Attorney General because she has a legal background and knows how to enforce the laws, the same thing we have with the FBI. You know, these people are technically trained to do these things. And I am just trying to raise the question that perhaps the problem here is that we don't have an appeals process so that the rights of these individual citizens on these reservations are protected, and it goes in to be handled by people who are not adequately qualified.

Mr. QUASULA. Yes, I think the FBI or anyone must be qualified to review civil rights and/or citizen complaints. Whether the FBI will do it, I don't know. I believe people that are in the business, that know the business and are specially trained, ought to be the folks that look into them. And I think certainly there ought to be some feedback to the complainant.

Mr. FALEOMAVAEGA. One more question, Mr. Babby. You say you have a plan. Can you give us a timetable that you are going to put

some kind of a plan in place and perhaps to respond to this issue that has been brought before the committee?

You indicated earlier you have a plan, you are developing a plan. Can you share with the committee the timetable that you are working under to implement this plan?

Mr. BABBY. I believe that when I used that term, I was referring to the fact that we intend now to put a program together for superintendents and area directors, and that it would be patterned, from where we are sitting now, looking at this, after a similar effort being made by the National Park Service. That was what I intended when I used the word.

Mr. FALEOMAVAEGA. Would you support legislation if we were to craft legislation to address this issue of police brutality on reservations?

Mr. BABBY. Would we support it? To the extent that an officer becomes involved in a situation or an incident where that kind of conduct takes place has no place in our business.

Mr. FALEOMAVAEGA. Well, I think we have to be fair to both sides, the rights of the citizens versus the rights of the officers. But the problem we have here is that when an officer commits a wrong, there seems to be no remedy to cure that wrong, other than assigning him to another reservation, which is the complaint that others have. The officer gets away with it.

And my question to you, how do we address, then, the problem of putting the officer in the proper place? If he has to go to jail for violating my civil rights, shouldn't we have something in place to do that?

And I am not getting that from your testimony.

Mr. BABBY. I have no problem with that, none. The problem that we all have is that up to this point in time, we haven't had that happen; we haven't had it demonstrated that someone has, in fact, violated someone else's rights, even though we have submitted it to the powers that have been given responsibility for making these determinations.

Mr. FALEOMAVAEGA. The gentleman from Wyoming?

Mr. THOMAS. Just one closing comment, thank you, sir.

I first of all appreciate your coming and your participation. This is not an easy issue. But it seems to me that several things are fairly clearly defined: one, that we need to do something to create more of a community sort of an involvement here with the policing system on reservations so that the tribal leaders and tribal members feel a little more comfortable that the thing is a part of them.

I don't know how—I think maybe the structure has something to do with that in terms of the BIA. Clearly, we have talked about the training, and the training needs to be done in a new fashion and needs to be in a way that it is more than driving the cars and shooting the guns, as has been pointed out here. I think that is clear.

I do—it does seem to me that we need to take a look at the line of authority here in terms of the tribal leaders being more involved perhaps. I don't share the notion that an area director, or superintendent of an agency has to have police training; I think that those positions are best filled by generalists. But maybe you do

need to change where those decisions go to be made, that have to do with law enforcement, and move them a little differently.

And, finally, I would hope the BIA is ready to do some things a little differently. I haven't been here forever, but I have to tell you that we come back year after year, talk about doing some things differently, and it is just damn little movement that we see from our standpoint. And one of the problems is that there are a lot of "acting" people over there.

After all, this administration has been in place now for 15 months. How long are you going to be "acting"? You know—and that is not your fault. But the thing needs to move, and our models need to be designed.

So I do think there have been some useful things happen here, and I appreciate your participation.

Mr. BABBY. Congressman, may I make one more observation?

I would like to tell everyone, or let you know of taking notice of what took place here in the testimony that was offered by the Rosebud tribe. They have availed themselves of an opportunity to take hold of a problem for themselves and find answers to those problems for themselves. We support that. I said that in the testimony, but one doesn't get much said in one sentence.

We feel they are doing it the right way. We are prepared to support that line of reasoning, encourage a tribe caught up in this controversy to step forward, tell us that this is the direction that things ought to be going down there. We want to do whatever it is that we can to help them get there.

Mr. FALCOMAVAEGA. I want to thank the gentleman from Wyoming for his leadership and certainly his keen interest in wanting to bring forth some kind of a solution to this problem that we are now faced with.

And certainly the Chairman and I look forward to working with the gentleman from Wyoming in developing legislation, if necessary, to resolve this.

And we certainly want to thank you, Mr. Babby and Mr. Whitesell and Mr. Quasula, for being patient and to be here with us this morning.

Without objection, the record will be open for two weeks.

Mr. FALCOMAVAEGA. Again, I want to thank all the people for being here this morning. The hearing is adjourned.

[Whereupon, at 1:28 p.m., the subcommittee was adjourned; and the following was submitted for the record:]

**BACKGROUND FOR OVERSIGHT HEARING ON
LAW ENFORCEMENT ISSUES IN THE BUREAU OF INDIAN AFFAIRS
March 18, 1994**

On August 18, 1990, Congress enacted the Indian Law Enforcement Reform Act (Public Law 101-379). This law marked the first comprehensive statutory scheme governing Bureau of Indian Affairs Law Enforcement activities on Indian lands. Prior to this statute, the Bureau of Indian Affairs relied upon the Snyder Act of November 2, 1921 (25 U.S.C. §13), the Indian Liquor Laws (18 U.S.C. §3055), and other references in various appropriations statutes to provide statutory authority to carry out law enforcement activities in Indian country. Currently, there are over 300 BIA uniformed officers and 1,000 tribal officers working in Indian country. There are 61 BIA law enforcement programs, 98 tribal programs under the Indian Self Determination Act and 15 Self-Governance law enforcement programs. Despite the enactment of the Indian Law Enforcement Reform Act, there remain serious problems in the Bureau of Indian Affairs Law Enforcement program.

There have been increasing complaints regarding the excessive use of force by Bureau of Indian Affairs Law Enforcement officers. These complaints have been the focus of a great deal of media attention. Although the numbers of allegations of police brutality against Bureau of Indian Affairs may not reflect a significant problem, the manner with which the Bureau of Indian Affairs has responded to complaints against BIA officers does present a significant problem. Under the current system, the agency superintendent has direct supervisory authority over BIA police on the reservation. There is no requirement that an agency superintendent supervising BIA law enforcement officers have any training or background in law enforcement. The superintendent is the BIA official charged with reviewing allegations of brutality or other citizen complaints made against BIA law enforcement officers. The superintendent is also the BIA official who has the responsibility for disciplining any law enforcement officer for misconduct. Yet, BIA superintendents are not law enforcement officers nor have they received any formal law enforcement training.

Until February of this year, there was no independent mechanism for investigating and processing a complaint made against a BIA police officer. The BIA law enforcement program, unlike any law enforcement agency in the nation, had no internal affairs division to investigate complaints made against BIA officers. In February of this year, the Assistant Secretary approved a plan to establish an internal affairs division in the Bureau of Indian Affairs to investigate complaints made against BIA police. This office is to be based out of the Police Academy in Artesia, N.M. and staffed by three officers. It is not clear when this division will be operational and how local complaints against BIA officers are to be processed.

Under the current BIA law enforcement program, it may take up to one year before a new recruit receives any formal law enforcement training. Yet during this period new recruits are issued firearms and authorized to make arrests. A new

recruit is not required to successfully complete training at the Indian Law Enforcement Academy before being authorized to carry firearms and make arrests. There is a tremendous backlog of BIA and tribal law enforcement officers to receive training at the Indian Law Enforcement Academy located in Artesia, N.M. Because of this overload, many BIA and tribal officers must wait several months before a training slot opens up at the academy. This has resulted in many officers not being properly certified or not meeting the annual requirement for law enforcement training.

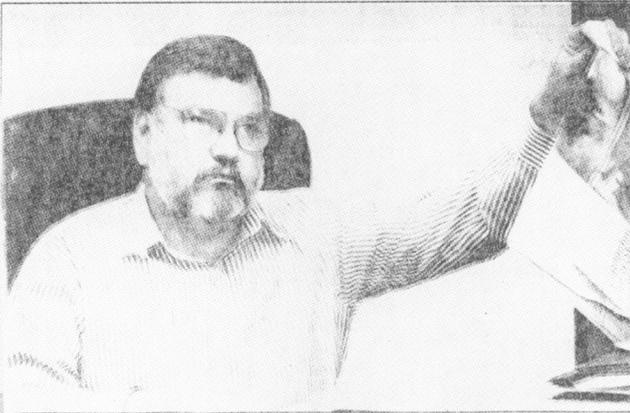
Other problems in the current BIA law enforcement program include lack of adequate resources and staff. Most BIA and tribal law enforcement programs are without the staff necessary to police large remote reservations. These staffing patterns result in police officers being placed in potentially dangerous situations without adequate backup. Police officers unable to respond to emergency calls on the reservation because of a shortage of officers. In addition, police officers on Indian reservations make less money than do state or other federal law enforcement officers. For example, the average BIA officer earns \$16,500 to \$18,600 per year compared to, for example, South Dakota's local police officers who earn \$22,250 per year on average.

NOVEMBER 11, 1993

Wind River brutality denied

AP
NOV 19 A 11:03
**Allison raps
report, photos
of beating**

By DEIRDRE STOELZLE
Star-Tribune staff writer



Wind River Police Capt. Larry Makeshine, top photo, and Wind River BIA Capt. David Allison, above, denounced charges by The Associated Press that an Indian woman was beaten by an officer in the BIA jail in Fort Washakie.

FORT WASHAKIE — Bureau of Indian Affairs officers do not engage in police brutality on the Wind River Indian Reservation, and photographs that claim to document the beating of an Indian woman by a BIA police officer are misleading and inaccurate, David Allison, superintendent of the BIA's Wind River Agency, and Larry Makeshine, captain of the BIA's Wind River Police Department, said Wednesday.

"We're not going to stand for any brutality, and if someone has experienced something like that, I'd ask they put (the allegations) in writing, and I have a requirement to report those types of incidents," Allison said.

The Associated Press' recent report on its investigation of 17 incidents of alleged police brutality on several Western Indian reservations included two photographs from a videotape filmed at the BIA police station at Fort Washakie. The 17 incidents the AP reported on were all drawn from written complaints of police brutality filed with BIA offices, the AP said.

The photographs made public by the AP appeared to be of a handcuffed woman, identified by the AP as Rachel Moss, being punched by an unidentified BIA police officer during an arrest for disorderly conduct.

Allison said publication of the photographs was "in poor taste," but that he'd seen the video before the AP gained possession of it through the Freedom of Information Act.

"It's my video," he said. "It appears that everyone is trying to focus on Fort Washakie because of the photographs in the article," Makeshine said. "But Please see AP PAGES A10.

A10—Star-Tribune, Casper, Wyo.

Allison

Continued from A1

that brutality does not go on here."

Allison and Makeshine were interviewed together at the BIA offices in Fort Washakie Wednesday.

There have been fewer than five reports of alleged misconduct lodged against BIA officers on the reservation in the past nine years, Allison said, adding, "I can only think of one that resulted in a serious injury." Allison said he was not referring to Rachel Moss.

Most of those reports entailed allegations of civil rights violations by either an arrestee or an arrestee's family member, according to Allison. Arrests make people angry, and those arrested may retaliate against the authority by making such allegations, Makeshine said.

Those five reports including one made about the treatment of Moss were forwarded to both the BIA district office in Billings and to the FBI bureau in Denver, Allison said.

On Monday U.S. Rep. Craig Thomas told the Star-Tribune he may suggest requesting a congressional investigation into the allegations of police brutality at Fort Washakie. On Wednesday, he wrote BIA Director Ada Deer in Washington about his concerns. (See related story, A1)

Allison and Makeshine both said they would welcome such an investigation.

Use of force

Moss was arrested for disorderly conduct in February of this year. During her arrest, the AP reported, Moss spat at the arresting officer and he hit her in the face, grabbed her hair and chin and slammed her head into a wall.

Allison and Makeshine maintain the incident was, in fact, not brutality — on the contrary, they explained, the officer's swiping gesture in the photographs was that of waving away the intoxicated, belligerent woman.

"In neither one of those photos was she punched, or anything," Allison said. The officer's swiping gesture was instead a "get out of my face sort of thing," Allison said.

"When I looked at the pictures in the (Star-Tribune), I was greatly concerned," he said. "But when I looked at what was going on in the video, my concern decreased considerably."

Makeshine said, "The articles contain allegations of people being choked, kicked, sprayed with mace — that doesn't occur here. The last time we used mace was when an officer was confronted with a subject armed with two kitchen knives."

Makeshine said, "You do not use any more force than is required."

Allison added, "If it is found that an officer stepped over that line, action will absolutely be taken — that's my policy, and that's Larry's policy."

Police on the reservation — as

Thursday, November 11, 1993

"In neither one of those photos was she punched, or anything. The officer's swiping gesture was instead a "get out of my face sort of thing."

— BIA Supt. David Allison

everywhere — experience stress on the job because they are frequently placed in potentially dangerous situations, both officials said.

Often there are 10 or more people living in one house, and safety and sanitary conditions, including lighting, plumbing and ventilation, are poor, Makeshine and Allison said.

"There are parties going on all night — it's a bad place to raise kids," Allison said.

BIA police recently began "saturation patrols" in which maybe five officers will respond to a scene at once — generally for their own protection against angry, belligerent people, Makeshine and Allison said.

Indian police

More than 1,800 arrests are made each year on the Wind River Indian Reservation — and 250 arrests were made in June, alone, Makeshine said. There are currently 13 peace officers on the BIA police force and four vacancies — two of which are expected to be filled soon, or when “paperwork” is completed, according to Allison.

Seven officers on the force are Shoshone or Arapaho, and all of them are BIA-certified peace officers who annually complete as much as 125 hours of additional, in-service training, Makeshine and Allison said.

These officers patrol roadways around 2.3 million acres of reservation land upon which 10,000 people — including non-Indians — live.

The Fremont County Sheriff's Office is often called to assist the BIA police, as is the Wyoming Highway Patrol, according to Allison.

Five BIA police officers — including Makeshine — reportedly have sustained injuries in the line of duty in the past several years, Makeshine said. One officer was stabbed twice, a second officer was hit in the face with a club, a third had a tooth knocked out and a fourth sustained a fractured nose, Makeshine and Allison said.

Makeshine said he was hit in the face some time ago while arresting a suspect for disorderly conduct.

In the last six months, Makeshine said, nine police cars have been vandalized, with their windows kicked out.

Of those arrested, at least 80

percent are repeat offenders, and nearly all of the arrests are made on alcohol-related misdemeanor charges. Allison said he jokes that he doesn't “run a jail, I run a detox center. I don't have any criminals in my jail.”

Felony cases on the reservation are prosecuted by the U.S. Attorney's office. Arrests in such cases are made only by BIA investigators — of which there are two on the reservation — who are assisted by BIA police officers, Allison and Makeshine said.

Makeshine, who is Arapaho and Sioux and grew up on the Wind River reservation, said, “Our primary duty is to serve and protect the people. We're not an occupying force here — if people perceive that we are, that could be a result of the news media.”

Internal investigations

If BIA police misconduct is alleged and Makeshine or Allison hears about it, Allison said he reports the incident immediately to the BIA area office in Billings and to the FBI bureau in Denver.

According to BIA procedure, the Wind River Agency would not be the office to investigate such complaints — that would be inappropriate, Allison said. “I don't want one of my police officers investigating their own,” he said.

“In the last year I've turned that whole issue over to criminal investigators in the Billings office,” Allison said. “I usually tell the captain (Makeshine) that we've got this complaint, and we start getting our records.”

Makeshine said that “use of force” reports are always filed away with the complaint and arrest information.

Video cameras are installed all over the police station and five-cell, 23-bed jail, and in most of the police cars, Allison said, “to protect our people and officers.”

Footage from those video cameras is monitored in the dispatch center by a guard working an 8-hour shift.

“As a captain and as a tribal member my goal is to make this reservation safer for all residents to live on,” Makeshine said.

He said the photographs run of the BIA officer allegedly “beating” Moss in the AP's report have “put us a step back.”

“The police brutality is not occurring here. It's not,” he said. “We'll just have to start at square one again.”

Congressmen seek investigation of BIA police

SIoux FALLS, S.D. (AP)—A congressional committee should investigate reports of widespread brutality by Bureau of Indian Affairs police officers, two U.S. House members said last week.

The charges, raised in an investigative report by The Associated Press Nov. 8, "disturb us greatly," wrote Rep. Craig Thomas, R-Wyo., and Rep. Tim Johnson, D-S.D. Both are members of the House Subcommittee on Native American Affairs and asked the panel's chairman, Rep. Bill Richardson, D-N.M., to schedule hearings on the matter early next year.

The six-month AP investigation revealed that BIA officers routinely use force and are rarely

disciplined for assaulting suspects on the 61 Indian reservations where the BIA provides local police. Complaints are handled by fellow officers reluctant to criticize their colleagues, the investigation found.

"I think we need to push the BIA to be aggressive in dealing with this kind of problem," Johnson said in a telephone interview. "I think it would be negligent not to follow up on (the AP report), particularly given the BIA's historical track record of an inadequate response to the problems on reservations."

Agency officials say the BIA plans to set up an internal affairs unit to investigate the most serious charges of brutality against BIA officers, but the

project needs \$250,000 to get off the ground.

Although we understand that the BIA has plans for a new internal affairs department, we are concerned that it is not yet in place and that once implemented, it may not go far enough in curbing these kinds of acts or investigating them when they do occur," the congressmen wrote.

The AP probe uncovered 17 formal brutality complaints on six western reservations from May 1990 to March 1993. Six complaints were against BIA officers on the Rosebud Sioux reservation in Johnson's district and four came from the Wind River reservation in Thomas' district.

The Rosebud Sioux Tribe

took control of its police department from the BIA in March because tribal officials were frustrated with the agency's handling of brutality concerns. The cases from Wind River included one where a booking room video camera filmed an officer slamming a woman's head into a wall Feb. 28.

Thomas also wrote last week to Ada Deer, the assistant secretary in the Interior Department who oversees the BIA. Thomas asked Deer to outline steps the agency takes to prevent police brutality and her plans for improving the BIA police system.

Deer's response has been prepared and is awaiting her signature, a BIA spokeswoman said Thursday.

Brutality by BIA debated

■ **Montana cases:**
More reports of
police abuse

SIOUX FALLS, S.D. (AP) — Bureau of Indian Affairs police officers treat suspects roughly more often than federal officials would like to admit, some tribal members say.

A six-month investigation by The Associated Press revealed that police routinely use force and are rarely disciplined for assaulting suspects on many of the 61 Indian reservations where the BIA provides local law enforcement. Complaints are handled by fellow officers reluctant to criticize their colleagues, the investigation found.

Some local BIA officials denounced the report after it was published Nov. 8, but some tribal members came forward with their own stories of mistreatment.

In a case not covered by the AP investigation, a member of the Blackfeet tribe in Montana has filed a federal lawsuit against the BIA over his arrest in 1990.

Kenneth Sellars' suit said he was mistakenly arrested on a warrant for his son and officers ignored his explanations of the mistake. Officers handcuffed him and attached his hands to walls so he was incapacitated, the lawsuit said.

Also in Montana, the Northern Cheyenne Tribal Council voted in September to create an independent commission to monitor police activities after getting complaints about brutality by BIA officers, council member Clara Spotted Elk said.

"Our effort here is trying to improve law enforcement," Spotted Elk said. "Contrary to what the bureau is saying — that brutality isn't a problem — we think that in any police department there is always room for improvement."

The Northern Cheyenne tribe will hold a public hearing on the issue next month, Spotted Elk said.

BIA Police Capt. Bernard "Larry" Makeshine, who heads the force on Wyoming's Wind River reservation, said the AP investigation overstated the case against officers on his reservation. The investigation uncovered four brutality complaints at Wind River in the past three years. In one case, a booking room video camera filmed an officer slamming a

BIA

From Page 1B

woman's head into a wall at Fort Washakie.

"It appears that everyone is trying to focus on Fort Washakie because of the photographs in the article," Makeshine said. "But that brutality does not go on here."

Makeshine was one of two officers involved in a 1991 arrest on the reservation where a man's arm was broken and his female companion suffered a black eye and bruises. The man, Milton Trosper Jr., has filed a federal lawsuit charging that his civil rights were violated.

Lucy Soundingsides, a member of the Northern Arapaho tribe on the Wind River reservation, told The Associated Press she has been arrested twice in recent years by BIA officers in a family dispute with Makeshine.

Soundingsides, 36, said she was arrested last month after a shoving match with Makeshine's mother, who is her cousin. Frances Makeshine was not arrested, Soundingsides said.

"He (Makeshine) picks out certain people, those are the ones ... he tells the officers to go after," Soundingsides said. "Then he gets mad at them (officers) if they pick his friends up."

Soundingsides said she and other tribal members complained about such incidents to David Allison, the BIA superintendent at Wind River. Allison has done nothing about the problem, she said.

When contacted by The AP on Friday, Makeshine referred questions to Allison. Allison, who also criticized the AP investigation, did not return a telephone message seeking comment Friday.

Walt Francis teaches a course on police brutality and corruption at Central Wyoming College in Riverton, at the edge of the Wind River reservation. Soundingsides is one of

66 So what we need is local control. That would eliminate a lot of the problem..."

—Walt Francis,
college instructor

his students, and he said he wished members of the Wind River police force also would take his classes.

"If some managers would have taken it, they could have implemented some changes. They would see that some of these things like brutality are going to happen and learn what they can do to head them off, to do some prevention," Francis said. "The problem is, the street officer may want to do it, but the top management let them."

Francis said research by criminal justice experts has shown that police brutality diminishes when citizens have some form of local control over police departments. But BIA officers do not answer to the tribal government on reservations.

"If this was happening in the city of Riverton, who would you go to? The mayor and the City Council. Who do you go to at the BIA?" he asked. "Your congressperson? We've only got one for the entire state, and he spread pretty thin."

"So what we need is local control. That would eliminate a lot of the problem; could eliminate it, should eliminate it, at least."

Many tribal members don't file formal police brutality complaints because they don't understand the trust system. Spotted Elk said Northern Cheyenne tribal members who have filed complaints have been told to file Freedom of Information Act requests to find out how the complaints were resolved, she said.

"They make a complaint, and they never find out what happened to it," Spotted Elk said. "It's like he fell into a big, black hole."

Congress of the United States
House of Representatives
Washington, D.C. 20515

November 18, 1993

The Honorable Bill Richardson
Chairman, Subcommittee on Native American Affairs
1522 Longworth House Office Building
Washington, DC 20515

Dear Chairman Richardson:

As members of the Subcommittee on Native American Affairs, we write to express our concern about a matter affecting Indian country which has recently come to our attention.

Reports by the Associated Press over the last two weeks allege that BIA police officers routinely use excessive force when arresting suspects, and that those accused of this type of abuse are rarely disciplined. As examples, the reports list several incidents on the Rosebud Sioux Reservation in South Dakota and a recent incident on the Wind River Reservation in Wyoming.

These allegations disturb us greatly. We are also concerned that, once a complaint of abuse is made, insufficient safeguards exist to ensure that the complaint is investigated impartially. Although we understand that the BIA has plans for a new internal affairs department, we are concerned that it is not yet in place and that, once implemented, it may not go far enough in curbing these kinds of acts or investigating them when they do occur.

The AP stories raise concerns in our minds sufficient to warrant further investigation. Toward this end, we request that the Subcommittee hold an oversight hearing on this important issue in the near future. While we realize that time does not permit it this year before sine die adjournment, we would hope that a hearing might be arranged earliest possible time next Session.

We look forward to discussing the matter with you.

Sincerely,


Craig Thomas


Tim Johnson

CRAIG THOMAS
WYOMING, AT LARGE

WASHINGTON OFFICE
LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-5001
(202) 225-2311

Congress of the United States
House of Representatives
Washington, DC 20515-5001

November 10, 1993

The Honorable Ada Deer
Assistant Secretary for Indian Affairs
Department of Interior
1849 C Street, NW
Washington, DC 20240

Dear Assistant Secretary Deer:

As the Ranking Republican member of the House Subcommittee on Native American Affairs, I write to express my alarm at a serious matter affecting Indian country which has just recently come to my attention.

A report last week by the Associated Press alleges that BIA police officers routinely use excessive force when arresting suspects, and that those accused of this type of abuse are rarely disciplined. As an example, the report highlights an incident on the Wind River Reservation in my state in which a manacled woman from the Arapaho Tribe was allegedly shoved and beaten by a BIA police officer, in full view of a video surveillance camera. In addition, several incidents on the Rosebud Sioux reservation were outlined.

These allegations, if true, disturb me greatly. I am also distressed that, once a complaint of abuse is made, insufficient safeguards exist to ensure the complaint is impartially investigated. Although I understand that the BIA has plans for a new internal affairs department, I am concerned that it is not yet in place and that, once implemented, may not go far enough in curbing these kinds of acts or investigating them when they do occur.

The A.P. story raises sufficient concerns in my mind to warrant further investigation. Please outline for me steps the Bureau undertakes to curb this type of abuse, the mechanisms in place to investigate an allegation of abuse, and any plans the Bureau has to improve – and insulate from accusations of partiality – the conduct of such investigations.

In the meantime, I intend to meet with Subcommittee Chairman Richardson to discuss the desirability of holding an oversight hearing or hearings on the topic.

Thank you very much for your assistance in this matter. I look forward to hearing from you in the near future.

Sincerely,

A handwritten signature in cursive script that reads "Craig Thomas".

Craig Thomas
Member of Congress

cc. Secretary Bruce Babbitt
Chairman Bill Richardson
Superintendent David Allison
Shoshone and Arapaho Business Councils



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

DEC 17 1993

Honorable Craig Thomas
House of Representatives
Washington, DC 20515

Dear Mr. Thomas:

Thank you for your letter dated November 10, 1993, in which you expressed your concern about an Associated Press (AP) news article alleging police brutality by Bureau of Indian Affairs (BIA) police officers. I, too, am concerned and consider this matter to be very serious.

We have asked our field managers to provide a full report on the allegations as specified in the AP article. The Chief of our Division of Law Enforcement (DLE) will compile the field reports received and analyze each case to determine if violations of BIA policy occurred, and, if so, whether there has been any failure to take appropriate disciplinary action in any case. We are determined that our review will assure against the failure of effective management control in the future.

As you point out in your letter, the AP article claims that BIA officers routinely use excessive force when arresting suspects. We do not agree with that allegation. The BIA has undertaken a purposeful effort to ensure that only the most qualified and reliable personnel are employed in our law enforcement programs. This includes conducting strenuous background investigations on all applicants and providing intensive training on proper police procedures to police recruits, their supervisors, and senior program administrators. BIA policy requires that all allegations of civil rights violations be referred immediately to the Federal Bureau of Investigation (FBI) for further inquiry when received. The results of the investigations are forwarded by the FBI to the Department of Justice, Civil Rights Division, for review and final prosecutive determination.

Our officers are trained and instructed to exercise restraint in handling serious situations. There have been many incidents in which the use of extreme force may have been justified, but were handled by our officers with sensitivity and restraint. This can be verified by most U.S. Attorneys who prosecute cases in which BIA police officers are assaulted in the line of duty.

As stated in the AP article, our police officers work under conditions which officers in other departments would not tolerate. They often patrol alone in remote areas where they may be out of radio contact with no available backup. However, they realize this is a condition of employment in the environment in which they work. To say that BIA police officers routinely use excessive force is a great injustice to the program and its many outstanding and dedicated police officers.

BIA agency superintendents, through Captains of Police, are responsible for police operations on each reservation where we provide law enforcement service. When allegations of police misconduct are made, it is the responsibility of the agency superintendent to ensure that a proper investigation is conducted, then initiate any personnel action against the officer involved, if deemed necessary and appropriate.

The agency superintendent has several options available: Depending on the allegations, he/she may have the local supervisor conduct an investigation and provide a report; he/she may request, through the Area Director, that an investigator from another BIA location conduct the investigation (such is the case in most instances); or he/she may also request that an investigation be conducted by the DLE.

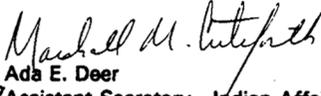
We agree that there should be an internal affairs unit, staffed by trained professionals, with the assigned task of investigating all alleged misconduct of BIA law enforcement officers. Other law enforcement agencies have proven that having a third party investigate allegations of police misconduct ensures that a prompt, fair and impartial inquiry is conducted. We believe that an experienced and trained internal affairs unit, familiar with police policies and procedures, is the best means to accomplish this task. I have directed the BIA to establish such a unit immediately. The resources for this program will be obtained by reprogramming existing funds from other activities.

I have also directed that a panel of experienced law enforcement professionals be assembled to review and evaluate the particular allegations contained in the AP article. This may involve onsite reviews of law enforcement programs. At the completion of this task, we will share the findings with your office.

The BIA is extremely proud of the dedicated and qualified personnel providing law enforcement services to Indian communities. All of our officers are Native Americans who share the traditions and cultural values of the communities in which they serve. These traditions hold respect for the lives and property of others in the highest regard.

I appreciate your concern for Indian country law enforcement and the welfare of Indian communities.

Sincerely,


Ada E. Deer
Acting
For Assistant Secretary - Indian Affairs

BIA police beat suspects, but go unpunished

Agency denies allegations

By MATT KELLEY
Associated Press writer

INDIAN COUNTRY — Bureau of Indian Affairs police officers routinely use force when arresting suspects and are rarely disciplined for assaulting them, a six-month investigation by The Associated Press found.

Some officers readily admitted kicking and hitting suspects, and BIA officials told the AP some use of force was inevitable.

A video tape of a jail booking on Wyoming's Wind River Indian Reservation vividly illustrated the

BIA police handling of suspects. In the video, Rachel Moss, her hands cuffed in front of her, is being booked for disorderly conduct. It's 8 a.m. and Moss is intoxicated.

Still standing, Moss spits at the officer. He shoves her in the face. She spits again. The officer stares momentarily at the spit on his sleeve then lunges at Moss. He swipes first at her jaw then grabs two fistfuls of hair and smashes her head into the wall. She slumps into a chair.

When contacted about the AP findings, the BIA defended its officers. Please see BIA, A3

In none of the cases was an officer punished — not even when medical reports indicated injuries were caused by force.

Files released under the Freedom of Information Act included the case of an officer on the Ute Mountain Ute Indian Reservation who allegedly dragged a 14-year-old runaway out of a squad car by her feet and punched her in the face, then said the blood the girl spit onto the carpet was evidence of her combativeness.

An officer broke a man's arm during an arrest for disorderly conduct, also on the Wind River Indian Reservation.

"BIA documents revealed two

instances on South Dakota's Rosebud Sioux reservation in which BIA officers broke suspects' tailbones, one a man ordered to bend over the trunk of his patrol car, then kicked.

Six of the 17 cases examined by the AP occurred on the Rosebud reservation.

The tribe became so frustrated with how BIA police treated its members and the agency's failure to investigate promptly or to discipline offending officers that it formed its own police force this year.

"Every now and then excessive force has to be used to arrest some of these people," said Phil Charles, a former BIA criminal investigator at Rosebud. "If the guy's coming after you with a tire iron or a jack or a baseball bat and you have to take him down with your PR24 (baton), then that's not police brutality, that's reasonable force."

In the 17 documented cases, however, none of the suspects was armed. In seven cases, women said officers roughed them up.

Two of the suspects were juveniles.

Most of the officers involved in the 17 cases continued to serve on reservations police forces. At least one was promoted, to head the force at Wind River.

Almost every police force in the United States can cite arrests when forceable restraint has injured suspects, sometimes even fatally. Big city police departments are sometimes accused of systemic brutality.

Lack of recourse

But in most places, citizens who believe force has exceeded proper bounds have recourse, through official channels or with the help of advocates and watchdog groups.

Continued from A1

officers and said brutality was not a problem. But officials also said high rates of alcoholism on reservations and entrenched disrespect for police made the use of force inevitable.

The startling scene involving a BIA police officer at Fort Washakie was captured Feb. 28 on a booking room videotape obtained by The Associated Press.

The officer's name was blacked out in documents released by the federal government through the Freedom of Information Act.

Every booking is taped at the Fort Washakie jail. Why would an officer beat a prisoner in full view of the camera?

Why not, when suspects are roughed up all the time?

17 cases reviewed

The AP reviewed 17 cases of alleged brutality filed on six Western reservations from April 1990 to March 1993. Citizens complained of being choked, sprayed with Mace, kicked in the groin, hit in the head and having hands and arms broken.

On Indian reservations, with BIA officers answering only to the distant U.S. Congress, such avenues are almost nonexistent.

Furthermore, unlike most police forces, the BIA has no separate internal affairs unit. Complaints against BIA officers are investigated by their BIA supervisors — an arrangement one agency official admits is “no good.”

On Montana's Fort Peck Reservation, the highest ranking officer, the police captain, has himself been accused twice of misconduct.

A proposal to create an internal affairs unit is on hold until the agency finds \$250,000 to fund it.

The BIA, a division of the Interior Department, provides police services to 61 of the 287 American Indian reservations, most of them in the West. Of the 1,461 police serving on reservations last year, 448 were federal officers from the BIA.

Reservations in some states, including Minnesota, Wisconsin, Nebraska, Oregon and California, come under state police jurisdiction. Tribes hire their own police on 114 reservations, among them the Pine Ridge and Rosebud Sioux in South Dakota and the Navajos in Arizona.

Seeking documentation

To look into brutality complaints against BIA police, the AP requested documentation from the five BIA regional offices that cover 15 Western states where 41 reservations have BIA officers.

Three of the offices, in Montana, South Dakota and New Mexico, released almost 1,000 pages of information, along with the videotape and photographs of Moss' injuries. Two offices, in Phoenix and Portland, Ore., did not fulfill the requests.

BIA defends officers

By MATT KELLEY

Associated Press writer

CST 11/6/93

INDIAN COUNTRY — Bureau of Indian Affairs officers conduct themselves properly in often violent arrest situations, BIA officials say, and do not brutalize suspects.

But officials also said high rates of alcoholism on reservations and entrenched disrespect for police make the use of force inevitable.

BIA regulations allow officers to use whatever force "is neces-

sary to control the subject," said Jerome Main, head of investigations at the BIA's office in Billings, Mont. "You have to make a judgment in the field what force you need to control the situation."

"Most of the guys use their Mace a lot," said Phil Charles, a former BIA criminal investigator at the Rosebud Reservation in South Dakota. "They're fighting the entire time, and sometimes people get hurt. It's hard not to

Please see OFFICERS, A3

Officers

Continued from A1

get hurt when you're resisting arrest."

The BIA listed several other factors contributing to the problem:

• **Overwork.** Until the Rosebud reservation hired its own police, 15 BIA officers patrolled an area the size of Connecticut where 18,000 people live. Those officers made 400-800 arrests a month, said Charles, the former Rosebud investigator, mostly for alcohol-related infractions such as disorderly conduct and drunken driving.

With so many arrests, reservation jails fill up and tribal court systems, without the power to give long prison terms, are overwhelmed. Defendants are commonly released after short jail time or none at all.

• **Cultural differences.** Most BIA officers are American Indians, but only about half are native to the reservation they patrol. A tribe may consider these officers outsiders, not to be accepted into its distinct culture.

• **History.** The forerunners of BIA police were Indians hired by the federal government to keep reservation Indians in line a cen-

tury ago and thus widely regarded as traitors. Today, many tribal members regard the BIA with contempt and consider BIA officers agents of conquering forces occupying their nations.

• **Salaries.** BIA officers earn \$16,500 to \$18,600 a year. By comparison, South Dakota's local police officers earn about \$22,250 a year.

• **Training.** The BIA allows officers to serve up to a year before taking a 14-week police training course. Timothy Smells, one of two Wind River officers accused of breaking a man's arm in a scuffle, had worked eight months without taking the course.

Officers also say the vast distances on Indian reservations — where many officers patrol alone, with help hours away — make BIA cops feel vulnerable and compel them to act swiftly and forcefully to any perceived threat.

"Not only do you have to evaluate how important it is that you make the arrest immediately, you have to consider where the backup is," said Joseph Wright, director of the Indian Police Academy in Artesia, N.M. "You have to evaluate whether you have to put yourself into a situation where you

"You have to make a judgment in the field what force you need to control the situation."

— Jerome Main, head of investigations at the BIA's office in Billings, Mont.

might end up getting hurt or you might end up hurting someone else."

In about half the complaints of BIA officers "hurting someone else," the FBI is called in to investigate possible civil rights violations. But FBI agents also rely on BIA police to help investigate major crimes on reservations, and tribal members say the agents are reluctant to criticize crime-fighting colleagues.

"Ten times out of 10, the FBI investigation comes back that there was no evidence of brutality, or the force that was used was justifiable," said Vernon Schmidt, a spokesman for the Rosebud Sioux tribe. "So we really don't get anywhere with a lot of this head-bashing going on."

What happened at Ft. Washakie

By MATT KELLEY
Associated Press writer

CST #1126193

FORT WASHAKIE — The videotape opens with a booking room door banging open. Moments later, a Bureau of Indian Affairs police officer is slamming a woman's head into a wall.

The tape was shot by a surveillance camera during the February arrest of Rachel Moss on Wyoming's Wind River Indian Reservation. Moss' brutality case was one of 17 complaints against BIA police officers that The As-

sociated Press examined in an investigation.

The BIA released a copy of the Moss videotape to the AP in response to a Freedom of Information Act request. The agency refused to identify the officer involved.

David Allison, superintendent of the BIA's Wind River Agency, was not available for comment Friday. Joe LaPlante, who was acting superintendent Friday, that he knew nothing about the taped incident involving Moss or the BIA

Please see MOSS, AB

Moss

Continued from A1

officer's identity.

Moss, 38, was arrested Feb. 28 of this year for disorderly conduct. Before the two came into the camera's view, Moss wrote to BIA officials, the officer cursed her, kicked her and beat her with his nightstick.

"He was trying to get me out of the (police) car while I was handcuffed and start jerking me around and calling me names and cussing at me," Moss wrote. "Then I spit at him about two times, that's when he took his stick out and I was still handcuffed and I went down and he said, 'Now, see what you made me do?'"

As Moss and the officer enter the booking room, they apparently are in the midst of trading insults; the officer's first audible words are "That's what you are," to Moss, whose hands are cuffed in front of her.

Moss responds by loudly cursing the officer in the Arapaho language as he prepares to enter another room. The officer retaliates by pushing Moss in the face; she stumbles backwards, curses again,

and spits at him.

The officer then lunges forward, grabs Moss by her chin and hair, and smashes her head into a bulletin board on the booking room wall. The blow resounds with a thud and Moss slumps into a chair, wailing in pain.

"Aw, shut up," the officer tells her.

Medical records note that Moss was suffering from dizziness and had bruises on her face, arm and knee when she was examined at the local Indian Health Service hospital three days after the arrest. Photographs taken by a BIA investigator four days after the arrest show a large red mark, bruising and swelling on the right side of her forehead and face.

The unidentified officer's report on the arrest claimed Moss had a bump on her head before she was apprehended. The officer also said Moss cursed at him, struggled with him and tried to wipe vomit and excrement on him.



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

WIND RIVER INDIAN AGENCY
FORT WASHAKIE, WYOMING 82514
November 16, 1993

IN REPLY REFER TO:

NEWS RELEASE

The Casper Star Tribune on 11/6/93 contained several articles regarding the treatment of persons arrested by BIA Police Officers. The writer states that suspects are roughed up all the time and that officers routinely use force. I take exception to the implications that this is how individuals are treated on the Wind River Reservation. There are no guarantees that isolated incidents of this type would never happen. However, if it did it would not be tolerated and the responsible individuals would be punished.

I feel that the public would have been better informed regarding the facts had the writer bothered to contact this agency regarding these articles.

First of all, I can recall one report of serious injury to an individual resulting from an arrest by a Wind River BIA Police Officer in the last five years. In that same period there were over 5000 arrests made. Almost all of these arrests involved persons who were intoxicated and many of the individuals were agitated at or abusive to the Officers. Contrary to the article, within the last year, mace was used only once. This was on an individual that was armed with two knives. No one can recall the last time it was used prior to that. During that same period, one officer was stabbed twice, one struck in the face with a club, one sustained a broken nose, and two others had injuries resulting in lost time on the job. In the last six months nine police cars were damaged by prisoners placed in them.

All allegations of injuries were investigated and to-date in no case was it found that an officers used more than reasonable force necessary to arrest or control an individual.

Contrary to the articles there is recourse for an individual who believe that force has exceeded proper bounds. An official receiving such an allegation is required to report it to the FBI and the Bureau of Indian Affairs Area Office for investigation. The findings are then revealed by the Justice Department. The results of these investigations are used in determining whether or not the officers actions were justified and disciplinary action is taken if warranted. If the individual is not satisfied he or she can either file a tort claim against the United States or take court action.

In his article the writer implied that Officer Smells were untrained. It is a fact that he had not taken the 14 week BIA training course but he did have previous police training. It should be noted that allowing officers to serve up to 12 months without taking an extensive police training course is no different that what is allowed under state law. Further, officers receive on-the-job and in-service training by certified instructors throughout the year. Each officer is required to attend 40 hours of training each year. Within the last year each Wind River Officer has received approximately 125 hours of training. This requirement exceeds that of the county or state.

The Agency Law Enforcement and Jail operations have been reviewed by several different groups and has been found to be operating at high standards. In respect to prisoner safety, cleanliness and program operation, I cannot speak for other Reservations, but the articles did not fairly represent conditions on the Wind River Reservation.

A handwritten signature in black ink, appearing to be 'A. R. C.', written in a cursive style.

Superintendent

November 16, 1993

Mr. Craig Thomas, Member
House of Representatives
Washington DC 20215-5001

Dear Mr. Thomas

I know you have recently wrote to the Bureau of Indian Affairs inquiring on the Associated Press news articles on BIA police brutality. You are commended for wanting to look into the matter.

I no longer work for the BIA Division of Law Enforcement but I feel compelled to let you know several things that may help with your inquiry. It is wrong to paint the entire BIA police force as bad just because of a few officers who may or may not be in the wrong. I'm sure you do not believe everything in the press.

Until police in the BIA are supervised by other police professionals there will always be problems. BIA agency superintendents oversee agency level police and provide day to day direction and supervision. This is just like the old Indian agent days. These superintendents have no police training or experience yet they are in charge of police! Until this past January, BIA criminal investigators were under this same supervisory set up. Now, criminal investigators report to the Chief, Division of Law Enforcement Services in Washington. Under this organizational control, criminal investigators are beginning to become true professionals.

It is simple...have all BIA police report to a centralized professional police organization. Of course, BIA agency superintendents and area directors will be opposed to this, because they can no longer interfere in law enforcement situations. Remember these are the same area directors and superintendents that have done so well that everyone knows how great the BIA is...SURE!!

Yes, the pay is terrible for BIA police compared to other federal law enforcement agencies. But no assistant secretary or commissioner has found it important to correct the problem. But even if the BIA pay was adequate...without professional police supervision and leadership, there will be little change.

Nothing will change, or if there is change, it will be for the worse with Wyman Babby in charge of the BIA. He is Ada Deer's designation for the deputy commissioner of Indian affairs position and is currently on detail serving as acting deputy commissioner. Babby, a failed BIA area director, has apparently impressed Ms. Deer. He thinks BIA superintendents should rule Indians, like in the old Indian agent days. He is now in the process of doing away with the criminal investigator supervisory

authority. He wants them back reporting to the superintendents and area directors. Check with the Department of Justice and the FBI and see if this is good for the investigation of federal major crimes on Indian lands.

Note in the AP article... "On Montana's Fort Peck Reservation, the highest ranking officer, the police captain, has himself been accused twice of misconduct". Babby's duty station for many years is Fort Peck where he was agency superintendent. Babby, in the past has refused to take any disciplinary action on his captain. Since Babby left Fort Peck two months ago, the captain has been suspended 30 days for an unrelated misconduct charge. I can guarantee had Babby been in charge at Fort Peck, nothing would have happened to his favorite captain, whom most peer captains and criminal investigators believe incompetent.

Enclosed is an interesting letter to Ada Deer by Minneapolis Area employees. Most people in the BIA believe it to be very accurate.

I am not going to provide my identity because I do not want my new employer to get the impression that I am a discontent. Not so, I think the BIA law enforcement officers that I have worked with are second to none. Try calling on some.

P.S. Bruce Babbitt should insist on a character background check for Babby before he is made permanent deputy commissioner.

October 14, 1993

Dear Assistant-Secretary Dear:

Greetings from the Minneapolis Area. Some of us want to let you know our thoughts on recent events here at the area office.

On Tuesday, October 12, 1993, you dispatched Wyman Babby, Acting Deputy Commissioner and Ron Eden, (title unknown), to Minneapolis to remove Earl Barlow, Minneapolis Area Director, presumably based on the recent news articles about he and his secretary-girlfriend, DeAnna Rasmussen and their gaming activities while on government business.

We really can't figure out which was worse, Earl's stupidity or the two former area directors you sent to deal with Earl. Was it because of their past experience as failures in being area directors? That they should know how it's not to be done? Surely, you know about these two people and their track records.

Wyman proved his worth by mishandling the Wounded Knee incident. That and ineptness in general caused his removal as area director and subsequent banishment to Fort Peck, where he and the Billings Area Director, Richard Whitesall, have kept the old BIA Indian agent mentality intact. (Note, there are fewer 538 and Self-Governance Compact programs by tribes in the Billings Area than anywhere else in the Bureau). Ron Eden, what a survivor! He is the epitome of the "adulthood Indian". This also goes for his loyal followers, Carol Bacon and Debbie Maddox, both of whom he has managed to get promoted. We hear they didn't bother to be Indians until they learned of Indian preference for hire in the BIA. Still, Carol Bacon being here as acting area director is better than Barlow's designee, Mike Fairbanks. In fact, most anyone would be better than Fairbanks. Also, it gives Carol an opportunity to learn about real Indian issues.

Ron Eden failed miserably at both being Sacramento Area Director and Director, Office of Tribal Services, where his underling Carol Bacon has taken over. She in turn, recently promoted Debbie Maddox as her deputy, although the Task Force on BIA Reorganization directed that central office deputy director jobs be abolished. Even Eddie Brown, knowing the BIA can't rid of SESers, had the good sense to move Ron Eden to a do-nothing job. Now, it is sickening to see you designate him as acting assistant-secretary in your absence.

We hope this is not what you mean when you travel the country telling Indian leaders your going to "turn the BIA upside down and shake it up". Your start is good in that you did not designate an area director to act as deputy commissioner. But you have failed to provide top management leadership in the deputy commissioner job. We need an experienced manager of people, and not necessarily an in-house bureaucrat who has so-called "institutional knowledge". A good manager can cultivate that knowledge quickly through his/her choice of staff.

Our strong advice is to stay home and get your house in order. Get your team together. Your use of Eddie Brown's old special assistants and some directors is not good. Some are already comparing you to Eddie, and your coming in second. Basic Politics 101 says you rid of the old regime. Do it. Believe it or not there are many quality Indian BIA employees. You are not going to win support if you threaten us in the newspapers then never sit and meet with us to introduce your new team leadership and game plan. Participative management-leadership is very important and you must sell your ideas and expectations to employees. Time is wasting.

Lastly, please do not allow the SES area directors to be a part of the \$25,000 early retirement buy-out. Nearly all of them are already eligible for retirement. Most have been blatant about "hanging around" for that extra cash before they retire. They certainly have not proven to have done a decent job, otherwise the Bureau would have a lot less problems now.

Thank you and good luck.

SPEAKING FOR MANY EMPLOYEES IN THE BIA
FROM THE MINNEAPOLIS AREA

CC: Bruce Sabbitt

Bureau of Indian Affairs
Division of Law Enforcement Services

Wind River Agency

	(Starting 10-20-91)		(Jan to Dec)	
	1991	1992	1993	
ASSAULT AND BATTERY	04	62	50	
BREAKING AND ENTERING	01	08	06	
CONCEALED WEAPON	0	03	05	
CHILD ABUSE	03	30	63	
CHILD MOLESTING	0	0	0	
CONTRIBUTING TO DELINQUENCY OF MINOR	04	76	51	
CRUELTY TO ANIMALS	0	0	05	
CURFEW VIOLATION	01	38	38	
DISORDERLY CONDUCT	30	205	126	
DISTURBING THE PEACE	13	109	99	
DISOBEDIENCE TO LAWFUL ORDER OF THE COURT	01	20	09	
PUBLIC INTOXICATION	21	560	246	
ESCAPE	01	01	09	
FAILURE TO SEND CHILDREN TO SCHOOL	0	0	0	
FAILURE TO SUPPORT DEPENDENT CHILDREN	0	04	01	
FIREARMS VIOLATION	0	01	02	
FRAUD	0	0	01	
FUGITIVE/EXTRADITION	07	112	221	
INHALING TOXIC VAPORS	0	03	03	
MAINT. A PUBLIC NUISANCE	0	0	0	
MALICIOUS MISCHIEF	06	29	17	
DRUG LAW VIOLATION	0	11	08	
RESISTING LAWFUL ARREST	0	10	10	
RUNAWAY CHILD	0	18	18	
RECEIVING/BUYING/STOLEN	0	0	0	
PROPERTY	0	0	01	
THEFT	02	08	09	
TRESPASS	01	03	0	
TRUANCY	01	08	0	
OTHER	11	127	100	
TOTAL:	107	1,446.00	1,098.00	

**ROSEBUD SIOUX TRIBE
ROSEBUD, SOUTH DAKOTA**

PERSONNEL COSTS

POSITION	HRLY. WAGE	XWEEKS	XHOURS	BUDGET
ADMIN COMMISSIONER	14.00	52	40	\$29,120.00
CHIEF OF POLICE	14.27	52	40	\$29,682.00
CHIEF INVESTIGATOR	14.04	52	40	\$29,203.00
CRIMINAL INVEST.(4)	13.50	52	40	\$112,320.00
ASST CHIEF OF POLICE	13.00	52	40	\$27,040.00
SERGEANT(3)	12.50	52	40	\$78,000.00
PATROLMAN(32)	11.25	52	40	\$748,000.00
JAILOR(6)	7.78	52	40	\$75,000.00
LEAD JAILOR	8.72	52	40	\$18,138.00
DISPATCHER(8)	8.43	52	40	\$140,272.00
ADMIN ASSISTANT	9.00	52	40	\$18,720.00
COP SECRETARY	8.43	52	40	\$17,534.00
CI SECRETARY	8.43	52	40	\$17,534.00
RECORDS CLERK	8.43	52	40	\$17,534.00
COOK	7.94	52	40	\$16,515.00
ASST COOK	6.75	52	30	\$10,530.00

SUBTOTAL \$1,408,034.00

FRINGE @13.75% \$193,605.00
 OVERTIME @18.5% \$260,486.00
 OVERTIME FRINGE \$35,817.00

TOTAL PERSONNEL \$1,897,941.82

NON-PERSONNEL COSTS

TRAVEL	\$21,000.00
TRAINING	\$70,000.00
G.S.A. VEHICLE RENTAL	\$300,000.00
VEHICLE INSURANCE	\$22,500.00
LIFE INSURANCE/BENEFITS	\$25,000.00
OFFICE SUPPLIES	\$30,000.00
RADIO/TELEPHONE COMMUNICATIONS	\$142,000.00
OFFICERS SUPPLIES	\$23,500.00
WEAPONS/EQUIPMENT	\$25,000.00
FOOD SERVICE	\$27,500.00
DETENTION SUPPLIES/LAUNDRY	\$9,500.00
C.I. SPECIAL ACCOUNT	\$10,000.00

TOTAL NON-PERSONNEL COSTS \$653,500.00

COMMISSION COSTS

PER DIEM(2 MTG'S/MON @ \$100/MTG)	\$21,600.00
TRAVEL	\$7,000.00
SUPPLIES	\$3,000.00

TOTAL COMMISSION COSTS \$31,600.00

TOTAL CONTRACT NEED \$2,583,042.00

STATEMENT OF
MARY V. THOMAS, GOVERNOR
GILA RIVER INDIAN COMMUNITY, ARIZONA
TO THE
NATIVE AMERICAN SUBCOMMITTEE OF THE NATURAL RESOURCES COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.
MARCH 18, 1994

Congressman Richardson, members of the Subcommittee on Native American Affairs and staff of the Subcommittee, it is an honor and a privilege to appear before you on behalf of Pimas and Maricopas of the Gila River Indian Community (the "Community") of Sacaton, Arizona, to relate our experiences regarding problems and concerns we have regarding law enforcement services provided by the Bureau of Indian Affairs (the "BIA") at Pima Agency, Sacaton, Arizona.

I. INTRODUCTION

The Gila River Indian Reservation (the "Reservation") is situated immediately south of the Phoenix Metropolitan area along the Gila River and is bisected by Interstate 10. The Reservation is comprised of approximately 372,000 acres and is located on both sides of the Gila River from Coolidge, Arizona to the confluence of the Gila and Salt Rivers near Phoenix, Arizona, a distance of approximately sixty miles. Our proximity to the greater Phoenix area offers us the vital opportunity to participate in the economy of central Arizona, but also presents many drawbacks.

The membership of the Community exceeds 13,000 and the on-Reservation population is greater than 8,000 members. Consequently, the Community is one of the largest Indian Tribes in the country in terms of Reservation population. With this population and land base, the enormous responsibility of the BIA in providing law enforcement services on our Reservation is readily apparent.

Unfortunately, today members of our Reservation live in a time of rapid change and transforming value systems both in the world surrounding the Reservation and the world on the Reservation. The cultures outside the Community inevitably interface with and influence our traditional culture. As those external influences reflect the upsurge in violence the nation is experiencing, clans, extended families and traditional support systems are disrupted and our members, particularly children, are profoundly and adversely impacted. Too often we are unable to provide the support and control that traditionally was an essential feature of our society. As a result, we must deal with adults and children who are not able to conform to the existing cultural and behavioral standards of which we think as being traditionally Pima and Maricopa in character.

The Community recently provided notice to the BIA that it intends to contract law enforcement services under the provisions of P.L. 93-638. This decision by the Community Council was made because of long-standing frustration among Community members who have experienced the under responsiveness of law enforcement officials.

STATEMENT OF MARY V. THOMAS
March 18, 1994
Page 2 of 7

II. LAW ENFORCEMENT SERVICES-PIMA AGENCY

Law enforcement services for the Community are currently provided by the BIA through Pima Agency personnel. At present, the total law enforcement budget is approximately \$3,376,800. The Criminal Investigations Unit is allocated \$475,360. The Full Time Equivalents (the "FTE") for Criminal Investigations for Pima Agency are: one (1) supervisory criminal investigator, five (5) criminal investigators, (two criminal investigators positions are currently vacant), one (1) secretary, and three (3) clerk typists (two (2) temporary positions). Unfortunately, two of the criminal investigator positions have not been filled, and historically these positions have not been held by experienced and trained investigators.

Police Operations and Adult Detention Facilities are currently allocated \$1,901,440. In recent years the FTEs and congressional appropriations have not been utilized wisely. For instance, many of these positions also have been vacant for a period of years. Although nine (9) police officers and three (3) sergeant supervisors are presently on board, five (5) additional officer positions are vacant and have been vacant for several years.

These vacancies reflect poor management of both law enforcement operations and funds. This situation has seriously affected the Community. Despite the available FTEs, it is common for one patrolman to be on duty for the entire Reservation at a given time. More typically, there will be one officer on duty at the east end of the Reservation and one officer on duty on the west end of the Reservation, a distance of approximately thirty miles. The resulting problems when simultaneous calls occur are obvious.

A similar situation occurs in the area of adult detention. At the present time only four (4) detention officers are available for twenty-four hour coverage. As there are two vacant detention officer positions from time-to-time reserve officers are required to fill-in as detention officers. Not surprisingly, the shortage in manpower facilitates break-outs from the adult detention facility. In the past two weeks alone four prisoners overpowered the single detention officer on duty and escaped. In the past eighteen months there have been twenty (20) escapes.

BIA's failure to plan also causes a police services sub-station on the west end of our Reservation to stand vacant. In need of extensive rehabilitation, the facility is nonetheless essential to law enforcement coverage for a significant portion of the Reservation. This facility's capacity of five (5) cells (and a maximum of sixteen (16) persons) would effect significant long-term cost savings in manpower, security, and vehicle expense if rehabilitated since, currently, suspects taken into custody on the west side must be transported over thirty three (33) miles to the detention facility on the east end of the Reservation.

STATEMENT OF MARY V. THOMAS
March 18, 1994
Page 3 of 7

Regardless of which agency, the BIA or the Community, administers law enforcement services, the need for quality and continuing training, will remain a constant. The need to fulfill law enforcement responsibilities such as court appearances will likewise always be present. The Committee should be aware that the shortcomings of law enforcement services causes tribes' efforts to address both adult and children's criminal cases to falter until proper supervision and training of law enforcement personnel takes place.

III. LINE AUTHORITY

In 1987, the BIA conducted a Program Evaluation of Law Enforcement Services at Pima Agency. The Evaluation described the problems in communication and cooperation that existed between the Chief of Police and the Chief Criminal Investigator. This situation has changed in that now the Police Chief is directly supervised by the Agency Superintendent. The Chief Criminal Investigator or Agency Special Officer reports to the Phoenix Area Office.

There appears not to be much difference in the performance of all law enforcement personnel regardless of how supervisory lines are drawn, although under the current chain of command, the Agency Special Officer is free from the responsibility of supervising the police and should therefore have more time for supervising and achieving more effective investigation. More critically, however, we have found that the bifurcation of the chain of command causes problems in the overall coordination of law enforcement services and, from time to time, a breakdown in the law enforcement function as a case moves from occurrence to follow-up investigation. In order to ensure our receipt of comprehensive law enforcement services, both police officers and investigators must be supervised by the same qualified, locally placed law enforcement officer.

IV. CHILD SEXUAL ABUSE

As is the case throughout Indian Country, the Community regards the apprehension and prosecution of child sexual abuse cases as a matter of highest priority and great urgency. If Gila River or any other Indian nation fails our children who have been physically or sexually violated, then we know that, first of all, we are helping to create an offender against others, whether adult or child. Secondly, in those cases where we have not intervened in the ground-swell of crimes against Indian children, we have tremendously undermined the self-worth of the child. And in so doing, threatened the future of our Indian nations.

It would, however, be a mistake for anyone to believe that these crimes are in any way concentrated in Indian Country. Members of the Committee are surely aware that cases of this nature are increasing in the extreme across the land. Everywhere, across all jurisdictional lines, there is developing a recognition that improved reporting and processing of these cases have caused the statistics of these cases to

STATEMENT OF MARY V. THOMAS
March 18, 1994
Page 4 of 7

dramatically increase. Indian Country's crisis in crimes against children should not be viewed as a result of a marked proclivity among Indians for these crimes. The Committee must recognize that disturbing case studies such as those brought to light in the Select Committee on Indian Affairs' Report of the Special Committee on Investigations (1989) are not peculiar to Indian Country and in fact may require the involvement and coordination of a number of jurisdictions. In the not uncommon instances in which perpetrators relocate their crimes across reservation boundaries, tribes must coordinate their efforts to prosecute these cases with the appropriate state jurisdiction and additional efforts must be exerted to coordinate effective investigative and prosecutorial action in order that the full availability of charges may be filed against perpetrators of physical and sexual abuse of children.

A. Training

In order to ensure a high level of efficiency in the prosecution of crimes against children, careful attention must be paid to staff training, the need to make in-service training time available to staff and to include continuing education and training in routine personnel evaluations.

The BIA has failed to provide its criminal investigators with training necessary to support effective prosecution of crimes against children. As the Committee is aware, investigation of child physical and sexual abuse present peculiar and critically important issues in investigative technique. These cases invariably require superior investigative skills owing to the stigma and resulting secrecy attaching to them and their sensational and extremely sensitive nature vis-a-vis the community at large. Additionally and most importantly, interviewing technique and knowledge of patterns in child maltreatment cases are absolute requirements if child-victim testimony and the scant physical evidence available in such matters is to be preserved in a manner supporting the effective prosecution of offenders against children. The skills necessary can be obtained only through topic specific professional training which to date has not been budgeted or otherwise facilitated.

As importantly, training packages must be carefully scrutinized to ensure that scarce budget dollars are not misspent on investigative and interview techniques that have proven ineffective. It would be additionally helpful for the BIA to support the development of training resources to routinely and frequently upgrade the skills of workers in this area and to make available to law enforcement personnel literature addressing methods through which jurisdictions across the country are achieving success in the courtroom.

B. Major Crimes

In cases meeting statutory provisions of the Major Crimes Act, jurisdiction for the prosecution of crimes against children is shared

STATEMENT OF MARY V. THOMAS
March 18, 1994
Page 5 of 7

between the tribes and the United States Attorney for the District in which a reservation is located. Efforts of the tribes' legal counsels and their federal counterparts must be well coordinated if the constricted power to sentence individuals convicted under tribal law is to be augmented by federal sanctions to fit the seriousness of these crimes.

V. LACK OF TRAINING OF BIA INVESTIGATORS AND OFFICERS

In addition to the training needed in the child sexual abuse area, the BIA must provide adequate training for routine law enforcement functions. For instance, for an officer to comprehensively and effectively enforce the law at Gila River should possess a federal commission, a Community commission, and a state commission (Arizona Law Enforcement Officers Advisory Council "ALEOAC"). The complex jurisdictional situation that exists between the federal government, the State of Arizona, and the Community complicates law enforcement but cannot be made an excuse for failure to comprehensively enforce the criminal laws on an Indian Reservation.

Only seventy-five percent (75%) of the officers at Pima Agency are state or ALEOAC certified. If an officer is not state certified, an arrest of a non-Indian is made much more complicated. For instance, a non-certified BIA officers responding to a dispute between two non-Indians or in a matter involving non-Indian parties would have to request assistance of a state certified officer or an off-Reservation law enforcement agency.

Community prosecutors have experienced considerable frustration in relying on the BIA Criminal Investigators to investigate criminal cases. Too often, investigative reports have been deficient in key information necessary to support a criminal complaint. In other examples, challenges are raised by defense counsel because of irregularities in the questioning of suspects. These defects indicate that the investigator is in need of specialized training in report writing and in making sure that the elements of possible criminal offenses are covered.

Frequently a Community Prosecutor's will learn about the existence of a criminal investigation many weeks after a case is opened. We have failed in too many of our efforts to convict because documents necessary in the discovery process are not timely provided or because the police officer or criminal investigator in a criminal matter fails to appear at trial even when served with proper notice.

The 1987 Program Evaluation resulted in a finding that mandatory general in-service training was not being completed by law enforcement personnel across the board. In addition, there was no certainty that officers had completed Command Management, First Line Supervisors and Detention Training or other required training courses. There has been no indication that this situation has changed.

STATEMENT OF MARY V. THOMAS
March 18, 1994
Page 6 of 7

The 1987 Evaluation made the following recommendation:

All police personnel must be made thoroughly aware that they are to adhere to court order by all courts. Just because they are federal employees does not permit any laxity toward tribal courts. Officers need not be personally served with court orders to appear in court. In cases where officers do not appear for court, there should be disciplinary actions taken.

Nothing of which I am aware would indicate that this recommendation has been acknowledged or heeded since it was issued. BIA law enforcement personnel seem oblivious to Community policies. This situation must change and the change must be implemented by supervisors at the Area Office and Central Office level. Training programs must instill in BIA officers that, if they are to serve the Community, they must make themselves knowledgeable of the Community's Code of Laws and familiarized themselves fully with the Community's policies.

Another recommendation of the 1987 Program Evaluation states:

A written policy should be established for police report writing deadlines. Officers should be allowed to begin writing as soon as possible after incidents, to avoid or minimize overtime, with consideration given for major cases, including vehicle accidents. Officers who submit untimely reports should be disciplined.

There has been no improvement in this area. Incident reports are often months late and there is no disciplinary action taken against officers who do not timely provide reports of incidents. Whether this attitude results from lack of training or poor management is difficult to determine. Of course, a criminal matter left undocumented for such an extended period of time will be lost to effective prosecution; giving the victim and the community as a whole more of the bitter frustration they harbor against law enforcement on our Reservation.

VI. LAW ENFORCEMENT COMMISSION (CITIZEN REVIEW FUNCTION)

Community members are increasingly dissatisfied with the level of law enforcement services provided. Special community meetings have been convened for the specific purpose of questioning the BIA and the Community government about the dereliction of the law enforcement responsibility on the Reservation. The most frequent voiced complaint made to the police concerns the lengthy response time to calls, the failure to file criminal complaints, and the failure to effectively prosecute criminal cases. The types of crimes most often filed are assaults, automobile thefts, driving while intoxicated and disorderly conduct.

STATEMENT OF MARY V. THOMAS
March 18, 1994
Page 7 of 7

The Community has established a Law Enforcement Commission which generally has the responsibility to act as a liaison between the Community, its members and the BIA. The success of the Commission has varied. One major factor preventing effective review of citizen complaints is the BIA's internal administrative procedures for disciplining officers. Often these BIA internal procedures hamper the Commission efforts to obtain relevant information and review of BIA action.

Once the Community contracts the law enforcement function under P.L. 93-638, citizen review of law enforcement activities should be much easier to carry out. At the present time, however, the BIA does not allow or permit citizen review of its activities. Thus, there appears to be no effective way in which the BIA can participate in a citizen review effort absent significant policy changes or legislation.

VII. DETENTION FACILITIES

In stark contrast to adult detention services on the Reservation, detention and rehabilitative services for children operate on a high level of efficiency owing to the fact that the Community operates and maintains our Children's Detention and Rehabilitation Center.

The Center does, however, need this Committee's continued support if its efforts to reorient children away from misconduct is to achieve lasting success. Adult detention services are planned to likewise be transferred to the Community under P.L. 93-638 and we are in final negotiations with the BIA for the construction of a new adult detention facility under the PONI program. Ideally, once complete, these efforts along with steps taken to rehabilitate and operate the west-end sub-station, will bring Reservation-wide detention facilities up to a level of adequacy and beyond.

VIII. CONCLUSION

The Community has a strong interest in securing the most effective law enforcement services possible for its constituents. I am confident that these service will be provided once the Community assumes the responsibility for law enforcement services now provided by the BIA. We respectfully request that we be allowed to submit additional comments and data while the record for this hearing is open.

I thank you for your kind attention and concern and I will be glad to respond to any questions or comments.

TESTIMONY

OF
CLARA SPOTTED ELK, CHAIRMAN
NORTHERN CHEYENNE AD HOC COMMITTEE ON LAW ENFORCEMENT
LAME DEER, MONTANA 59043

PRESENTED TO THE
NATIVE AMERICAN SUBCOMMITTEE
HOUSE INTERIOR AND INSULAR AFFAIRS COMMITTEE
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.

AT AN
OVERSIGHT HEARING ON BIA LAW ENFORCEMENT

MARCH 18, 1994

INTRODUCTION

Good Morning Mr. Chairman, members of the Committee and staff. My name is Clara Spotted Elk. I am a member of the Northern Cheyenne Tribal Council and the Chairman of the Northern Cheyenne Ad Hoc Committee on Law Enforcement. I have been delegated by the Tribal President to present the views of the Northern Cheyenne Tribe at this hearing. Accompanying me is John Woodenlegs, tribal council and Ad Hoc Committee member. Also included accompanying exhibits are some individual statements from members of the Ad Hoc Committee. Thank you for the opportunity to present our views on BIA law enforcement. We commend the committee for holding this hearing to explore an issue which affects the daily lives of so many Indian people.

BACKGROUND ON NORTHERN CHEYENNE LAW ENFORCEMENT AD HOC COMMITTEE

Mr. Chairman and members of the committee, I assume that many of you have had experience in local politics. For a moment, imagine you are a tribal council member on a reservation where the BIA provides police services. Dozens of your constituents approach you and your colleagues with concerns and complaints about the police including a petition requesting the transfer of an officer. You try to investigate this problem and even introduce legislation in the tribal council to request the transfer of the police officer which is passed unanimously. In response, the BIA informs you that you have no authority in the area of local law enforcement and your requests for information are denied on the basis of the Privacy Act and other federal regulations. This is the situation at Northern Cheyenne and one which faces most Tribes who have BIA police programs.

When people have concerns about local police, they naturally ask elected officials for help. Other local officials such as county commissioners or mayors would recognize a high volume of community complaints about police as a "red flag" and deal with the problem. However, unlike our counterparts, tribal officials have very limited, if any, ability to influence law enforcement when it is administered by the BIA.

In September 1993, I introduced legislation to create an Ad Hoc Committee on Law Enforcement. The Tribal Council also appropriated general fund monies to support the committee. This was passed a few months before the AP investigative series on BIA police brutality appeared. We were unaware at the time that other reservations apparently face similar problems.

The Ad Hoc Committee is comprised of both community and council members. I had included a representative of the police force but this was not approved by the BIA Superintendent. The committee is charged with developing recommendations to the Tribal Council in three major areas: 1) contracting the police under P.L.

93-638; 2) creating a local commission to address complaints and 3) recommending strategies to improve police public relations and to improve the delivery of law enforcement. (A copy of the authorizing legislation is provided in supplemental exhibits).

Over the past five months we held public hearings to receive testimony and comment in each of the five reservation districts with heavy public turnout. We also traveled to other reservations to learn more about successful tribal police programs. We have compiled necessary information and data related to problems of our law enforcement program.

In 1987, the Tribe retroceded the Law and Order to the BIA because of a severe lack of funding. At that time the BIA promised improvements in law enforcement, particularly in response time, improved investigations, increased patrolling and overall services. Based on testimony provided to the Ad Hoc Committee at public hearings, the community does not believe this has occurred.

Recently, for example, the Tribal Council directed that the Criminal Investigators be placed under the supervision of the Area Criminal Investigator in hopes this would provide more independence from the BIA Superintendent for the investigative function. Several months ago, we also requested that the Area Special Investigator provide the Tribal Council with a written report on the number of major crimes reported and the results of the investigation, but this has not yet been provided to the Tribe.

Nonetheless, we have worked closely with the BIA Police and involved the BIA Superintendent and police representatives in most of our meetings. We also met with the entire law enforcement staff, which is primarily made up of Northern Cheyennes, to seek their input and recommendations. I would like to commend the majority of the local department for their willingness to work with the committee and to acknowledge the problems.

One unforeseen activity which has required much of our attention is dealing with complaints about BIA police officers. After the committee was formed, many individuals approached us to lodge specific complaints about incidents with the BIA police. Initially, we advised these people to write their complaints and submit them to the BIA in compliance with federal regulations. Overwhelmingly, people were reluctant. They told us that they: 1) had previously filed complaints with the BIA with no results; 2) were skeptical that their complaint would be addressed by the BIA; 3) were afraid of receiving retaliation or harassment from the police as a result of filing a complaint; or 4) they did not understand the federal regulations governing the complaint procedure and needed help working through the process of filing with the BIA. Therefore, they wanted the Ad Hoc Committee to assist and stand behind them during the process of filing complaints.

From our experience, it is very difficult for tribal members to obtain information about regulations, policies and complaint procedures from the BIA. While the Ad Hoc Committee has managed to get this information, many tribal members report that they have had a very hard time working through the bureaucracy. Some have been directed to utilize the Freedom of Information Act, a process which is almost incomprehensible to the average citizen.

Unfortunately, it seems these fears are well founded. For example, members of the Ad Hoc Committee have been harassed by the police officers who were the subject of complaints pursued by the committee. It was only when two community members wrote formal complaints documenting that officers make statements threatening to "get" various Ad Hoc Committee and Tribal Council members that the BIA Superintendent directed the officers in question to conduct themselves professionally and not to harass the committee members. (Copies of these complaints are in Supplemental Exhibits).

We consulted with our tribal attorney and the BIA and Special Investigators to develop a procedure for handling complaints as follows:

1. We require people to submit written notarized statements of complaint.
2. We require completion of a Privacy Act Waiver which authorizes the BIA to provide information about the complaint and investigation to the committee.
3. The committee reviews each complaint with legal counsel to determine if it is an Indian Civil Rights Act or a disciplinary issue because these complaints are handled by different personnel.
4. The committee formally transmits the complaints to the BIA which handles disciplinary actions or the Special Investigators who handle Indian Civil Rights Act investigations.
5. The BIA conducts an investigation and is supposed to provide a response to both the committee and complainant within 10-14 days, although on several occasions this has taken longer.
6. The committee also met with the Area Director and Chief Special Investigator to apprise them of our effort and request their support and assistance.

When the Committee first started, the local BIA superintendent advised us that he had received a "handful of complaints about BIA officers within the past three years". Apparently, he was referring to written complaints only. Since then, the committee has received written complaints from 25 people as well as a petition signed by 21 people. We also have numerous oral complaints but have not forwarded these to the BIA. A copy of all the complaints and the BIA responses are included in the Exhibits.

The complaints cover a wide range - the attitude of police; lack of probable cause for stopping and arresting people; lack of search warrants and illegal entry into homes; property damage; violations of the Indian Civil Rights Act; assaults by officers;

harassment and preferential treatment for BIA and federal employees. Some of the most alarming allegations deal with the BIA interfering to prevent a State Court felony warrant from being served on a BIA employee; official misconduct related to fraternization with females by on-duty officers; excessive physical force during arrests, including juveniles; and damage to personal property of tribal members by officers.

These complaints center around a small group of officers out of a total force of 14. Therefore, we have come to the conclusion that we have a basically good police force, but one which includes a few officers who are viewed by the community as "bad cops" - in large part because they are rude, overbearing and arrogant. The kids call them the "terminators". Even though these officers are objectionable to many community members, they enjoy the full support of the BIA superintendent who feel the complaints are generated because these officers have the most aggressive officers and have the highest arrest rates on the force. As elected officials, we continue to be very concerned about the number of complaints received on these officers and are insisting that they either substantially improve their public conduct or be transferred.

We expected some of the complaints to be dismissed by the BIA. Reservation police have a hard job and frequently encounter situations where drugs or alcohol lead to confrontations and generate complaints. However, we did not expect that the BIA would conduct investigations on all but one complaint and find that the BIA officers were correct.

To date, the Ad Hoc Committee has only been able to successfully intervene in one complaint. This involved the towing of a vehicle belonging to one of our tribal elders which had been left on the roadside due to mechanical problems and was towed by the police in a matter of hours. The next morning, the Tribal President and I managed to get the BIA to pay for the towing bill because the tribal elder did not have the money to pay the bill. The BIA Superintendent finally agreed to pay for the towing because the police had violated the tribal law and order code which stipulates that vehicles are not to be towed for 48 hours. In this instance, it seems we were successful because we intervened immediately and had the direct support of the Tribal President. This is not possible on all the complaints we receive.

It appears that the BIA simply interviews the officer who is subject to a complaint and forwards his view to us. As a result, we are not satisfied with the result and quality of the investigations conducted by the local BIA on the complaints we have expedited. This has also underscored the community's belief that the BIA discounts community complaints in favor of the officers. As a result, the Ad Hoc Committee is entertaining the idea of hiring special legal counsel to pursue some of the more serious

complaints for our tribal members. We are also considering referring these complaints directly to the FBI and asking for an independent investigation. However, based on the high number of major crimes which are not adequately investigated we are not optimistic that the complaints about police conduct will have a high priority.

Our Ad Hoc Committee is nearly finished with its work and in April, 1994 we will be presenting our report to the Tribal Council. The Tribe's position is that we must contract the Police Department under P.L. 93-638 to provide better control over the police and accountability to our community.

III. RECOMMENDATIONS

We would like to make the following recommendations to your committee.

1. Enhance Local Accountability:

Under BIA Police Departments, the total authority for the police rests in the hands of one person - the BIA superintendent. At a minimum, this creates the potential for incredible power and influence - and in the worst case a dictatorship. A question we have is whether or not BIA Superintendents have adequate training to supervise police departments. Please note that these criticisms are directed at the system, rather than just our individual superintendent. Under the present system, Tribes are dependent upon the good will and working with the BIA Superintendent - a precarious position.

At Northern Cheyenne, for example, the Superintendent's philosophy has been to develop a cadre of young very aggressive officers with an emphasis on high arrest rates, particularly in the area of alcohol related offenses and in dealing with juveniles. We think this contributes to the tension in the community with the police viewed as the enemies, especially by juveniles. Also, indicates that an aggressive police force leads to increased complaints about police brutality.

The Tribal Council, on the other hand, prefers to have a force of more mature officers with an emphasis on public service and courtesy and a rehabilitative and helpful approach to those with alcohol problems and with our youth. (As a result of the Ad Hoc Committee, our local police have increased their civic activities through our youth center which is positive.) Under the present BIA regulations, people over the age of 35 are not eligible for employment as police officers. The Tribe currently has two tribal police officers under a Highway Safety Grant and has refused to accept this age limit. The Northern Cheyenne tribal philosophy holds that individuals gain full maturity, wisdom and good sense at about the age of 40 and we believe that this should be incorporated

into our law and order philosophy.

Local elected officials must also have a role in providing guidance and direction for law enforcement services. This is particularly important in personnel matters such as officer selection and removal and to ensure that complaints are handled promptly, efficiently and thoroughly. Apparently, the BIA sometimes transfers officers if the number of complaints is too great. Often, the reservation and local officials who receive this person do not know this information. This doesn't solve the problem - it only shifts it to another area. At Northern Cheyenne, for example, we understand that one of the officers who is the subject of numerous complaints was transferred from another reservation for similar reasons, but we are unable to confirm this.

Recommendation: Amend the law to require that local Police Commissions comprised of tribal members be established to work with BIA police departments. We suggest that such Commissions be required by law, but that the Tribes be given flexibility to develop the commissions according to their own needs. Local Police Commissions should: 1) be directly involved in personnel matters such as hiring and firing; 2) make sure that complaints are addressed; and 3) work cooperatively with the BIA to improve law enforcement. This is particularly important when there is a complaint against a BIA Superintendent in his role as supervisor of the police department. A full background file on each officer transferred should be provided to the local commission.

This mechanism would require the BIA to work closely with the local community and will provide a system of checks and balance on law enforcement. This recommendation would most likely require some adjustment of federal personnel law so that pertinent information could be shared with a local commission.

2. Improve Investigations of complaints:

Every complaint filed by a tribal citizen deserves to be investigated expediently and impartially. The present BIA complaint system is governed by federal regulation and it is hard for many Indian people who are of the oral tradition to comply with it. It is also fraught with loopholes. For example, we have been advised by the Area Criminal Investigator that the Justice Department, rather than the BIA must investigate Indian Civil Rights Violations and that as a matter of practice these type of complaints are an extremely low priority and almost never investigated.

Based on our experience, it is not enough for the BIA to simply take the word of the officer - the complainant and available witnesses also need to be interviewed, the facts weighed and an unbiased conclusion reached. At present, this seems questionable because the investigations are "in house", in that BIA officers

investigate their fellow officers. This may be why very few, if any, of the complaints filed against BIA officers are found to be legitimate. Why then, is it surprising that our tribal community has little confidence that the BIA will police itself?

Recommendation: Create an Internal Affairs Division for BIA Law Enforcement or utilize professional police from other law and order systems to conduct investigations on a timely and thorough basis. Perhaps the local Police Commissions could be authorized to investigate complaints and if necessary relay complaints to appropriate authorities for additional followup. The FBI could provide an example, through their Office of Professional Conduct - an independent branch which investigates complaints. According to testimony of former FBI Director William Webster before the U.S. Commission of Civil Rights, it is imperative to use an "arms length" approach to investigations by not assigning those officers who have a close working relationship to do investigations on local police departments.

The complaint procedure needs to be simplified. The BIA also needs to accept oral statements of complaint - especially from elders or provide some assistance to help people write statements. Complainants need to know the procedure and receive a copy of the results. Finally, the local tribal government should also be formally advised if a severe complaint is found to be legitimate and what, if any, disciplinary actions are taken. Thus far, our community has been unable to obtain this information because personnel matters are confidential.

3. Require Annual Law Enforcement Evaluations and Plans:

During the course of our work, the BIA Superintendent and police officers agreed that public/community relations need to be improved on our reservation. This is particularly true with juveniles - a matter of mutual concern to the police and tribal government.

Our committee was advised that a BIA committee is working on a plan to improve the police department. However, when we asked to see the plan and to be involved we learned this was not possible - because it is a BIA "in-house" Total Quality Management Group. While it is good that the BIA is working to improve law and order, we must question how they can do this effectively without the involvement of local officials and community members.

Recommendation: Annually, each BIA Police Department be evaluated by an external source. This evaluation, including identification of problem areas and recommendations should be shared with the local tribal government. The annual evaluation should also be used as a tool to plan improvements, and the planning must directly involve local officials and community members.

4. Increase support for Detention Facilities:

One of the major areas of our complaints stem from the local jail. Although the BIA spent a large sum of money rehabilitating the jail several years ago, the facility is extremely inadequate. It is designed for temporary detention of about 72 hours, yet when the tribal court imposes long term sentences (up to two years), inmates are housed in the tribal jail which lacks exercise facilities, library or t.v. materials, a cook or other provisions for long-term care. We are also forced to house juveniles with adults due to lack of funding for alternative facilities. Another major problem is a lack of space for alcohol counseling or support services for long-term prisoners. Overall, the facility is inadequate for our needs and creates problems for the police department.

As a result of the Ad Hoc Committee's work, the BIA is taking some steps to improve the local jail. These include:

- 1) improving the menu which was determined by an IHS physician to be nutritionally inadequate (we are also concerned because the reports we receive from prisoners about the menu do not match the menu BIA provided to the committee. The prisoners report that they receive only oatmeal without milk, coffee and two pot pies per day);
- 2) agreeing to hire a cook rather than use trustees;
- 3) repairing cells to provide working toilets in the cells and improved heating and cooling systems;
- 4) improved sanitation and overall cleanliness;
- 5) providing toiletries (toothpaste, towels, razors, toiletpaper, etc) to inmates upon request;
- 6) repairing the booking room camera which was out of order for months; and
- 7) improving surveillance of the cells and holding areas to minimize suicides, fights and improve their ability to identify prisoners in need of medical care.

On the other hand, our committee traveled to the Cheyenne River Sioux to tour their new detention facility which was recently completed with Congressional appropriations as a model for Indian country. This facility includes separate wings for men, women and juveniles and incorporates alcohol services. This type of facility is needed at Northern Cheyenne and on reservations across the country.

Recommendation: Although we recognize the fiscal constraints facing Congress, we strongly encourage that funds be made available to Tribes to improve jail facilities and to improve the operation and management of jails. There is a critical need in particular for funds to construct juvenile detention facilities, a program all but wiped out in recent BIA budgets. There is also a severe need to increase funding in Indian country for alcohol prevention and

rehabilitation facilities and programs. At Northern Cheyenne, we could benefit from a Detox facility and Halfway House.

5. Continue Appropriations Support for Tribal Law and Order:

For many years, the Northern Cheyenne Tribe ran the police department under P.L. 93-638. However, the funding kept shrinking and in 1987 reached a crisis. For example, the Tribe had only one police car and could not provide insurance or other benefits. The Tribe retroceded because they knew the BIA would increase funding which has occurred in that the budget is now double what the Tribe received.

We are extremely concerned about the funding aspect of contracting as past experience has shown that the BIA tries to reduce funding when the Tribe assumes administration of a federal program. We are committed to operating a quality police force which offers the same salaries, benefits, equipment and so forth as the BIA offers. Hopefully, the 1988 Law Enforcement Reform Act will provide some protection because it specifies that tribal police are to be paid comparable wages and benefits as other federal officers. We must be assured that the money will continue to be available to the Tribe to administer a quality law and order program.

Recommendation: Congress must continue an adequate level of support for Tribal Law and Order Programs. It may be advisable to increase funds for training of BIA and tribal police officers. At present, officers are allowed to serve for up to one year without Academy training which we think contributes to problems. Officers need to receive on-going training in sensitive areas such as domestic abuse, Indian Civil Rights and the overall professional skills necessary to deal with the public. Ultimately, Congress should direct that funding for tribal police programs may not be reduced from the level of funding available for a BIA program.

6. Improve Enforcement of Indian Civil Rights Act:

At present, complaints about violation of the Indian Civil Rights Act does not seem to be taken seriously by the BIA. Both lawyers and the BIA Area Special Investigator have advised us that it is extremely difficult to get these complaints investigated. There must be some teeth put into this law and complaints in this area need to be taken seriously and investigated. If investigations determine that violations have occurred, appropriate disciplinary actions must be taken.

CONCLUSION

In closing, we would like to re-emphasize the importance of providing for local tribal involvement in law and order. BIA Police Departments must be held accountable to the local

communities they serve. We urge you to develop appropriate legislation that will accomplish these two objectives. At Northern Cheyenne, we are going to accomplish this goal by contracting the Law and Order Program. Tribal contracting has also been strongly recommended by all of our district communities because they feel that the Tribe will provide better police services. This view, interestingly is even shared by many of the BIA police officers.

However, not all Tribes will take this step - in fact we probably wouldn't have come to this point if the community had more confidence in the BIA police. Nevertheless, it is imperative to ensure that all tribal communities - including those served by a BIA Law and Order Departments - are accorded the opportunity to be involved in the provision of law enforcement. This is a basic tenant of democracy and self determination.

We need to make certain that BIA Police serve Indian people rather than the BIA.

Thank you for the opportunity to provide these views to your committee. We would be happy to respond to any questions you may have.

WRITTEN STATEMENT OF WALTER M. FRANCIS
Associate Professor, Criminal Justice Department
Central Wyoming College, Wind River Reservation
Riverton, Wyoming

TO: United States House of Representative Sub-Committee on
Native American Affairs

This statement addresses the present situation faced by Native Americans on reservations policed by Bureau of Indian Affairs police, which has lead to accusations of police misconduct and brutality. Recent media based investigations have produced numerous complaints of serious police misconduct on these reservations, including the Wind River Reservation in Wyoming where I have resided and served as professor of criminal justice for the past five years. I too have been aware of many complaints against Wind River Police officers during the course of my dealings with Native American students enrolled in my college courses. I have enclosed a copy of the research paper written by one of my students which details the situation on the Wind River Reservation. (Exhibit A)

There is little doubt that the current management practices on reservations policed by the BIA leave open the opportunity for major community relations problems. These agencies are effectively operating without any program to minimize and control officer misconduct and brutality. There are extremely limited methods utilized for both internal and external control of these officers and their organizations. Residents of these areas have no real opportunity to raise complaints and seek redress for such misconduct. This leads to hostility between officers and those they police, resulting in ineffective and inefficient policing for these persons. Perceptions of police misconduct are allowed to build up to a dangerous level since residents have no realistic avenues open to hold these organizations accountable.

ACCOUNTABILITY

Police organizations in a democratic society must be accountable for their actions and procedures. Since their employees use deadly force, non-deadly force, vehicle pursuits and have the power to restrict citizen's liberty through the arrest and search/seizure process, they must operate under the close scrutiny of the organization's management and of the community they serve. The basic strategy of accountability is accomplished by the use of a written directive system involving written policies and procedures.

Polices for the operation of all areas of a police organization are developed to control the discretion of officers in carrying out their duties. Specific policies in the area of ethics and misconduct control must be formulated through the use of a code of conduct. Courses of action to direct officers in using force, deadly force, arrests, and pursuits must also be specified.

Officers can only be held accountable for their actions if they are made aware of the policies and of the enforcement system.

Organizations must train their officers in all policies and procedures. All officers must know what is expected of them in these situations. Policies must be constantly updated and reviewed for changes in practical and legal areas. Officers must be trained in these updated policies on a regular basis. They can then be held accountable for their actions based on review of their actions in light of the written policies.

A system of discipline is built around the enforcement of the written directive system. A process for investigation of internally and externally generated complaints is developed by providing a fair hearing of such complaints. An additional component of this misconduct control program is one which utilizes self-initiated reliability tests. Included are staff inspections, audits, call backs, stings and other devices to determine adherence to the written directives without relying solely on reaction to complaints. (Exhibit B)

TRAINING

Training of officers is certainly a major area of concern in light of the recent accusations of serious misconduct. Officers must receive training which provides them with the tools necessary to be effective in their positions. Training in the use of hardware such as weapons and handcuffs are necessary as are self-defense techniques. However, equally important are training components which teach officers how to avoid using deadly and non-deadly force in the first place. Officers must be taught how to use stealth tactics and knowledge of the situational variables of which they are aware when responding to calls for service. They must be taught the continuum of force concept which limits officer's responses to those meeting the needs of the situation. De-escalation techniques of conflict management must be utilized to minimize the use of force.

A formal outcome based training program must be developed for new officers during basic training to provide the basis for their development as ethical officers. Legal areas, such as due process of law, must be stressed as the core of their job requirements. The oath they take to uphold the Constitution must be explained in detail so they understand what the responsibility of this oath entails during their policing career. Ethical issues can be brought to the attention of the recruits through role playing and other practical based teaching devices.

Once new officers are fully trained and released for duty, they must be introduced to the local policing climate through the use of a formal Field Officer Training (FTO) program. The highest quality experienced officers are used as positive role models for

the highly impressionable young officers. Specially trained FTOs should be utilized to socialize the young officer into the proper operating systems and procedures. Failure to provide such positive role models allows the continuation of a negative sub-culture in the agency to persist and be transmitted from one generation of officers to the next. This is often how police misconduct and brutality get entrenched into an organization and also is why it is so difficult to control and minimize such misconduct once established.

All managers in BIA police organizations must be trained in their role in minimizing and controlling misconduct. They must be advised that they will be held accountable for their officers' conduct. Specific programs for controlling misconduct can be presented to managers for their use in developing a written directive system in general and in creating a program to minimize officer misconduct utilizing a system of discipline, training, internal/external complaints and self-initiated reliability tests. Each BIA policed reservation must have its own localized process for misconduct control which holds the line managers and supervisors accountable for their actions. Only then will the community being policed feel they have a real voice in the process of policing their residential area. (Exhibit C)

COMPLAINT PROCESS

Specifically, an open, formal process for both internally and externally generated complaints of misconduct must be established on each reservation. The system must be fair to all parties, including the officer. It must be easy to use and must keep the complaining party advised of all aspects of the process, including the results of the investigation of the complaint. Supervisors must be trained in handling basic complaints and special internal affairs officers must be trained and available at each agency to handle major and serious complaints. These internal affairs specialists should be part of all BIA local staff, assigned to these duties as part of their rotational assignment. They must be fully trained in both internal affairs investigations, and in staff inspection functions since they would assist management in audits and other reliability testing when not investigating complaints.

Eventually some type of local external review of the complaint process must be implemented to provide local residents a method of holding police officers accountable for their agency's operation generally, and specifically in the processing of complaints. This could include a civilian review board operating parallel with the policing organization during the complaint investigation and review process. Another model would provide its own complaint process of investigation, adjudication and recommendation of discipline independent of the agency. Several acceptable models should be provided to the BIA staff which could

be adapted for local use on each reservation. No matter which model of external review is used, the perception of accountability will be introduced and the local residents will feel that the police are part of the community. This can lead to the introduction of basic community oriented policing methods and strategies on each reservation. Such methods are seriously absent at the present time. (Exhibit D)

COLLEGE RESOURCES

Many local and regional resources can be utilized by BIA police agencies to assist in the development of misconduct control programs. Community colleges, such as Central Wyoming College, usually offer criminal justice programs encompassing both the academic and training aspects of this problem. Central Wyoming College offers a semester length course providing 48 hours of course work titled "Law Enforcement, Justice and Ethics." The initial portion presents descriptive information describing all facets of the problem of police misconduct. The final section provides a prescriptive package allowing the student to deal with real world scenarios from both the viewpoint of the officer and of management. BIA managers should mandate that this type of course be taught for officers at local colleges or at their police headquarters by qualified college professors.

Colleges provide the opportunity for police agencies to perform research into this area and to assist them in developing written directive systems and codes of conduct. Institutions of higher learning can also be called upon to hold regional training sessions and forums on this subject at little or no cost to the BIA agency. Reservation oriented management institutes should be specifically provided for top level BIA police officials, managers and supervisors to develop them into first rate managers. (Exhibit E)

LOCAL/LINE ACCOUNTABILITY

The key to developing and implementing the necessary program to minimize and control BIA police misconduct is providing for local based accountability of each reservations' policing organization. Misconduct control programs must be developed and formulated with the input of local residents who will then feel a part of the process and will come forward more often with complaints. Each reservation based BIA police agency must be held accountable for their actions locally. Any system of internal affairs investigation, based regionally or out of a national office, will never succeed. Complaints will not come forward and the investigators will not have the knowledge and understanding of the local community to provide the necessary services.

The BIA proposal does nothing to promote staff inspections and self-initiated reliability tests which must be an integral part

of such a control system. A nationally based division could investigate or assist a local investigations of exceptionally serious incidents, such as the pattern and practice of the use of deadly force over a long period of time. If only a national team is utilized, basic complaints of physical abuse, rudeness, or discourteousness will never get investigated and the local residents will continue to feel alienated from the police.

SUMMARY

A multi-facet program to minimize and control police misconduct and brutality on BIA policed reservations is definitely necessary. Models of successful programs of minimizing misconduct can be obtained from both academics and major city police managers. Each reservation is culturally different, requiring differing systems of policing for each reservation. This is similar to the community oriented policing concept of providing diverse neighborhoods with different police services.

Local BIA police managers and supervisors must be held directly accountable for their officers' actions and behavior. The current practice of the reservation superintendent serving as the de facto police chief will never succeed. The highest level BIA police manager, the captain, must be provided with the delegated authority to manage the reservation policing system, and be held accountable by the residents for honest, ethical and constitutional police services. A program for controlling misconduct, based on the models discussed earlier in this statement, can then be developed and implemented locally on each reservation.

EXHIBIT LIST

- Exhibit A, Police Brutality on the Wind River Reservation, by Helen Grace Blackhair
- Exhibit B, Self-Initiated Reliability Testing, by Walter M. Francis, Ph.D., Associate Professor, Criminal Justice Department
- Exhibit C, Law Enforcement Management Training Program: Controlling Corruption and Misconduct, by Walter M. Francis, Ph.D., Associate Professor, Criminal Justice Department
- Exhibit D, Police Department Risk Management: Effective Prevention Measures and Audits, by Walter M. Francis, Ph.D., Associate Professor, Criminal Justice Department
- Exhibit E, Course Syllabus, POLS 1170, Law Enforcement, Justice and Ethics

EXHIBIT APOLICE BRUTALITY
ON THE WIND RIVER RESERVATIONBy Helen Grace Blackhair
(Enrolled Member of the Eastern Shoshone Tribe)

Police brutality is ignored here on the Wind River Indian Reservation. In the past, stories were heard of Bureau of Indian Affairs police officers abusing people. Although it is hard to believe that such a crime still exists in this day and age, police brutality is evident throughout the country, and is especially evident to us on the Wind River Indian Reservation.

Recent cases have come to light and citizens of the reservation have become concerned. I find it amazing that the complaints of abuse are against the same officer and the allegations of police brutality have continuously been covered up. There is no control over the police officers in the misconduct or brutality complaints since they are not employed by the tribes. The residents of the reservation need to realize that the federal government implements all of the laws that are enacted there. Many of the people do not realize that the Bureau of Indian Affairs Superintendent is the police officers' head supervisor, so the tribal councils have no power to intervene in any of the governmental employees' actions since they are not employed by the tribes.

The Wind River police have no education in criminal justice. They do not know how to deal with the people simply because they have no background in social skills. They do not have training in

self-discipline in certain situations where people who are arrested are mad. In some cases where family members of a Bureau of Indian Affairs officer are involved they get personal and take sides. According to an article in the Wind River News, the Captain Larry Makeshine is accused of doing so:

Lucy Soundingsides, a member of the Northern Arapaho tribe on the Wind River Reservation, told the Associated Press she has been arrested twice in recent years by B.I.A officers in a family dispute with Makeshine...she was arrested last month after a shoving match with Makeshine's mother who is her cousin. Frances Makeshine was not arrested (Kelly 1+).

It is evident that the unfairness of the Captain shows a lack of professional conduct and social skills. If he was educated enough in the criminal justice field, he would have the capabilities to not get personally involved in a family matter.

The Wind River Police blame alcohol as the main factor in most of the cases alleged. Police officers contend that people who are drunk are so incoherent that they do things like spit at you, swing at you and even attempt immoral acts. The police officers need to take Social Problems, Victims of Violence and Psychology classes that are offered here at the Central Wyoming College. Those classes cover the types of activities that an officer most certainly will encounter.

The plaintiffs in all of the alleged cases need to have direct recourse of the events that happened in their complaint. As it is, the plaintiff does not have a chance in an actual hearing because the superintendent stops it at his office. Since there is no one to actually question the superintendent, most complaints are either

dropped or are still in his office waiting to be heard.

The most shocking story hit the headlines of the Casper Star Tribune on November 6, 1993. A Bureau of Indian Affairs officer was actually videotaped retaliating against a intoxicated female who was cussing him and trying to wipe excretion on his face.

The Casper Star Tribune tells the female side of the story. In the interview of the Associated Press with the editor Matt Kelly, the female told in her own words how the unidentified officer acted during her arrest:

He was trying to get me out of the police car while I was handcuffed and start jerking me around and calling me names and cussing me...then I spit at him about two times, that's when he took his stick out and I was still handcuffed and I went down and he said "Now see what you made me do?" (A1+).

The unidentified police officer struck at her and forcefully put her head against the wall of the booking room of the Wind River police department. The woman was Racheal Moss, an enrolled member of the Arapaho tribe. This lady was taken to the Indian Health Service the next day where she complained of dizziness and had bruises on her face from that incident. This happened in February 1993 in Ft. Washakie, Wyoming. A complaint was filed but was passed over because the officer was able to establish probable cause. The case was dropped out of court even when there was actual footage on a videotape proving the policeman's use of excessive force.

Unfortunately, I have had the police abuse one of my family members. Vincent, who is my foster brother, was arrested one morning in 1992. After being stopped by officer Timothy Smells, Smells dragged him out of the 1976 Blazer Vincent was in. The

police officer accused him of being drunk. Officer Timothy Smells was enraged because Vincent answered him in a slurred stuttering voice. Smells hit Vincent behind the neck causing him to drop. After being flattened out by the cop, Vincent was handcuffed rudely in an angry manner and taken to jail. When being booked in the police department, Vincent talked slowly to the dispatcher who is related to him. Vincent explained to the dispatcher that he was in an industrial accident two (2) months before the arrest. A pipe fell on him landing behind his neck severely bruising the main nerve that controls his speech and that is the reason why he speaks in a slurred voice and stutters a lot. Vincent asked for medical attention since the police officer hit his neck. He was in pain. The dispatcher agreed with Vincent and went to tell Officer Timothy Smells that he was going to take him to the Indian Health Service. But, after talking to Smells, the dispatcher refused to give Vincent medical attention. I went to the jail to see Vincent because I knew something did not sound right when the police department notified my parents of Vincent's arrest. I yelled at the dispatcher and told him "If Officer Smells did anything that re-injured Vincent's neck, I would personally help Vincent initiate a law suit." I was so upset that I went and talked to Richard Ferris Sr., who is a tribal judge, and explained the situation to him. Judge Ferris was very upset and went to the Wind River Police department, then personally released Vincent. It was then that I was stunned because Richard Ferris Sr. advised me to get an attorney. A tort suit was filed against Timothy Smells for abuse,

misconduct and refusal to give medical attention. This legal action has been sitting in the Bureau of Indian Affairs files for one (1) year with no reply. My foster brother Vincent, who was abused while being arrested, has run into a wall in the governmental system. The superintendent's inaction on his case shows me that it is up front that his case can be won in court. The problem I have with that situation is that Vincent was sober when arrested and just because he didn't talk right he was judged drunk by the officer who arrested him. When proven wrong, the whole police department covered up for the officer. I think that the root of the problem is that the officers are not accountable for any actions on their part because there is no way to deal with them.

In June 1992, a similar case happened with my cousin Marvin. Marvin combated a police officer right in front of my home. Marvin was experiencing marital problems and was working while I watched his infant son while he worked. Officer Timothy Smells came to my house and asked Marvin to go out and talk to him. Officer Smells accused Marvin of harassing his wife, who at the time was legally separated from him. Marvin pleaded with Smells only to hear the officer place him under arrest. Marvin became angry! "How, what, and when did this all occur?" questioned Marvin. The police officer threw his handcuffs toward him. Marvin pushed the cop away. Marvin was mad since he knew he was at work at Circle Ridge oil field and there was no possible way he could have been harassing his wife. The officer grabbed Marvin, then Marvin

slipped away and ran. Officer Smells was behind him then grabbed his shirt. Marvin turned back and hit him in the eye. Officer Smells and another officer apprehended Marvin then took him to jail. Well, you see Marvin was in good health when taken from my house. He had no bruises of any kind. Apparently when the cops got him to the jail, while being transferred from the police unit into the police department, Timothy Smells and the other officer beat him with a PR 24 baton. Marvin was sent to the Lander Valley Regional Medical Center, where it was documented by the physicians that he was beaten with a blunt object. On the doctor's report, the doctors asked him who beat him since it was part of their routine questioning. Marvin's reply and the doctor's report were inconclusive. A law suit was filed against Timothy Smells for brutality and aggravated assault. His suit is still at the Bureau of Indian Affairs awaiting action.

The incriminating evidence of the videotape of Racheal Moss being roughed up by an unidentified police officer is seen in plain view that some type of criminal activity was going on besides her own. The unidentified cop forcefully put her head against the wall and struck her several times so hard that she required medical attention. According to Matt Kelly, of the Casper Star Tribune, Racheal Moss got some medical attention after the officer retaliated against her on the videotape:

"The officer lunges forward, grabs Moss by her chin and hair and smashes her head into a bulletin board on the booking room wall. There is a sound with a thud and Moss slumps into a chair wailing in pain." (A1+)

The point I am making is that in Vincent and Marvin's case, Officer Timothy Smells was the cop charged in those complaints. The officer accused of beating them has had a wide range of allegations on him of patterned abuse. The manager in the police department should be able to detect the abusive pattern in this police officer. Studies of brutality in officers show that certain factors should be detected when an officer practices such activities such as verbal abuse and physical abuse it becomes a norm to him or her. The book Police Deviance by Thomas Barker and David L. Carter explains that another factor that may be causing that kind of activity:

There are a number of reasons why an officer might engage in acts of brutality. He might be the pathological personality who enjoys physically abusing and hurting others, and he has become a police officer because of the potential opportunities of violence (127).

The captain in the police department should have some kind of system that can enable him to detect that sort of activity. As it is now, the Wind River Police Department have federal policies and procedures that are vague. There is no control of a deviant police officer because of the Federal Employees Act. This Act protects all government employees. Their constitutional rights are implemented when an employee is called in to be reprimanded. This is how I see the superintendent: he is here to protect the Shoshone and Arapaho tribes and their tribal members, but in reality he acts as an employer protecting his employees. It is so hard to get him to agree on any tribal issue because of a complete

conflict of interest. However, he is needed to uphold our treaty which gives us this land.

What are we going to do about the Superintendent? We need to get some kind of Review Board to monitor the Bureau of Indian Affairs police officers and the Superintendent. The review board can consist of attorneys, doctors, level-headed tribal members, elders in the tribes and educated individuals of the tribe that have knowledge in sociology, psychology, criminal justice and social science. It would be a new thing, but the Shoshone and Arapaho tribes must start somewhere.

Where are we going to do this? Ideas should be acted on in General Council, the governing body in each tribe. This would make it legal.

Why would we be doing this? It is a proven fact that the Superintendent has let many allegations of abuse be idle or dropped. The three (3) cases that have been explained earlier in this paper all have the same ending: they are still in the Superintendent's office waiting to be enacted on. The officers involved in the cases have never had any disciplinary action against them. In the Casper Star Tribune, the Associated Press investigated allegations of police brutality on several Indian reservations:

"The Associated Press reviewed 17 cases of alleged brutality filed on six western reservations from April 1990 through March 1993. Citizens complained of being choked, sprayed with mace, kicked in the groin, hit in the head and having hands and arms broken. In none of these cases was an officer punished--not even when medical reports indicated injuries were caused by force" (Kelly 1+).

An internal affairs unit needs to be over the Bureau of Indian Affairs Police Department. This board would investigate all allegations of physical, verbal, and civil abuse. Federal policies would dictate to the police departments. The Internal Affairs Units get to the bottom of a case and are very strict. They investigate every case that is filed, by complete recourse and are able to detect a deviant cop fast. That is why they are not liked by police departments in the country.

A Review Board made up of the interested parties can go over checks and balances of the internal affairs. The congressional delegate in this area must be informed of the Review Boards activities and if there is some kind of disagreement with the internal affairs, it could be addressed to that person since they represent the congressman of this area.

If nothing is done at any of these levels, a vice team or sting unit could be placed in the police departments. The sting officers would be transferred here just like any other police officer only no one would know about this, not the captain, superintendent or even the congressional delegate. That is how these special forces work. A sting operation would work with the police officers, but they would document all the criminal activity that goes on. These operations work in the same manner as Central Intelligence Agency.

In conclusion, the ignored police brutality has become a great concern of the Wind River Reservation residents. The complaints of abuse against the same officer and the allegations of abuse have

become more exposed to the Wind River Reservation residents. The complaints that are ignored can be questioned and investigated by an Internal Affairs Unit and a Review Board with a constant watch on all alleged brutality cases. The Tribal Councils need to become more involved in these documented cases in order to protect their members rights. To summarize this, police brutality is going to be a major issue in the next decade.

Work Cited

- Associated Press. "Accusers have little resource." Wind River News." November 9, 1993: 8.
- Barker, Thomas and David L. Carter. Police Deviance: Police Brutality. Cincinnati, Ohio: Anderson Publishing Co., 1991.
- Kelly, Matt. "BIA Police beat suspects, but go unpunished." Casper Star Tribune. November 6, 1993: A1+.
- "what happened at Ft. Washakie." Casper Star Tribune. November 6, 1993: A1+.
-"BIA Officers accused of beatings." News from Indian Country. November 1993: 1+.
- Sioux Falls S. D. "BIA Brutality common, tribal members say." Wind River News. November 16, 1993: 1+.

CHAPTER 3

SELF-INITIATED RELIABILITY TESTING: Pro-active police management
techniques of compliance programs

by: Walter M. Francis, Associate Professor
Criminal Justice Department
Central Wyoming College
Riverton, Wyoming

The current state of affairs in police departmental investigation of complaints against officers is based on the reactive model of investigations. The police simply respond to complaints of officer misbehavior and of deviant activities much as they have always reacted to typical investigation of criminal matters. A change has taken place during the past decade with police utilizing pro-active methods to investigate citizens, particularly in the area of mala prohibita crimes, e.g. drugs, vice and other victimless crimes. Yet, police managers have not pursued the investigation of their own personnel with the zeal which they have used methods to investigate citizen criminal activity.

The recent cases of police misconduct involving Rodney King in Los Angeles and Jeffrey Dahmer in Milwaukee demonstrates that police agencies and their managers must use self-initiated reliability tests (SIRTS) to control police personnel. Both of these cases demonstrate what is likely to occur if police departments fail to use SIRTS to monitor and control their officers behavior. Audio tapes located subsequent to these incidents provide evidence of office disregard of departmental and constitutional procedures in the handling of these cases. An elementary audit process would have discovered major discrepancies in the officer's handling of these two incidents and in Milwaukee, at least 4 victims would possibly still be alive had such a process been in place.

Police investigatory units routinely use intrusive methods on the public to catch offenders. Stings, decoys and various types of surveillance methods are unhesitatingly utilized during investigation of citizens. It is necessarily time for police managers to use these same investigatory tools to seek compliance of personnel for which they are held accountable. These highly intrusive methods must be used to insure that police personnel are following statutes, rules, procedures and constitutional requirements. Failure on the part of police managers to adopt these methods for internal compliance will continue the double standard of investigatory techniques which currently is in place.

Numerous SIRTS currently exist which have been successfully used in the management of business firms. Specific examples of proven management compliance SIRTS include: audit processes-field, case, trial, report and evidentiary audits; Internal Monitoring-work product, complaints, lifestyle, financial status; pro-active situational testing-sting type operations, decoys, surveillance. A comprehensive pro-active compliance program must be developed by police managers using such techniques. A meaningful program will then exist in the police agency to prevent and detect criminal and procedural violations of police personnel.

The lack of management use of these techniques is directly related to the power of line officers and their subculture via the unionization movement in American police departments. Even though police managers realize the value of SIRTS in controlling personnel under their command, it is likely they fear the backlash from line officers and union leaders if these methods were undertaken in their agencies. Police managers must take bold action to implement SIRTS into their departments and bring personnel under compliance

programs. New values must be mandated from top levels of the police bureaucracy to bring about value changes in the police subculture to provide police personnel with values based on the highest ethical, legal and constitutional standards.

Officers properly carrying out their duty have no valid reasons to not welcome audit and compliance SIRTS into the management and supervisory style of their agency. On the other hand, officers who routinely violate departmental norms have much to fear. Those receiving citizen complaints will be strictly scrutinized and their work product audited regularly. Street supervisors will perform daily random call backs on officers accountable to them to determine the quality of their actions or the lack of action itself. Corrupt officers will be rooted and prosecuted with evidence from sting operations. Even if officers do not undergo value changes, citizens are more likely to receive fair, courteous, legal, constitutional service from the police, because of the officers' fear of discovery of any negative actions. Today, due to the King incident in LA, officers must assume a citizen may be video taping their actions. Tomorrow, the agency itself may tape all police behavior and/or specific acts such as sting operations, to provide documentation of negative acts, while also protecting officers from false reporting. Officers performing their duty in the necessary legal and procedural manner have nothing to fear from SIRTS which analyze permanent records of their actions.

A former New York City Police Department internal affairs investigator, Vincent Murano, presents an excellent case for using pro-active techniques to ferret out corrupt and deviant officers in his book, Cop Hunter. He describes the success such a program can have, only to have it dropped by

managers due to the power of subcultural values of the agency which they have advanced through the ranks. Based on his experience, a successful SIRTS compliance program must be pushed from the top levels of police management in order to compete with the historical values which have developed from the line officers. The negative values of secrecy, isolation and silence must be replaced with those of visibility, openness and sharing of information.

It is very apparent that police managers and their agencies are not doing all they can to insure that police officers treat the public in a courteous, legal, ethical manner at all times. Racism, sexism, corruption, and other negative actions must be discovered and stopped. Proper implementation of SIRTS through a compliance program will do just that. Police officer actions will be monitored, reviewed, audited; corrupt officers will be targeted for sting operations; abusive and brutal officers will be discovered and prosecuted using evidence obtained by SIRTS measures; procedurally and legally consistent officers will be rewarded by the system through promotions; whistleblowers will also be rewarded and will be protected for taking risks in exposing other officers.

SIRTS programs will bring all officers of the law under the scrutiny required by the public they serve. Monitoring police personnel for misbehavior and for compliance with departmental procedures, state statutes and constitutional requirements is the only way the management of the agency and the citizens it serves can really know what each officer is really doing (or not doing) during their work period. Police managers must integrate inspection/audit procedures with pro-active investigatory techniques to create and implement a comprehensive compliance program. Such programs must utilize all legal methods of discovering police corruption, deviance, racism,

sexism, brutality and all other negative and illegal acts which may be performed by police personnel. SIRTIS can provide the mechanism to build positive values into police agencies and must become standard practice in all American police departments.

EXHIBIT CLAW ENFORCEMENT MANAGEMENT TRAINING PROGRAM:
Controlling Corruption and Misconduct

by
Walter M. Francis, Ph.D.
Assistant Professor of Criminal Justice
Central Wyoming College, Riverton, Wyoming

Law enforcement chief executives have a responsibility to control and minimize the amount of employee corruption and misconduct taking place in their agencies by establishing a misconduct control program which must necessarily include a training program for agency managers and supervisors. Due to the nature of the occupational role it is not realistic to have an organization goal of totally eliminating such employee misbehavior. Specific training can be developed and implemented with the goal of maintaining corruption and misconduct levels of police employees at minimal levels.

The initial step in this process is to develop a training program specifically for police chief executives and top level managers which will demonstrate the need for such misconduct controls in their respective agencies. It is suggested that the vehicle for such training programs be regional one-day events located and sponsored by colleges and/or state training academies. Such a program must be both descriptive and prescriptive in nature.

The author has developed and utilized this type of program successfully in the state of Wyoming and plans to expand these efforts nationally. The model program suggested in this article is one which utilizes several methods of instruction.

Initially, the instructor can use several devices to gain the attention of the audience and to convince them of the importance of and potential for corruption and abusive conduct by law enforcement employees. The best method is to maintain a file of newspaper and magazine clippings of recent misconduct behaviors which can be briefly reviewed in the first few minutes of the program. The author has a three inch thick file established over the past two years on such cases. The attendees will quickly be made aware of the documented cases which will cover an amazingly wide array of behaviors from sexual abuse to drug dealing, to physical abuse of citizens. Another device to get the immediate attention of the individuals is to play a video tape of the Rodney King incident demonstrating the LAPD brutality event or play one of many video cases dealing with police related drug corruption. No matter which learning device is used it is crucial to develop a keen interest and awareness of such activities in the participant since many will possess a naive attitude on the subject.

Once the instructor has gained the attention of the audience a descriptive presentation can be successfully delivered. This presentation must include a precise, comprehensive review and definition of the various types of occupational deviance and abuse of authority incidents which are potentially possible in all police agencies over any given length of time. Following this review it is suggested that each major area of misconduct be introduced in separate blocks of time requiring approximately three (3) hours

each. One should cover corruption related events and the other abuse of authority incidents.

The descriptive information on each type of corruption incident should provide detailed information and cases regarding specific types of events and reasons for their occurrence including: deception, perjury, lying, sexual misconduct, drug abuse, criminal law violation, vice related acts, and constitutional violations. This section will utilize at least 1 -1/2 hours of the program. Immediately following the descriptive lecture material, intensive case studies will be introduced via video tape using material from such television programs as "60 Minutes", "48 Hours", and "Frontline". The author has seven cases of drug related corruption events which demonstrate the widespread problem faced by police managers in controlling this specific type of corruption. Written case material can supplement the videos.

The second block deals with descriptive material, using the methods above, covering areas of police abuse of authority. Suggested types to include are physical abuse, use of force, use of weapons, psychological abuse, harassment, discrimination, threats, verbal assaults, and legal abuses such as constitutional and statute violations. Cases can be presented via written and video material. A good case is the Rodney King, LAPD physical assault case which was covered in great detail by all forms of the media. Video tapes of this event are an excellent source for study due to the extremely violent and graphic nature off the event.

The prescriptive portion will begin following the conclusion of the descriptive presentation after approximately 5 - 6 1/2 hours of the session. This will introduce various types of control mechanisms such as written directive systems, citizen complaint systems, internal affairs, discipline systems, code of conduct, Self Initiated Reliability Tests (SIRTS): field audits, call backs, stings, field associates, complaint monitoring, and civilian review resources. A comprehensive model will be presented to the attendee which they can utilize selectively at their respective departments.

The final 1/2 hour of the program should be used to conclude the session and for open discussion of the topics presented. Due to the nature of the program and controversy surrounding control programs discussion should be easily developed. The instructor will develop questions in advance to stimulate discussions. Group discussion probably has taken place during the case study and video presentation.

The training session should be evaluated several weeks after the session in order to determine the effectiveness of the delivery of the material and also to determine if the participants have utilized any of the control measures presented.

All participants should be encouraged to bring any case studies with them which are pertinent to the program. Also, they might want to bring policy manuals from their respective agencies which would be useful for reference during the time spent on written directive and discipline systems. An additional idea which has been successfully used by the author is to have the

participants bring a copy of the oath of office that police officers take immediately upon employment which pledges them to uphold the U.S. Constitution, their respective state constitution, and laws of both state and federal jurisdictions.

Discussion regarding the oath of office can be utilized in both the introductory material and during the prescriptive section. Officers must be informed of the importance of this oath and its significance at the time they are sworn in as police officers. Police managers must utilize the oath of office as the keystone of their respective corruption and misconduct control efforts. Officers who behave in their official capacity under the requirements of their initial oath of office will not likely ever be involved in major or minor events of police misconduct.

Police officers and agencies derive their authority from the citizens they serve and represent. Local communities are beginning to hold local police chief executives accountable for the actions of their officers and employees. Police chief executives must develop misconduct control programs which hold their managers and supervisors accountable for the actions of the employees for which they are responsible. The model management training program presented here will provide the groundwork for police executives to control and minimize employee misconduct and corruption in their respective agencies.

P R O G R A M O U T L I N E

I.	<u>INTRODUCTORY MATERIAL</u>		<u>Time</u>
	News File Cases		
	Oath of Office Discussion		
	Video/Written Case		1/2 Hour
II.	<u>DESCRIPTIVE MATERIAL</u>		
	A. Corruption Events	(3)	
	1. Lecture Presentation	(1 1/2)	
	2. Video Cases	(1 1/2)	
	B. Abuse of Authority	(3)	
	1. Lecture Presentation	(1 1/2)	
	2. Video Cases	(1 1/2)	6 Hours
III.	<u>PRESCRIPTIVE MATERIAL</u>	(1)	1 Hour
IV.	<u>DISCUSSION/SUMMARY</u>	(1/2)	<u>1/2 Hour</u>
		Total	8 Hours

EXHIBIT DPOLICE DEPARTMENT RISK MANAGEMENT:
EFFECTIVE PREVENTIVE MEASURES AND AUDITS

By
Walter M. Francis, Ph.D.,

Assistant Professor of Criminal Justice
Central Wyoming College, Riverton, Wyoming

Risk management techniques are necessary for the effective operation of all contemporary police agencies regardless of size. Chief executives and top level managers of all police departments must seek to minimize and control liability risks occurring during the operation of their agencies by promoting specific preventive measure through development and implementation of risk management/reduction programs.

Payment of large liability monetary awards has forced governing bodies to severely scrutinize police agencies in the current budgetary climate to minimize such awards in the future. Federal guidelines for sentencing of organizations created incentives for police departments to emphasize internal preventive measures to reduce/control criminal conduct within the agency. Police executives have obvious need to build such preventive programs into the operational framework of their agencies.

TYPICAL PREVENTIVE MEASURES

Some typical preventive measures available for use in contemporary police agencies include:

- a. Written Code of Conduct which covers such matters as conflict of interest, discipline, safety, conduct on departmental business, safety reporting violation, departmental assets (expenses, property, etc.), compliance with laws, and other areas unique to the

business of policing, such as use of deadly force/vehicle chases, etc.

- b. Risk Management Programs which include insurance and in some cases a combination of disciplines, e.g., safety, security, environmental, industrial hygiene, claims and litigation, and perform one or more of the following functions:
 - 1. Develops policies and practices
 - 2. Conducts audits
 - 3. Conducts post mortem by reviewing litigation to determine the causes and remedy the same.
- c. Ombudsman programs which receive complaints from employees regarding violation of policies, rules, regulation or laws. The "whistleblower" is usually assured anonymity and protected from retaliation if an investigation or other action is taken.
- d. Compliance programs, some of which are routine and built into the daily operation of the business and some which may be the result of court order, consent decree, regulatory requirement or other special circumstances. Routine audits and reports are usually an integral part of the compliance programs.

MANDATE FOR UTILIZATION OR PREVENTIVE MEASURES

Police agencies should be concerned about preventive measures for various reasons. It is good business to practice prevention or detection of problems favorably affecting the effective/efficient

operation of the department. The departmental image and the goodwill of the governmental body also profit. A department that fails to comply with public policy requirements as set forth in state and federal statutes and regulations could have its budget impacted by civil and/or criminal fines and penalties. The public disclosure of civil and/or criminal penalties would adversely impact the departmental image and goodwill. The departmental image can be further damaged if individual managers or officers are found liable for their individual violations.

Society expects police departments to be good citizens, but often believes that they are not. Departments need to portray a good public image to combat these widely held negative beliefs. Police agencies are treated in a similar manner as corporations in terms of negative perceptions from the public.

"Whether or not the current checks and balances on corporate conduct are in fact adequate, the public does not believe them to be adequate. Whereas general individual wrongdoing is taken as aberrant conduct the public almost seems to expect improper conduct and too often seems to view good corporate conduct as the exception rather than the rule."

Vicarious liability principles which hold a department responsible for the acts of its officers and employees dictate the necessity of preventing this potential liability. Vicarious liability is premised upon two justifications:

1. Loss distribution which links departmental liability to the control a department has over its employees and ensures that

a police department bears the cost of its improper and illegal conduct.

2. Vicarious liability provides a means to shape employer conduct by providing employers with an incentive to prevent liability.³

SELF-REGULATION PROGRAMS

Self regulation by the department is preferable to external regulation which is disruptive due to:

1. Extensive monitoring can disrupt daily operation of a police agency.
2. Enforcement often occurs in and encourages a contentious and adversarial process.
3. Only internally developed processes reflect priorities and commitment of a police agency.³

An excellent model of such programs is provided in the Federal Guidelines for Criminal Sentencing of Organizations. These guidelines were mandated by Congress in the 1984 Crime Bill 18 U.S.C. 3551-3681 and resemble those for individuals. After more than two years of study and various drafts, the United States Sentencing Commission submitted a final draft to Congress on May 1, 1991, becoming law on November 1, 1991, emphasizing preventive measures by providing minimal standards for effective due diligence programs.⁴

Organization means a person other than an individual and includes corporations, partnerships, associations, joint-stock companies, unions, trusts, pension funds, unincorporated organizations,

governments and political subdivisions thereof, and non profit organizations.⁵ (emphasis added)

One of the purposes of the Organizational Guidelines is to provide "incentives for organizations to maintain internal mechanisms for preventing, detecting, and reporting criminal conduct."⁶ These Organizational Guidelines allow the deduction of three (3) points from the culpability score "if the offense occurred despite an effective program to prevent and detect violation of law..."⁷ (emphasis added). Note that it must be an effective program as defined in the Guidelines.⁸

To be effective, the program must be reasonably designed, implemented, and enforced so that it will be generally effective in preventing and detecting criminal conduct. Due diligence must be exercised to prevent and detect criminal conduct by the employees and the agents of the organization. Due diligence requires, at a minimum, the seven following steps to assure compliance:

1. Policies defining standards and procedures to be followed by the organization's agents and employees.
2. Must specify people in high-level management who have ultimate responsibility to ensure compliance.
3. Must use due care not to delegate significant discretionary authority to persons whom the organization knew or should have known had a propensity to engage in illegal activities.
4. Must communicate standards and procedures and other publications to all agents and employees and require participation in training programs.

5. Must take reasonable steps to achieve compliance, e.g., by use of monitoring and auditing systems and by having and publicizing a reporting system where employees can report criminal conduct without fear of retribution (ombudsman program).
6. Must consistently enforce standards through appropriate discipline ranging from dismissal to reprimand.
7. After detection of an offense, the organization must have taken all reasonable steps to appropriately respond to this offense and to prevent further similar offenses - including modifying its program and appropriate disciplines for the individuals responsible for the offense and those who failed to detect it.⁹

This section states that the precise actions necessary for a meaningful program will depend on a number of factors:

1. The size of the organization. The larger the organization, the more formal its program should be. Larger organizations should have written policies defining the standards and procedures to be followed by its employees.
2. The nature of its business. If certain offenses are a substantial risk because of the type of business, then management must have taken steps to detect and prevent those risks, e.g. toxic substances, price-fixing, fraud, use of deadly force, vehicle chases, and search and seizure, Federal Civil Rights Violations - 18 USC Section 241, 242.

3. Past history. Prior adjudication for similar conduct puts organizations on notice that the same conduct could occur again and causes doubt that the organization took all reasonable steps to prevent such misconduct.
4. Industry practices and applicable rules and regulations of governmental agencies.¹⁰

If an organization having fifty or more employees at the time of the sentencing did not have a meaningful program to prevent and detect violation of law, the court shall order a term of probation.¹¹ The court may then order conditions of probation including the development and implementation of such a program with periodic reports to the court or probation officers and unannounced examinations of the organization by probation officers or other experts.¹²

The model of self regulation programs provided in the Organizational Guidelines not only assist police departments in preventing severe sentences in Federal Courts, it provides specific methods which can be adopted to create in-house risk management programs that meet the contemporary operational needs of police managers and agencies. Chief executives who have implemented such programs will have effectively met the liability control demands required from the community and the governmental entity they serve.

AUDITS

There are many types of audits available to police managers to ensure compliance by employees with policies, rules, codes of conduct and procedures. Some audits are required by law, court order, settlement agreement, policy or as part of a compliance program.

Other audits may be considered because of a particular allegation of misconduct from the media, employees, private citizens, or as a result of litigation.

Compliance audits are of primary importance to a successful risk management program. Police agencies should have various levels of audits which are utilized to determine the effectiveness/efficiency of not only employees, but also of department policies and procedures.

Auditing techniques should be built into the supervisory framework of the department. First line supervisors (Sgts.) must be involved in a constant process of scrutinizing the officers for which they are accountable. They must perform call backs of officer/citizen contacts to determine the quality of the officer's response. The effectiveness of the department in meeting the problem solving needs of the community served would also be determined at this level.

A staff inspection process must be initiated on a department wide basis to perform random, un-announced inspections of equipment, policy adherence, financial records, communication records, and physical evidence gathering/storage. Self initiated reliability tests such as stings, decoys, surveillance, and other pro-active devices must be utilized by this process to ferret out police employee misconduct, i.e., corruption, illegal deception, brutality.

The inspection process should have formalized components built into the operational structure of the department utilizing specifically assigned personnel who are specially trained in such operations. Department-wide inspection services would be performed by these staff members, ultimately responsible directly to the chief

executive. Mid-level managers (Lts. and Capts.) should also be required to perform inspectional audits on a regular basis within their span of control and operational area of accountability.

The audit process will be able to identify and monitor officers who are involved in activities which may result in liability awards from the department. Patterns of officer misbehavior will be established through inspection of official records, including citizen complaints, use of force reports, internal complaints, supervisory evaluations, call backs, replay of digital terminal records and regular inspection reports. Officers found to be a risk to the agency can be retrained, disciplined, re-assigned, or released. Departmental policies found to promote liability risks as determined during this process can be re-evaluated/re-formulated to reduce such risk to the agency.

SUMMARY

Police agencies and managers can no longer meet their operational goals effectively/efficiently without formal risk management programs in place. Preventive measures and audit processes must be made a part of any police department risk management program. The effective program model set forth in the Federal Guidelines for Criminal Sentencing of Organizations should be utilized by police departments to minimize and control legal liability reducing monetary awards while also creating a safer environment for the public and police officers. The effective development and implementation of departmental operational policies and procedures will be maximized by this same process.

- 1) V. Fuller, An Answer to the Public Perceptions of Corporations, 46 Business Law. 29, 29-30 (1990).
- 2) Pitt and Groskaufmanis, Minimizing Corporate Civil and Criminal Liability 78 Geo. L.J., 1559, 1563-70 (1990)
- 3) Ibid. 1561.
- 4) Federal Sentencing Guidelines Manual, 1992 Edition, U.S. Sentencing Commission, West Publishing, St. Paul, 1991
- 5) Ibid., pg. 349, 18 U.S.C. Section 18
- 6) Ibid. pg. 347
- 7) Ibid. pg. 364, 8C 2.5.(f)
- 8) Ibid. pg. 352, 8A 1.2. Commentary: Application Notes 3(k) (1-7)
- 9) Ibid.
- 10) Ibid. pg. 353, 8A 1.2. Commentary: Application Notes 3.(i-iii)
- 11) Ibid. pg. 379, 8D.1.1. (a)(3)
- 12) Ibid. pg. 381, 8D.1.4. (c)(1-4)

EXHIBIT E

COURSE SYLLABUS
 POLS-1170
LAW ENFORCEMENT, JUSTICE AND ETHICS
 Fall-1993

Professor: Walt Francis 856-9291 Ext. 135 Office: Science 107-C
 856-1451 HOME

Office Hours: MWF-NOON to 1:00 TTh-10:00-11:00 and by appointment

Textbooks: Police Deviance, 3rd ed., Barker and Carter
Police Vehicles and Firearms, Alpert and Fridell

Course Description: An examination of the ethical and value based discretionary decisions that police officers deal with on a regular basis. Police deviance will be addressed as to causal analysis and prescriptions for controlling such areas as police corruption, brutality and abuse to citizens.

Course Objectives: To make the student acutely aware of the ethical dilemmas of policing, especially deviance/corruption issues. To introduce students to methods of controlling occupational deviance relating to policing.

COURSE REQUIREMENTS:	2 TESTS DURING THE SEMESTER (33 1/3% each)	66 2/3%
	1 FINAL EXAM	33 1/3%
		100%

Tests-Each test will consist of essay type questions which will cover readings in the assigned text, videos shown in class, handouts and lecture notes. Each test will consist of six questions from which the student will select FOUR (4) to answer.

STUDENTS ARE REQUIRED TO TAKE EXAMS IN "BLUE BOOKS"-EXAM BOOKLETS WHICH ARE AVAILABLE FOR PURCHASE IN THE CAC BOOKSTORE.

<u>Grading-</u>	90 - 100=A
	80 - 89=B
	70 - 79=C
	60 - 69=D
	Below 59=F

STUDENT RESPONSIBILITIES: It is expected of the student to come to class fully prepared by reading any assigned material and ready to take part in class discussion and to answer questions posed by the professor.

Attendance in class by the student is the individual student's responsibility. Lengthy absences should be explained by the student. Any excused type absence such as illness, etc. will be reported to the professor and work missed will be allowed to be made up. Specific reading assignments will be announced daily in class.

Students are expected to take tests at the announced time. Tests may be made up ONLY upon proof of a serious event causing the student to miss the test. e.g. death in the family, serious injury or illness, court appearance, school activity.

<u>EXAM SCHEDULE</u>	EXAM #1	October 5	Barker: Ch. 1-10
	EXAM #2	November 11	" Ch. 11, 13-22(END)
	FINAL EXAM	December 16	" Ch. 12
		Thursday	Alpert Ch. 1-8(ALL)
		10:50-12:20	

LAW ENFORCEMENT AND ETHICS

POLS 1170

Exam #1

INSTRUCTIONS: Answer any four (4) of the following six questions. Each has a maximum point value of 25 for a total possible of 100.

1. Compare and contrast the police use of Acceptable Lies, Tolerated Lies and Deviant Lies. Examine several types of each type of lie by police, explaining possible reasons for such activity to take place, and how such behavior is promoted by the police working environment. Describe and discuss the following uses of deception by police officers: Testimonial, Investigative, Interrogatory, Internal Affairs type investigations.
2. Describe and discuss the concept of the police subculture. Explain how this sub culture may become a deviant one and the various types of occupational deviance which may be supported by a deviant police sub culture. Describe the danger to our society when a deviant police sub culture is allowed to exist, persist and grow in size and generationally. Explain why such behavior is extremely difficult to control and minimize, let alone eliminate.
3. Describe and discuss the management concept of the Written Directive System in terms of utilization by police organizations, including the major purpose, goals, components and processes involved in the use of police written directive systems. Explain how such systems may be used to control police behavior and actions in general and specifically in relation to police corruption activities. Describe what role a code of conduct and mission statement play in such a system
4. Describe the various types of police misconduct which are separate from police corruption. Explain possible reasons for such occupational deviance, how it can become entrenched in a police department and become a way of operation for many officers in a department. Describe and discuss the three major elements which are important to understanding police occupational deviance in terms of how the occupation supports and promotes such deviance.
5. Define and discuss the typology of police corruption, providing several examples of police corruption. Describe the various factors which make the police officer and organization particularly susceptible and encourage police corruption. Explain why vice crimes present a special challenge to police officers and departments in controlling police corruption. Compare and contrast the rotten apple theory of corruption with that of patterned pervasive corruption in a department.
6. Describe and discuss the various drug related problems facing police officers and departments, including drugs and corruption, officer recreational use of illegal drugs, officer on duty use of illegal drugs and how the job related conditions of police work impact such issues. Compare and contrast the major policy issues facing police organizations regarding police employee drug control efforts. Explain how department selection of officers and training techniques can be utilized to control and minimize drug related police problems.

LAW ENFORCEMENT, JUSTICE AND ETHICS

Exam #2

INSTRUCTIONS: Answer any four (4) of the following six questions.
Each has a maximum value of 25 points.

1. You have been appointed as chief of police for a department in a city of 50,000. Upon arrival you determine that there is no written directive or policy relating to misconduct of officers/employees, no system of discipline, no method of citizen complaint processing, etc. Provide a detailed program encompassing an integrated system of prevention of police misconduct for this department including citizen input and review. Describe what organizations and individuals may be of assistance to you in setting this program up. Describe how you would implement this program in the department.
2. Describe and discuss the report of the independent commission of the LAPD, also known as THE CHRISTOPHER REPORT in terms of why it was established, what it did, who was on the report in terms of occupations, the major problem discussed and investigated, specific instances of problems with officers and major findings and recommendations.
3. Answer the following questions based upon the videotaped and other material surrounding the Rodney King brutality incident in Los Angeles. Describe and discuss the various liability issues regarding this event in terms of the liability of: Individual officers taking part, Supervisors on the scene, Police Department, City of Los Angeles, Chain of Command officers, Chief of Police. Explain how both direct and vicarious liability issues would arise in terms of each category above. Describe what legal actions you would pursue for Mr. King if you were his attorney.
4. Compare and contrast external review of complaints against police officers with methods of internal review. Describe internal affairs type units, their functions and operational methods, including the major types of systems of internal affair investigations, based on who is actually performing the review function. Describe and discuss the various types of external review for the same areas/issues as above for internal units. Which type or types do you feel do the best job in handling such complaints, why?
5. Explain how the concept of stress can be applied to police abuse of authority, indicating how "the cumulative interaction of stressors" can be seen as a primary cause of police abuse of authority. List and describe several of the stressors specifically relating to a police officers job which may lead to such abusive behavior. Describe the various containment strategies which can be utilized to control these stressors and thus contain abusive police practices.
6. Compare and contrast the following remedies you as a citizen have in seeking damages for police officer's and police organizational liability resulting from abusive and wrongful behavior in their job performance: Criminal vs. Civil, State vs. Federal. Be sure to include the officer's liability under Section 1983 of the Federal Code- Civil Rights Cases. Describe the term Vicarious Liability and the general areas supervisory negligence may arise from in a police organization.

San Juan County, New Mexico

District 1, County Commissioner

Billy F. Hillgartner

P.O. Box 3176

Shiprock, New Mexico 87420

1-505-368-4206

Hon. Bill Richardson, U.S. Congressman
2349 Rayburn H.O.B.
Washington, D.C. 20515
Attn.: Tadd Johnson

RECEIVED

Billy F. Hillgartner, Commissioner
County of San Juan
Shiprock, New Mexico

MAR 28 1994

WASHINGTON, DC

11 March 1994

Subject: Request for Support;
re: Native American Law Enforcement Training Center,

Dear Tadd,

I am submitting this correspondence to your attention as instructed by the Congressman last week in Washington.

As I have previously informed you, I am currently involved in the development and hopeful implementation, of what is now tentatively entitled, "The Native American Law Enforcement Training Center". This project is being designed not only to demonstrate the self determination efforts of the Navajo Nation, but also the true capabilities of all Native American Tribes.

It is also believed that this proposed project falls directly in line with the present intention of President Clinton's efforts to scale down the federal governmental system, while at the same time enhancing the domestic sector.

Unlike the law enforcement training programs now operated by the Bureau of Indian Affairs and the U.S. Treasury Department, which employs primarily non-Native Americans as instructors, and allows participation by Non-B.I.A., or Non-federal police officers, only when there are no other federal officers available to attend. Attendance at the proposed "Native American Law Enforcement Training Center", would be available to all Tribal Law Enforcement Programs. And will utilize the many, and already certified and highly qualified, Native American Law Enforcement Instructors in the presentation of instructional blocks ranging from basic police training, to advanced law enforcement management techniques. This program could also be expanded to afford quality training to Non-Tribal law enforcement programs if desired, and if financial compensation for this purpose is provided.

The foundation of this project is the present Navajo Nation's Law Enforcement Training Academy. This program now utilizes Navajo Law Enforcement Officers as instructors, and is accredited as an approved law enforcement training facility by the States of Utah, New Mexico, and Arizona, as well as the Bureau of Indian Affairs. And because of the quality of this training

Page 2

facilities present course curriculum is comparable to that now provided by major metropolitan law enforcement programs, accreditation by other states would be easily achieved.

The initial funding for this project, with the support of members of the House, and Senate, is now targeted to come from money presently being directed to non-tribal entities such as the Bureau of Indian Affairs and the U.S. Treasury Department for the purpose of providing training to tribal peace officers.

It is believed that the level of funding now directed to these entities for the above cited purpose, could be spread farther, and utilized with greater efficiency and effectiveness. Thereby requiring no additional funding, beyond that now being allocated, to be directed to this project.

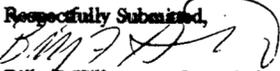
It is believed that the proposed "N.A.L.E.T.C." can, contrary to the opinion of certain other Federal Law Enforcement programs, produce a higher quality, and better trained tribal law enforcement officer, at a much reduced cost to the Federal Government. While at the same time also enhancing the economy of the Navajo Nation, and greatly improving the provision of law enforcement services to Native American Tribes.

To simplify matters, I have included the following information to hopefully aide the Congressman in understanding what is specifically being sought.

1. What's the problem? - The provision of inferior, and deceitful, law enforcement training techniques employed by the Bureau of Indian Affairs and the U.S. Department of Treasury to Native American Peace Officers. Which is in turn presented by these entities as the Native American's inability to learn, and thereby serves these entities as false justification for the continued need for their respective law enforcement training programs.
2. What is Wanted? - A Native American Law Enforcement Training Center, operated and managed by the Navajo Nation's Law Enforcement Training Academy, and utilized by all entities providing law enforcement services to Native Americans.
3. What is it's purpose? - To provide true, quality instruction from Native American Law Enforcement Instructors, to Native American Peace Officers, for the purpose of enhancing the quality of law enforcement services to Native American Tribes. While at the same time demonstrating the true capabilities of the Native American.
4. Where is it to be located? - San Juan County, New Mexico.
5. How is it to be Funded? - By redirecting funds now allocated for the purpose of providing law enforcement training to Native Americans by the Bureau of Indian Affairs and the U.S. Department of Treasury.

In summation, it is hoped that the Congressman will be able to provide assistance and direction regarding this matter. And as always, should there be additional questions pertaining to this matter, please contact me.

Respectfully Submitted,



Billy F. Hillgartner, Commissioner
District 1, San Juan County, N.M.

RED LAKE BAND of CHIPPEWA INDIANS



Red Lake, MN 56671

Phone 218-679-3341 • Fax 218-679-3378

DIVISION:

TRIBAL COUNCIL
Organized April 16, 1916
(Revised Constitution & By-Laws,
January 6, 1959)

OFFICERS:

GERALD F. BRUN, Chairman
BOBBY WHITEFEATHER, Secretary
JAMES STONG, Treasurer

DISTRICT REPRESENTATIVES:

ROMAN P. STABLEY, JR.
FADIAN COOK
LEONA L. FAIRBANKS
PURSTON GRAVES
LAWRENCE BELDEAU
ALLEN ENGLISH, JR.
TOM J. STILLDAY, JR.
CLIFFORD C. HARDY

ADVISORY COUNCIL:

7 HEREDITARY CHIEFS
CHIEF COUNCIL OF 1886
May-dway-goo-no-mud
Nah-guut-oo-guut-ah
Moy-oo-ree-ah-ay
Ah-mah-ree-ay-goo-ah-g
Nay-wah-quay-goo-ah-g
Nah-wah-quay-goo-ah-g

STATEMENT OF THE HONORABLE GERALD BRUN, CHAIRMAN RED LAKE BAND OF CHIPPEWA INDIANS TRIBAL COUNCIL

Submitted to the
House Committee on Natural Resources
Subcommittee on Native American Affairs
March 18, 1994

Mr. Chairman and distinguished members of this Subcommittee, thank you for this opportunity to submit written testimony on behalf of the Red Lake Band of Chippewa Indians on P.L. 101-379, the Indian Law Enforcement Reform Act (Reform Act).

The Red Lake Band's primary concern about the Reform Act involves the provisions which delegate line authority over criminal investigators through BIA Central Office Branches or Divisions, instead of through BIA Agency Superintendent or Area Office Directors. We believe that keeping criminal investigator line authority at the BIA national, Central Office level has eroded the quality of investigative services on our Reservation, and that this centralization of authority also conflicts with the modern federal Indian policy to maintain local Tribal control of Tribal programs wherever possible.

Our most immediate problem, however, is that the Interior Department has not followed the express requirements of the Reform Act. Interior has ignored the provisions in the law which provide that Interior must re-establish line authority through the Agency or Area Office levels at a Tribe's request

Red Lake Enterprises: Red Lake Sawmill, Red Lake Fishing Industry,
Red Lake Bingo, Red Lake Builders, Chippewa Trading Post-Red Lake & Ponemah

TESTIMONY OF THE RED LAKE BAND OF CHIPPEWA INDIANS
 THE HONORABLE GERALD BRUN, CHAIRMAN
 MARCH 18, 1994 HEARING BEFORE THE HOUSE NATIVE AMERICAN AFFAIRS SUBCOMMITTEE
 REGARDING P.L. 101-379 - THE INDIAN LAW ENFORCEMENT REFORM ACT

after one year. Secretary's Order Number 3177, dated December 20, 1993, is clear evidence of the Interior Department's blatant disregard for this provision of the Reform Act, because it extends the expiration date for one year of line authority delegation to the Central Office without regard for the Red Lake Band's request that the line authority be re-established at our Area and Agency levels. We believe that Secretary's Order Number 3177 is unlawful and is not consistent with the intent and purpose of the Reform Act.

A. BACKGROUND ON THE REFORM ACT

The Reform Act apparently was enacted in response to the perceived need to better control what was considered out-of-control lawlessness in Indian Country. However, this general perception of lawlessness was not the situation on certain Reservations. For example, on the Red Lake Reservation, the law enforcement framework in place before the Reform Act was doing a good job at enforcing the law. Congress recognized this fact and included provisions in the Reform Act to allow continued local control of law enforcement where it made sense to do so and where the Tribal government so requested. The statutory language of the Reform Act, codified at 25 U.S.C. §§ 2801-2809, unambiguously reflects a congressional intent to maintain local Tribal control of the investigative program wherever possible.

25 U.S.C. § 2801(d)(1) provides that the Secretary establish the Branch of Criminal Investigations within the Division of Law Enforcement to investigate and prosecute certain violations of the law within Indian Country. 25 U.S.C. § 2801(d)(4)(i) provides that supervision of such criminal investigators be carried out by the Central Office's Branch or Division.

However, 25 U.S.C. § 2801(d)(4)(ii) provides that, after one year of line authority through the Central Office, a Tribe may request the Secretary to re-establish line authority through the Agency Superintendent or Area Office Director. The statute states that the Secretary must re-establish line authority as requested in the absence of good cause to deny the request.

Secretary's Order Number 3150 set forth the original change in line authority per 25 U.S.C. § 2801(d)(4)(i), and set the expiration date of the

TESTIMONY OF THE RED LAKE BAND OF CHIPPEWA INDIANS
 THE HONORABLE GERALD BRUN, CHAIRMAN
 MARCH 18, 1994 HEARING BEFORE THE HOUSE NATIVE AMERICAN AFFAIRS SUBCOMMITTEE
 REGARDING P.L. 101-379 - THE INDIAN LAW ENFORCEMENT REFORM ACT

Order for one year after its adoption, December 31, 1993, according to the statute.

The Red Lake Band followed the provisions of 25 U.S.C. § 2801(d)(4)(ii) and passed Resolution No. 257-93 (see Attachment #1) which requests that line authority be re-established through the Agency Superintendent or Area Office Director at the end of the one-year time limit. Interior has not yet responded to our request. However, on December 20, 1993, just as the one-year limit was about to expire, Secretary's Order 3177 was issued extending for an additional year, until December 31, 1994, the line authority delegation to Central Office Branches or Divisions. We believe that Secretary's Order 3177 is unlawful, unfair, and poses practical problems for effective law enforcement on the Red Lake Indian Reservation.

B. THE INTENT AND PURPOSE OF THE REFORM ACT

25 U.S.C. § 2801(d)(4)(ii), which provides for re-establishing line authority through the BIA Agency or Area Office levels, is clear evidence of the congressional intent to maintain local Tribal control of this program. 25 U.S.C. § 2801(d)(4)(i), while it requires that supervision of criminal investigators be carried out by the Central Office's Branch or Division, also explicitly states that it is not intended to prohibit "cooperation, coordination, or consultation" with the Agency or Area levels, nor is it to prohibit or restrict the right of a Tribe to contract the investigative program under P.L. 93-638 or to maintain its own criminal investigative operations. Similarly, 25 U.S.C. § 2804(d)(4)(i) also provides for contracts under the Self-Determination Act to perform the functions of the Branch of Criminal Investigations.

Similar congressional intent is clear from the Reform Act's legislative history. Senate Report No. 101-167 notes that the Indian Affairs Committee amended the Reform Act before passage to eliminate language which created an exemption for the Branch of Criminal Investigations from the provisions of the Self-Determination Act which would have prevented Tribes from contracting under P.L. 93-638. Instead, the substitute provision, 25 U.S.C. § 2804(d)(4)(i), encourages such contracting. The Committee noted that several Tribal law enforcement programs are run in an "exemplary fashion", and stated:

TESTIMONY OF THE RED LAKE BAND OF CHIPPEWA INDIANS
 THE HONORABLE GERALD BRUN, CHAIRMAN
 MARCH 18, 1994 HEARING BEFORE THE HOUSE NATIVE AMERICAN AFFAIRS SUBCOMMITTEE
 REGARDING P.L. 101-379 - THE INDIAN LAW ENFORCEMENT REFORM ACT

"[t]he Committee felt strongly that the Federal Government's policy of Indian Self-Determination should be maintained and Indian [T]ribes should be allowed and encouraged to pursue these policy objectives."

C. BIA AREA OFFICE SUPPORT FOR RED LAKE'S POSITION

The BIA Minneapolis Area Office has indicated its full support for the Red Lake Band's request to re-establish line authority locally. In an October 8, 1993 memorandum to the Deputy Commissioner of Indian Affairs (see Attachment #2), the Minneapolis Area Director noted that the original change in line authority eroded the quality of service on our Reservation and resulted in confusion, and states: "[t]his office supports the Tribal Governments, and respectfully requests that the current line authority structure be reversed." This opinion is strong evidence that congressional intent to improve investigative services has been thwarted by the change in line authority, and that the purpose of the Reform Act will be better realized by reversing this change in line authority.

D. ACTION REQUESTED

Interior has not yet ruled on Red Lake's request to re-establish line authority through the BIA Agency or Area Office levels. 25 U.S.C. § 2801(d)(4)(ii) requires the Secretary to re-establish line authority at the request of a Tribe unless there is good cause to the contrary. The Secretary has not revealed to us any good cause to the contrary for Interior's refusal thus far to re-establish the requested line authority.

We believe that the weight of authority is on Red Lake's side in this effort to re-establish line authority at the BIA Agency or Area Office level. While under the Reform Act, Interior does retain regulatory authority over the nature and extent of criminal investigator authority, its exercise of that authority must be consistent with the letter of the statute and its accompanying legislative history evincing the congressional intent behind the statute.

TESTIMONY OF THE RED LAKE BAND OF CHIPPEWA INDIANS
 THE HONORABLE GERALD BRUN, CHAIRMAN
 MARCH 18, 1994 HEARING BEFORE THE HOUSE NATIVE AMERICAN AFFAIRS SUBCOMMITTEE
 REGARDING P.L. 101-379 - THE INDIAN LAW ENFORCEMENT REFORM ACT

In this case, explicit statutory language in the Reform Act sets a one-year deadline for mandatory line authority to the Branch or Division, after which Tribes may petition to have line authority returned to the Agency or Area. The Secretary may not unilaterally change this deadline. In addition, there is explicit statutory language in the Reform Act supporting control of the investigative program at the local Tribal level through P.L. 93-638 contracting. The legislative history of the Reform Act also clearly shows support and encouragement of such local Tribal control and P.L. 93-638 contracting.

The Secretary does not have authority to extend the one-year statutory deadline because there is no good cause to deny Red Lake's request. The Secretary's decision to extend the deadline is therefore legally insufficient and vulnerable to legal challenge.

Given the foregoing, we respectfully request that the Subcommittee:

- Direct the Secretary to rescind or withdraw Secretary's Order Number 3177, dated December 20, 1993, as inconsistent with both the letter and intent of the Reform Act;
- Increase the Subcommittee's oversight of Interior's actions to ensure that the provisions of the Reform Act that allow re-establishment of line authority when requested by a Tribe are respected; and
- Consider amending the Reform Act to mandate re-establishment of line authority to the local Tribal level wherever a Tribe so seeks.

E. CONCLUSION

Please let us know how we might assist you in improving and enforcing the original intent of the Reform Act during this session of Congress. Thank you for this opportunity to be heard.

Attachments

RLGEN10.TST
015207027

ATTACHMENT 1

RED LAKE BAND of CHIPPEWA INDIANS



Red Lake, MN 56671

Phone 218-679-3341 • Fax 218-679-3378

DIVISION:

RESOLUTION NO. 257-93

TRIBAL COUNCIL
Organized April 18,
Revision Constitution & By
January 6, 1959

OFFICERS:
SERGENT AT ARMS: CHARLES
DORIS WHITEFEATHER, S
JAMES STRONG, Treasurer

DISTRICT REPRESENT.
ROMAN P. STATELY, JR.
PAULIAN COOK
LORNA L. FAIRBANKS
PRESTON GRAVES
LAWRENCE BEDDAU
ALLEN ENGLISH, JR.
TOM J. STILLDAY, JR.
CLIFFORD C. HARDY

ADVISORY COUNCIL:
7 HEREDITARY CHIEFS

CHIEF COUNCIL OF 1889
Nah-see-ye-goo-ne-see
Nah-see-ye-goo-ne-see
Nah-see-ye-goo-ne-see
Nah-see-ye-goo-ne-see
Nah-see-ye-goo-ne-see
Nah-see-ye-goo-ne-see
Nah-see-ye-goo-ne-see

WHEREAS, the Red Lake Band of Chippewa Indians is a duly Federally-recognized Indian Tribe; and

WHEREAS, the Red Lake Tribal Council has a vital concern for the welfare of its tribal membership and is authorized to act in all matters that concern the welfare of the Tribe; and

WHEREAS, the provisions of Public Law 101-379, the Indian Law Enforcement Reform Act (Title 25 United States Code Sections 2801-2809) were implemented effective October 1, 1992; and

WHEREAS, the Red Lake Band of Chippewa Indians law enforcement and criminal investigation services have suffered detriment under the direct line supervision of criminal investigators by the Division of Law Enforcement Services; and

WHEREAS, 25 U.S.C. Section 2802(d)(4)(ii) states:

At the end of one year following the date of establishment of the separate Branch of Criminal Investigations, any tribe may by resolution of the governing body of the tribe, request the Secretary to reestablish line authority through the Tribal Administrator Officer or Bureau of Indian Affairs Area Office Director. In the absence of good cause to the contrary, the Secretary, upon receipt of such resolution, shall reestablish the line authority as requested by the tribe.

NOW THEREFORE BE IT RESOLVED, that the Red Lake Band of Chippewa Indians requests that line authority of criminal investigators be reestablished through the Red Lake Agency, effective October 1 1993.

FOR : 10
AGAINST : 0

RED LAKE BAND of CHIPPEWA INDIANS



Red Lake, MN 56671

Phone 218-679-3341 • Fax 218-679-3378

DIVISION RESOLUTION NO. 257-93
PAGE 2

TRIBAL COUNCIL
Organized April 18,
Revised Constitution & S.
January 6, 1989

OFFICERS:

GERALD F. BRUN, Chairman
BOBBY WHITEFEATHER,
JAMES STRONG, Treasurer

DISTRICT REPRESENT

HOMAN P. STALEY, JR.

FASHAN COOK

LORNA L. FAIRBANKS

PRESTON CRAVER

LAWRENCE BEDEAU

ALLEN ENGLISH, JR.

TOM J. STILLEY, JR.

CLIFFORD C. HARDY

ADVISORY COUNCIL:

7 HEREDITARY CHIEFS

CHIEF COUNCIL OF 1889

May-1889-1890-1891

Nov-1890-1891-1892

May-1891-1892-1893

Nov-1892-1893-1894

May-1893-1894-1895

Nov-1894-1895-1896

May-1895-1896-1897

Nov-1896-1897-1898

We do hereby certify that the foregoing resolution was duly presented and enacted upon at the Regular Meeting of the Tribal Council held on August 10, 1993, with a quorum present, in the Tribal Offices, Red Lake, Minnesota.

Gerald F. Brun
Gerald F. Brun, Chairman

Bobby Whitefeather
Bobby Whitefeather, Secretary

ATTACHMENT 2



* REPLY REFER TO

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

MINNEAPOLIS AREA OFFICE
131 SOUTH 2ND AVENUE
MINNEAPOLIS, MINNESOTA 55401-2241

ADMINISTRATION

OCT 8 1993

MEMORANDUM

TO: Deputy Commissioner of Indian Affairs

FROM: Acting Area Director, Minneapolis

SUBJECT: Bois Forte Tribal Council Resolution No. 58-54, and Red Lake Tribal Council Resolution No. 257-93



Please find enclosed a copy of subject Tribal Government Resolutions that were adopted by the Bois Forte Reservation Business Committee and the Red lake Band of Chippewa Indians on September 30, 1993, and August 10, 1993, respectfully.

The Tribal Governments have enacted their respective governmental authorities and powers, as authorized by their respective Tribal Constitutions. The enactments authorize a change in line authority, for the Criminal Investigation Section of the Law Enforcement Branch, back to the Minnesota and Red Lake Agencies. This is consistent with appropriate provisions of P.L. 101-379, The Indian Law Enforcement Reform Act.

As you are aware, in December 1992, the line authority and supervision was changed. This excluded the Area Director and Superintendents from participating in Programmatic Management of the Criminal Investigation Section. The only authorized participation was to provide Administrative services. This caused realistic and noticeable matters that did not enhance the quality of services to the service population on the respective reservations. Such matters were related to

Attachment No. 4b

Communications, Coordination, Reporting System, Supervision, Personnel Management, Financial Management, and confusion.

This office supports the Tribal Governments, and respectfully requests that the current line authority structure be reversed. Your appropriate consideration, concurrence, and action is respectfully requested.

If you have any questions or comments, please advise.

A handwritten signature in black ink, appearing to read "Michael A. Fairbanks".

Michael A. Fairbanks
Acting Area Director

ORIGINAL

U.S. DEPARTMENT OF THE INTERIOR
Washington, D.C.

JOINT TRIBAL/BIA/DOI ADVISORY TASK FORCE
ON BUREAU OF INDIAN AFFAIRS REORGANIZATION

held at

Quality Hotel Four Seasons
2500 Carlisle Boulevard, Northeast
Albuquerque, New Mexico

GENERAL
SESSION

WEDNESDAY, APRIL 29, 1992



Court Reporting Services, Inc.
201 North Fairfax Street, Suite 21
Alexandria, Virginia 22314
Tel: (703) 548-3334; Fax: (703) 684-7278
Toll-free: 1-800-848-4007

DR. BROWN: Yes, sir, Mr. Monteau?

MR. MONTEAU: Again, I emphasize that we do need this analysis in order to proceed with whether we want to follow through with this recommendation. Now, the Task Force did include this recommendation in the cumulative report and accepted this as part of the committee's report that went into the overall report, and it was based on the premise that we had to do this analysis to determine what resources could be taken from the existing education resources and placed into this processing center and that whether, based on that, it was feasible to do the center. So at some point, we have to do this feasibility and analysis, and it's got to be presented to us and presented to the tribes so that a determination can be made as to whether a servicing center is advisable.

DR. BROWN: Mr. Bettenberg?

MR. BETTENBERG: I guess I've got a procedural question. On other requests for analyses, information, and that sort of thing, has the Task Force generally passed a resolution? I don't recall that they have.

MR. MONTEAU: I think Bill makes a very fine point. We brought it out the last time that this was discussed, too. You know, are these things that can be done by the OIEP without a Task Force resolution? But I think they have to be done in a manner which keeps people informed that we're not instituting and implementing a service center. What we are doing is analyzing and doing feasibility studies to see if it's something that's desirable. So maybe we don't even need the resolution. We just need the Assistant Secretary to tell Mr. Parisian to get on with the analysis and the feasibility study to tell us whether this in fact is something we want to do.

DR. BROWN: If there's no further discussion, so done, and let's move on.

BIAM, Mr. John Washakie.

MR. WASHAKIE: Mine should be short. I hope you've received the packet that was handed out. It's not under any tab. It's been handed out. It says "Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization," and then it says, "Summary for Tuesday, April 28, 1992, Dealing with BIAM, CFR, and USC Work Group."

The Bulletin for 10 BIAM, which addresses delegations of authorities to area directors for both OIP and OIEP, is the first one, and I believe that it's important to understand the delegation of authority to area directors. This is a revision, and we're asking that we receive a recommendation for this from the Task Force group. If you look at section 1, which is the purpose, "This bulletin provides for an orderly interim administration and continuity of direct line authority from the Commissioner of Indian Affairs to the Bureau of Indian Affairs field education organization line officials, and authorities of BIA area directors are contained herein."

As you move through the sections of that, each section will tell you. Section 2 is the authority of area directors. Section 3 is the limitation of authority of area directors. Section 4 -- I'm not going to read all of this, okay? Section 4 is the restrictions to the agency level. Section 5 is the delegations not published in 10 BIAM. Section 6 is the effective date. Section 7 is delegation.

What is key to this -- and I probably should jump around in our deal here a little bit. You can look under section 2(d), the Indian Law Enforcement Reform Act, Public Law 101-379, of August 18, 1990, which legislatively established a separate line of authority regarding criminal investigators for law enforcement.

"Tribal action may be taken by resolution to return supervision to the appropriate line officers." We added that to section 2(d), and the reason that we did that is because we made a recommendation to implement the Indian Law Enforcement Reform Act, which is Public Law 101-379.

In the Tampa meeting, we had suggested that tribes would come forward and hopefully we would get legislation to change one part of the Indian Law Enforcement Reform Act. However, no one has come forward, and we're about six months down the road. If we had acted on it then, we'd only have six months left before we could go ahead by tribal resolution and have it moved back down to the superintendent. The law requires that after one year, if tribes want to take it back and put the CIs under the superintendent, they can. So we just went ahead and moved to implement that.

I think that the next part of that that we should talk about is --

Dan, do you want to go ahead and address section 3(e)(7), calling of elections or referendums and approving results?

MR. DECKER: In the copy that you have, that section 7 doesn't compare with the original section 7 for the memorandum that we were dealing with yesterday. That section 7 has now been deleted. The section 7 that was in the previous memorandum dealt with secretarial elections for tribes organized or to be organized under the Indian Reorganization Act. The beginning of that section was to exclude those authorities that must be transferred if it required Federal Register publication, and upon doing some research of that overnight, there was no such requirement in the CFR for that to be published in the Federal Register; therefore, it was simply eliminated.

Later on in the bulletin, I believe it is section 4, I believe that that section 4 would cover that authority. The CFR, in discussing secretarial elections, refers to the Secretary and the officer in charge and does indicate that the Secretary may delegate that down. So we simply eliminated it from section 3, and section 4 would now cover secretarial elections. So the authority to transfer down for secretarial elections is contained in here, but it doesn't specifically say that.

MR. WASHAKIE: Any questions on that? There were some yesterday. I'm not a constitutional tribe; I'm unorganized, as you can tell.

[Laughter.]

MR. WASHAKIE: The other part that you have there is the checklist of authorities to be redelegated to the agency level. The checklist we submitted was the redelegation of authorities immediately, and it had a provision that "if adequate resources existed at the agency." That was submitted to the higher echelon, SES -- I never know if I get that right -- and they made comments on the side of that and submitted it back to the work group. The authorities work group chose not to change the original position of the Task Force, so we are standing as is with those.

The reason that we are leaving them as is is also contained in paragraph 1 of the checklist. It says, "The adequate resources exist at the agency to accomplish the carrying out of these authorities in compliance with all statutory, regulatory, policy, and procedural guidelines. These redelegations require a change only in the Bureau

of Indian Affairs manual part." We are going to stay with our Task Force motion on that which has already been approved.

The next part of that -- and I think you can approve this overall, if you would like -- is to go down to the following recommendations that were made. There is a bullet there to start identifying authorities that can be transferred to the Central Office West, which just came up this week. That has been assigned to Bird Ford's office.

The second recommendation we are making is to begin work on phase two and phase three of the delegations of authority plan, which include CFR and USC regulations. I believe J.T. Goombi addressed this, and I've heard it mentioned a number of times here. We need to provide a work plan to include program cost analysis, resource distribution, schedules, and tasks necessary to complete the BIAM/CFR statutory revisions. It is anticipated that due to limited Bureau and Task Force resources, this plan will include a request for additional support to perform such tasks as legal research and program analysis. This work plan will be provided at the June 1992 meeting of the Task Force.

The third and final recommendation is to prepare a package identifying resources needed to complete the above assignments. That has also been assigned to Bird Ford.

That's all we have.

DR. BROWN: Is there a motion needed here to accept the report? Harold, do we need to formally accept this?

MS. GARCIA: I think we should accept it as a report.

MR. WASHAKIE: We need to clarify something, too, in the first bullet to start identifying those authorities that can be transferred from Central Office West to agencies.

MR. TEBA: Is the group recommending action on the law enforcement issue that you've identified?

MR. WASHAKIE: Yes, we are.

MR. TEBA: So that needs a motion.

DR. BROWN: It says here, "to implement the Indian Law Enforcement Reform Act." Do we have a motion here before we go on?

TRANSCRIPT

GENERAL SESSION

MR. WASHAKIE: I'll move that.

MR. GOOMBI: Second.

DR. BROWN: Okay, a motion has been made by Mr. Washakie to accept the report as presented and has been seconded by Mr. Joseph T. Goombi. Any discussion?

Mr. Babby?

MR. BABBY: Wyman Babby, Fort Peck Agency.

I wanted to add some emphasis to the discussion that has already taken place on this issue relating to line authority and law enforcement. It really places a Catch-22 problem in front of everybody. Really, what it boiled down to yesterday is the work group having to confront the problem and decide which way to go, perhaps neither being the best if everyone had the right choice. There is a reluctance to take the chance of getting that legislation changed. Here we are talking only about one sentence in a piece of law, one lousy sentence. If we tried that, other provisions in that legislation that are important to the tribes that we've waited decades of time to have finally come our way would also be open to question.

What would be important to me is that everyone would understand that the work group action is premised more on our feeling that the best way out of this dilemma is to go ahead and start that year of time running in order to get it behind us. That would be preferable to attempting to try to change that statute.

DR. BROWN: Any further comments? If not, let me call for the question. Those in favor of accepting the report as presented, please manifest by saying aye.

[Chorus of ayes.]

DR. BROWN: Those opposed?

[No response.]

DR. BROWN: Abstentions?

[No response.]

DR. BROWN: The motion is carried.

John, are you completed here?

MR. WASHAKIE: Yes.



ISBN 0-16-046796-9



9 780160 467967