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INVESTIGATION OF INDIAN HEALTH SERVICE EXPENDITURES, BILLINGS AREA

A REPORT

PREPARED BY THE

SELECT COMMITTEE ON INDIAN AFFAIRS

OF THE

UNITED STATES SENATE

DURING THE

NINETY-SIXTH CONGRESS

SECOND SESSION

1980

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Ninety-Sixth Congress, Second Session

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SUMMARY OF FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

This study of certain irregular activities within the Billings area office of the Indian Health Service was precipitated by allegations brought to the attention of the Senate Select Committee on Indian Affairs in the fall of 1979. The scope of the inquiry included the following major items:

1. Private pilot training for the Billings area director between 1975 and 1979 at the expense of IHS;
2. Purchases of video equipment from a local source without competitive bidding;
3. Securing services from a local firm to create a recruitment film of questionable necessity;
4. Use of an anesthetist from Minnesota to provide services for surgery in Montana;
5. The cost of patient care under contractual arrangements with the Northern Montana Hospital in Havre; and
6. Allowing the assistant area director for administrative support programs position to be filled on an acting basis for over 5 years by the same person.

The committee held a hearing in Billings, Mont., on December 21, 1979, to take testimony on these issues, but while the hearings shed light on some of the problems, it was not possible to explore all areas of concern in detail. Consequently, the committee directed its staff to conduct additional inquiries into the matter and report their findings back to the committee.

FINDINGS AND CONCLUSIONS

1. Private Pilot Training Lessons

According to the IHS, use of Federal funds to pay for the private pilot training was cost effective. However, the IHS based that assumption on comparing private plane charter for the area director to automobile travel and did not take into account travel costs information based on commercial air travel combined with automobile rental. The commercial air alternative is the most common method used by most IHS and Bureau of Indian Affairs employees. This alternative was never analyzed in the IHS's cost effective analysis for private pilot training.

Even under the IHS analysis of the cost effectiveness for the private pilot training, the lessons have not resulted in a total savings to the IHS. Finally, this type of service requires competitive bidding or, in the alternative, a justification for sole source procurement. In this case, neither alternative was present.

CONCLUSIONS

The private pilot training should not have been started and should have been adequately justified before it was authorized by the IHS director.

The private pilot training was poorly justified and should have been more carefully reviewed by HEW Department audit.

2. Video Equipment Acquisitions

The committee investigation found that there was no sole source justification for the open market purchase of video equipment nor, in the alternative, were such purchases bid competitively as required by procurement regulations. In addition, confirmation orders were used after equipment was acquired as if it were an emergency situation which required use of the equipment before the proper procurement procedures could be completed; but no emergency was indicated. The total funds spent for video equipment and supplies during the summer of 1979 exceeded $22,000.

There is a notation on the purchase order for the major portion of the video equipment purchases that the charges for funds to pay for this purchase were made against the three IHS hospitals located in the area. These accounts represent medicare and medicaid fund collections. As patients who are eligible for medicare and medicaid are treated at IHS hospitals, funds for this treatment are identified and transferred to IHS on a national basis. Allocations of these funds are made back to IHS areas based upon approved plans for obligations. The plan submitted by the Billings area for the use of these collected funds did *not include any proposal for purchase of video equipment*. A subse-

quent report showing use of collected funds included several obligations in addition to the video equipment which were not on an approved plan. In fact, in 1979, 65 percent of the obligations of the medicare/medicaid funds were not in accordance with the approved plan for the use of these funds.

The point is that no regularly appropriated funds for the IHS were used for these purchases.

CONCLUSION

It was an unwise use of scarce funds to make unplanned expenditures to acquire additional video equipment, when, at the same time, the Director of IHS had declared that additional appropriations were needed.

3. Services Acquired From Red Eagle Productions

Red Eagle Productions is a small local film production firm which entered into an agreement with the Billings area office to produce a video tape to be used in the recruitment of medical personnel for the Billings area. The following Health and Human Services procurement requirements were ignored in the process of the procurement of services of the Red Eagle Productions:

(1) That the contract proposal be reviewed and approval be granted at each organizational level of the Department up through the Assistant Secretary for Public Affairs (ASPA–OS);
(2) That all procurements shall be conducted on a competitive basis whenever possible;
(3) That contracts be a fixed price; and
(4) That the ASPA–OS concur in requests for sole source procurement justification.

CONCLUSION

It was poor judgment to proceed with the acquisition of these services without following all of the proper procurement procedures.

4. Contracted Anesthesia Services

The Billings area office has contracted with Anesthetists, Inc., of Minneapolis, Minn., to provide anesthesia services at Billings area IHS hospitals. The anesthetist who performs the services has been providing such services for IHS since 1974, when he was located in Montana. In 1977, he moved to Minnesota and has returned to the Billings area on at least six occasions to provide services for periods of 1 week or longer on each occasion. Surgeons working with him prefer his work and request his services. His fees are in line with others who perform such services, even considering the travel and per diem costs, and he has been willing to be available for several days at a time so that the most cost effective use of facilities and personnel can be attained.

CONCLUSION

The anesthesia contractor appears to be providing good services at a reasonable rate and his availability allows IHS to make the most effective use of their facilities and personnel by scheduling several operations within a short time period.

5. Northern Montana Hospital, Havre, Mont.

Allegations were made that Northern Montana Hospital (NMH) was charging excessively for services provided to Indian patients under contractual arrangements with the Indian Health Service. NMH was constructed in 1975 and part of the construction costs were paid from Federal funds authorized by Public Law 85–151. In accepting the grant, NMH agreed, among other things, to make available at least 12 beds for Indian patients at inpatient facility rates not in excess of the average annual per diem cost of operation and maintenance for the entire facility computed in accordance with joint form 1 and to enter into annual contracts with IHS for 20 years to provide hospital and medical care to Indians. Joint form 1 indicates those expense items which must be deducted from total expenses before computation of the average annual per diem rate. The NMH rate covers total services whereas the other hospitals negotiate for each type of service in the hospital. A comparison of the average cost per hospital day including cost of all hospital services showed that NMH's fiscal year 1979 per day cost was much less than other comparable hospitals of 100 beds or more.

CONCLUSION

It appears that the adjustments and retrospective payments made to NMH were legal, correct, and fair to both the contractor and the Government. When proper comparisons are made of the NMH rates and those of other hospitals, including all hospital services, NMH costs are quite favorable. Apparently, the individual alleging excessive charges by NMH did not understand the provisions of the NMH contract under Public Law 85–151 and other hospital contracts.

6. Assistant Area Director for Administrative Support Programs—5 Year Undocumented Detail

Since November 14, 1974, the duties of the position of assistant area director for administrative support programs of the Billings area office have been performed by an individual on an "acting" basis without benefit of proper personnel action. On that date, a bulletin was issued indicating an individual who would serve as acting area director, administrative support programs, until the then ill Billings area deputy director returned to his office. The functional title of this position was changed at this time without following personnel regulations and proper personnel action was not followed with respect to this detail of more than 30 days.

In February 1977 an announcement was issued soliciting applications for the position of supervisory hospital administration spe-

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cialist, functional title assistant area director, administrative support programs. In May 1977 the Billings area director received a selection roster containing the names of seven candidates deemed to be highly qualified, including four individuals with Indian preference eligibility. The position was not filled.

In March 1980 the Office of Personnel Management, Denver Regional Director, directed the IHS Billings area director to terminate the detail of the individual to the position. In April 1980 the Billings area director requested official approval to continue the individual's detail, while at no time taking any personnel action to legitimatize the detail. In May 1980, the extension on the order to terminate the detail was granted contingent upon certain actions to be taken by the Billings area office.

CONCLUSION

Personnel regulations have been flagrantly violated with the full knowledge of all concerned by filling the assistant area director, administrative support programs, position for over 5 years by improper detail. The request for an extension of the OPM directive to remove the individual improperly designated reflects a continuing defiance of personnel regulations. The nonselection of a candidate for the position from among four applicants rated as highly qualified and with Indian preference eligibility raises a very serious question as to possible circumvention of Indian preference.

RECOMMENDATIONS

1. The committee should require the Director of IHS to implement semiannual program and administrative reviews of the Billings area office and report the results of these reviews to the committee. The first review should cover the period April 1, 1980 through September 30, 1980, for submission not later than December 31, 1980.

2. The committee should conduct additional oversight hearings at the other IHS area offices to receive remarks and comments from interested local Indian individuals and tribal organizations, IHS employees, and other concerned citizens who have information about the conduct of IHS operations in each area.

Based on the information received, inquiries similar to Billings could be instituted for the area concerned if deemed appropriate.

3. The committee should conduct additional inquiry into the program effectiveness of IHS expenditures, including a review of the procedures used to determine the need for medical services and how the cost to the Federal Government is factored into these determinations. The inquiry should place special emphasis on the use of the appropriations by Congress for "unmet" surgery needs. (It should be recognized that this will be a most sensitive matter, since it will necessarily require extensive information on decisions made by medical personnel.)

4. The committee should require the Director of IHS to submit a detailed statement of the cost of operation of each of the 48 IHS Government hospitals.

5. The committee should request the Director of IHS to report disciplinary actions he has taken for violations of procurement and personnel regulations identified in this inquiry.

I. INTRODUCTION AND BACKGROUND

As a result of several allegations of irregular activities within the Billings area of the Indian Health Service (IHS), the Senate Select Committee on Indian Affairs held a hearing concentrating on several questionable actions taken by IHS in the Billings area, namely:

- Pilot training for the area director paid from appropriated Federal funds;
- Purchases of video equipment from a local source;
- Securing services from a local firm to create a recruitment film;
- The cost of patient care under contractual arrangements with the Northern Montana Hospital in Havre;
- Using an anesthetist from Minnesota to provide services for surgery in Montana; and
- Allowing the assistant area director for administrative support programs position to be filled on an acting basis for over 5 years by the same person.

While the hearing shed light on these issues, it was not possible to explore all of the areas necessary to determine if these and other activities in the Billings area IHS were being conducted in the best interest of providing health services to Indians. To develop that information, the committee instructed its staff to conduct additional inquiries into this matter and to report these findings back to the committee.

At the beginning of the inquiry the following statement of purpose was developed:

To insure that from a management standpoint, the funds for IHS in the Billings area are being used—

(1) within legal authority;

(2) to conduct programs as authorized by Congress; and

(3) in conformance with the intent of Congress as stated in the Senate and House committee reports on appropriations and the Appropriation Act.

This report is not a review of the effectiveness of the IHS health programs.

A. Scope

Congressional hearings and reports, pertinent Federal regulations and policies, IHS memoranda and other documents and policies, priorities, and practices relating to providing Indian health services were reviewed and evaluated. Responsible program officials were interviewed at both the national office headquarters of IHS and in the Billings area. Other individuals volunteered pertinent information. Officials of the Office of Personnel Management and the Department of Health and Human Services (HHS) in Denver, Colo. were also interviewed.

IHS budget presentations, allotments documents, accounting reports, and procurement records were examined for accuracy and consistency.

B. Indian Health Program

The IHS had approximately 10,200 permanent positions authorized in fiscal year 1979. Total appropriations for IHS were about $570 million in fiscal year 1979. These figures indicate a dramatic rise in permanent positions of almost 2,500 since fiscal year 1974 and more than doubling the approximately $250 million appropriated in fiscal year 1974.

The Billings area IHS has experienced funding and staffing increases in proportion to the national IHS program. There were 668 permanent positions authorized for the Billings area in fiscal year 1979 and total funding allotments were almost $40 million.

Despite the large funding and staffing increases authorized for IHS, the Director of IHS testified concerning the fiscal year 1980 budget request that it "* * * does not permit the improvements in quality and the improvements in access, that in my judgment are required to meet the needs of the population for which the program was established." His testimony indicates that IHS funding needs are more than $140 million greater than the budget request contained in fiscal year 1980 and they are over 2,000 shy of the needed staff. The Director stated that "* * * the needs of the people for services are not being met by the program currently available to them."

The IHS budget has been developed "from the top down." Field personnel at the service unit level and tribal officials have not been permitted to identify their total funding and staffing needs or even to establish priorities for these needs among various program activities within funding and staffing constraints. Allotments of funds to the field have been incremental. That is, funds are added to the prior year level based upon current factors, such as operation of new facilities and increased costs due to inflation, and the prior year base is assumed to be required.

In the development of the 1982 budget requirements, the Health Services Administration will be initiating a ZBB (zero based budgeting) process which in IHS will go to the service unit level. IHS officials at the Washington level seemed very skeptical of its usefulness.

C. IHS Need To Follow Regulations

The Director of IHS indicated in the initial interview with the committee staff that he was displeased with efforts of the committee to review the activities of IHS. His contention was that IHS personnel were "can do" people who use "innovative techniques" to accomplish the work of IHS. He believed that inquiries by the Congress tend to stifle the initiative of IHS employees and that this initiative was necessary to successfully conduct the IHS program. His basic thesis was that if IHS has to live within all the rules of the Government, that is, "follow the book, line for line," then it would limit their ability to perform and may even cause some to leave the service.

This inquiry did reveal many instances where IHS was not following regulations and directives. However, it failed to reveal any ex-

amples where the conduct of IHS programs was improved because of these actions. In each case, properly following the regulations and rules would have been the most appropriate expenditure of Federal funds and would have accomplished the same results. There does not appear to be any evidence that IHS is a special organization which can operate better if not subject to congressional oversight or to the regulations.

II. INFORMATION ON SPECIFIC INCIDENTS

The primary focus of this inquiry is to provide information concerning the specific incidents identified in the December 21, 1979, committee hearing in Billings. The findings of the staff are presented to clarify the circumstances surrounding those incidents and to point out any violations to proper procedures, imprudent acts, and ineffective or inefficient use of Federal funds.

A. Private Pilot Lessons

The IHS Billings area director took private pilot lessons paid from appropriated funds during the period from June 25, 1975, to June 9, 1978.

1. CHRONOLOGY OF EVENTS

A requisition, dated June 24, 1975, requested the private pilot lessons. A purchase order, also dated June 24, 1975, ordered the lessons to be provided by Gillis Aviation of Billings for an estimated cost of $1,500. Invoices show that the lessons began on June 27, 1975.

On December 9, 1975, Mr. Henry Graham, a contract administrator for the IHS in Billings, wrote a memorandum to the area director requesting that the purchase order be canceled and that payments be stopped. Mr. Graham wrote to the General Accounting Office (GAO) in Denver on March 2, 1976, informing them of the matter and asked them to look into it. GAO turned the information over to the then Department of Health, Education, and Welfare (DHEW) Regional Audit Agency in Denver. The DHEW Regional Audit Agency requested Billings area IHS to justify the purchase. The Billings area IHS prepared a memorandum dated April 8, 1976, in which they wrote a justification for the procurement. They followed this with another memorandum dated May 10, 1976, which transmitted to DHEW Regional Audit a copy of a letter confirming the verbal authorization of the private pilot training for the area director signed by the Director of IHS and dated May 5, 1976. On July 9, 1976, the DHEW Regional Audit Director wrote to Mr. Graham informing him that the documents provided by Billings area IHS "* * * justified the need for the training and show that the $1,500 expenditure was proper." The training continued through July of 1978, including instrument training through a purchase order dated November 4, 1976, in the amount of $1,830, which began in November 1976. Total obligation for pilot lessons was $3,330. Reports to the DHHS Office of Investigation from IHS indicate only $2,298.80 was expended.

2. ANALYSES OF ALTERNATIVES

The justification developed by Billings area IHS for using Federal funds to pay for the private pilot training included an analysis of costs

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to travel from Billings to six locations within the IHS Billings area by renting an airplane and driving an automobile. The six locations were Browning, Rocky Boy's, Fort Belknap, Fort Peck, Fort Washakie and St. Ignatius. The analysis included not only the transportation costs of traveling to a location but also an estimate of per diem costs and the value of production time lost by the individual (area director) traveling. Using these factors the average cost of a trip when an airplane is rented and flown by the traveler is $123 while the average cost per trip when using an automobile is $372. This analysis would indicate an average savings per trip of about $250. Only 13 trips would be needed to recover the obligation of $3,330 for training to make the air rental alternative economically justifiable. Only 10 trips are required if the expenditure figure of $2,298 is used.

ASSUMPTIONS USED IN DEVELOPING COST ANALYSIS FOR JUSTIFICATION OF PRIVATE PILOT TRAINING

[In hours]

Assumption	Air rental	Automobile
Average length of stay at the location	7	11
Average hours of employee off-duty time used for traveling	3	0

In order to make the two analyses comparable, the committee staff prepared a new table for the automobile alternative which makes the same assumptions for it as those used in the justification for the air rental alternative. This new table keeps the same items and costs but changes the per diem time and production time lost to coincide with the assumption used for the air rental.

ANALYSIS FOR AUTOMOBILE ALTERNATIVE

[Using same assumptions as those used for air rental]

Location	Mileage		Per diem		Travel costs	Production		Total costs
	Miles	at $0.12	Days	at $33		Hours	at $17.06	
Browning	702	91	1¾	58	149	8	136	285
Rocky Boy's	580	70	1¾	58	128	8	136	264
Fort Belknap	408	49	1¾	49	98	8	136	234
Fort Peck	568	68	1¾	58	126	8	136	262
Fort Washakie	578	70	1¾	58	128	8	136	264
St. Ignatius	772	93	1¾	58	151	8	136	287

This new analysis for the automobile alternative, using assumptions comparable to those used for the air rental, comes out with an average cost per trip of $266. This reduces the average savings per trip to $143 for the air rental alternative. Considering this new average savings per trip it would take 22 trips for the area director, by air rental, to economically justify the $3,330 obligated for the private pilot training. Only 16 trips are required if the expended figure of $2.298 is used.

The justification did not include an analysis of a possible third alternative, which is to fly commercial airlines from Billings to the closest commercial airport and then drive or be picked up by personnel from the service unit. The following table develops cost estimates for this alternative using assumptions comparable to those used for the air rental alternative.

ANALYSIS FOR COMMERCIAL AIRLINES ALTERNATIVE

Location	Air fare	Auto expense		Per diem		Travel cost	Production loss		Total
		Miles	At $0.12	Days	At $33		Hours	At $17.06	
Browning, commercial airline to Great Falls, then GSA car	94	252	30	1½	50	174	1	17	191
Rocky Boy's commercial airline to Great Falls, then GSA car	94	210	25	1½	50	169	1	17	186
Fort Belknap, commercial airline to Havre, car by service unit	88	188	23	1¾	58	169	0	17	169
Fort Peck, commercial airline to Wolf Point, car by service unit	92	90	11	1¾	58	161	3	51	212
Fort Washakie, commercial airline to Riverton, car rental	78	50	21	¼	8	107	0	----------	107
St. Ignatius, commercial airline to Missoula, car rental	84	84	25	1½	50	159	2	34	193

The commercial air alternative reduces the average cost per trip to $176 and the average saving for the air rental down to $53 per trip. Using this alternative it would take 63 trips by the area director to effect a savings equal to the $3,330 obligated for the private pilot training. Only 45 trips are required if the expended figure of $2,298 is used.

The commercial air alternative is the most common method used by most employees of both the IHS and the Bureau of Indian Affairs (BIA) in the Billings area. This alternative was never analyzed, however, in the justification for the private pilot training.

The DHEW regional audit review did not consider other alternatives either. In fact, the audit review accepted all of the justifications from the Billings area IHS without question, including the assumptions used in developing the air rental and automobile analysis. Their major concern was whether or not the expenditure had been approved by the IHS director and not if it was an economically justifiable expenditure or improvement on the effectiveness of the Indian health program.

3. AIR RENTAL USE

It is interesting to review the actual use made of air rental by the area director. The first part of the instruction was completed, apparently, in July 1976. This did not include the instrument training but it was apparently sufficient to permit the area director to fly a rented aircraft on trips. There were six such trips in the 2 months remaining in fiscal year 1976—which ended in September of 1976. During the next fiscal year—fiscal year 1977—there were 16 air rentals by the area director. In fiscal year 1978 the air rentals dropped to three, and in fiscal year 1979 there were two. The instrument training was apparently completed in June of 1978. After that time through fiscal year 1979, there were a total of four air rental trips taken by the area director.

Out of the 27 air rental trips made by the area director, 23 were made while he was still receiving instructions. None were made in the last 11 months of fiscal year 1979. It is evident that the need or enthusiasm for air rental trips reduced dramatically when the private pilot training was completed.

At least six of the air rental trips were made to the nearby Crow and Northern Cheyenne reservations. Trips to these locations were not even analyzed in the justification for the private pilot training. Use of GSA cars for these short trips would seem obvious.

Contrary to his sworn testimony, air charters, where both the plane and the pilot are hired, have continued to be used by the area director during the period when air rentals were being used. In fiscal year 1976 the area director used nine air charters, nine also in fiscal year 1977, eight in fiscal year 1978 and then a sudden drop to only one in fiscal year 1979. Trips within the area by commercial air increased in fiscal year 1979, however, to four to make up some of the difference.

4. ANALYSIS OF SAVINGS CLAIMED

At the December 1979 hearing the area director testified that the savings from flying himself had been approximately $3,000 to date. As the committee staff reviewed the figures furnished by the area director to substantiate this testimony, there were questions as to how these computations had been made.

5. PROCEDURAL ERRORS

There were some procedural errors noted in the procurement of the private pilot training. Small purchases for amounts of more than $500 and less than $5,000, which is the range that covers this procurement, are to be acquired competitively. The usual procedure is to solicit three quotes by telephone. If this competitive requirement is forgone, there is to be a justification for the sole source procurement. Neither of these requirements appears to have been met in this procurement action.

Another procedural error was noted in the timing of the purchase order for the instrument training. The purchase orders for the instrument training and the instrument "package" were dated November 5, 1976, and January 26, 1977, respectively. The records show that the instrument "package" was obtained October 7, 1976, and that the subsequent order was a confirmation order. Purchase and delivery prior to a purchase order should be done only in cases of emergency. Since the instrument training purchase order was for $1,830, there should also have been at least telephone quotes for bids or a justification for a sole source procurement.

B. Video Equipment Purchases

The Billings area IHS has been acquiring video equipment at least since 1974. Much of the equipment is at various locations within the area and most service units now have video monitors and cassette recorders. The area office has two black and white cameras, obtaining the first one in 1974. This equipment was obtained to maintain the capability of providing continuing education to IHS staff and Indian health boards.

1. RECENT VIDEO EQUIPMENT ACQUISITION

In the spring of 1979, some IHS Billings area office staff contemplated acquiring more sophisticated video equipment. This equipment would produce tapes in color and would facilitate editing and produc-

tion of a better quality of product. They stated that their motivation was to be able to reduce travel costs by producing video tapes for education of tribes and field personnel. Maintaining Joint Commission on Accreditation of Hospitals (JCAH) accreditation of IHS hospitals was also a major consideration. Apparently a limited cost analysis was made but not documented. Other alternatives, such as slide presentations, were also considered.

The area office staff stated that the real turning point which sold the idea to purchase the new video equipment was the need to develop a recruitment film for medical personnel to fit the particular needs of the Billings area. They selected Sony equipment, which was on GSA schedule and could be obtained locally, because the local distributor agreed to provide training on use of the equipment and to let them hook it up and try it before the actual purchase.

The major portion of the new video equipment was picked up by IHS personnel on June 8, 1979. The voucher from the vendor confirms that date. Requisitions for this portion of the equipment are dated June 20, 1979. The purchase order is dated June 25, 1979. It is noted on the purchase order that it is a confirmation order, which means it was completed after the purchase had been transacted. The total amount for video equipment on that purchase order is $17,707.11. There are 17 items of equipment on that purchase order. The first 11 items listed are on a GSA schedule as items contracted by GSA for purchase. The last six items are designated as "open market" on the purchase order. The total amount for the 11 GSA schedule items is $15,991.77. The total amount for the six open market items is $1,715.34. There was no justification for the open market items to be purchased without competitive bids.

Other items of new video equipment acquired throughout the summer of 1979 included lighting equipment, two TV monitors/receivers and a carrying case. The total amount for these items was $2,756.75. The orders for the lighting equipment and carrying case, which totaled $609.95, were open market and confirmation orders. These two TV monitors are in addition to two others included in the major order of video equipment so that a total of four TV monitors—receivers capable of receiving both tapes and commercial TV—were purchased in the summer of 1979.

Additional related items purchased during this period included $428.92 for tapes which were confirmation orders and an open market purchase of a replacement tube for the color camera for $1,120.

The total funds spent for video equipment and supplies during the summer of 1979 comes to at least $22,012.78. Of this amount, $18,745.98 was confirmation orders and $3,445.29 was purchased without competitive bids and with no sole source justifications as required in procurement procedures.

It should be recognized that the more than $22,000 of video equipment purchased in the summer of 1979 was in addition to existing stocks of video equipment in the Billings area office. With the addition of this new equipment, there are now in the area office: three video cameras (one color and two black/white), six TV monitors, and eight video cassette recorders.

It was also noted in a spot review of the file on small purchases that on September 5, 1979, another video color camera was ordered for the

hospital in Browning. This established a precedent for having video cameras at field locations and conflicts with the statements of the area director's staff that this capability would be maintained in the area office only.

2. USE OF VIDEO EQUIPMENT

Two specific examples of the use being made of the new video equipment were cited by the Billings area IHS staff. The equipment was used to produce a recruitment film for medical personnel. This is the film which involved a contract with Red Eagle Productions to assist in the production. The film is about 25 minutes in length and appears to be of professional quality.

The other use being made of this equipment is by the mental health program. They are taping therapy sessions by recognized specialists with mental health patients. These tapes are used to train other professionals and tribal health representatives. They have produced about 30 hours of these types of tapes in addition to the recruitment tape.

3. FUNDS USED TO PURCHASE VIDEO EQUIPMENT

There is a notation on the purchase order for the major portion of the video equipment purchases that the charges for funds to pay for this purchase were made against the three IHS hospitals located in the area. These accounts represent medicare fund collections. As patients who are eligible for medicare are treated at IHS hospitals, funds for this treatment are identified and transferred to IHS on a national basis. Allocations of these funds are made back to IHS areas based upon approved plans for obligations. The plan submitted by the Billings area for the use of these collected funds did *not include any proposal for purchase of video equipment.* A subsequent report showing use of *collected funds* included several obligations in addition to the video equipment which were not on the approved plan. In fact, in 1979, 65 percent of the obligations of the medicare/medicaid funds were not in accordance with the approved plan for the use of these funds.

During fiscal year 1979, medicare/medicaid funds were identified as to the source of their collection or where the patients were treated. Obligations also identified the source of collection, no matter what the purpose of the obligations or the location for which it was being obligated. This year IHS is not identifying the location of the source of the funds at the time of obligation.

The main point is that no regularly appropriated funds for IHS were used for these purchases. The accounting information which identified the obligations to the three hospitals merely indicates the location where the transferred funds were earned. If the transaction were recorded in fiscal year 1980, there would have been no notation identifying the hospitals.

4. PROCEDURAL ERRORS

There were procedural errors noted in the review of the video equipment purchases. None of the open market purchases were bid competitively. While the cost of several individual items was less than $500, collectively they amounted to at least $3,445.29 and at

least three single items cost $500 or more each. There should have either been a justification for sole source purchasing of these items or there should have been bids solicited.

Most of the video equipment, at least $17,745.98 of it, was purchased as if it were an emergency situation which required use of the equipment before the proper procurement procedures could be completed. No one has indicated that this was actually the case. Purchase and delivery of the video equipment could have been accomplished in the normal manner without undue hardship and confirmation orders would not have been necessary. Purchasing the equipment through verbal orders and picking up the equipment and then using a confirmation order was probably the reason why bids were not solicited for the open market items.

C. Services Acquired From Red Eagle Productions

Red Eagle Productions is a small local film production company. One of the principals in the company is a local television news reporter in Billings who is Indian. The IHS Billings area entered into agreement with Red Eagle Productions to provide assistance in the writing, filming, editing and production of a video tape which would be used in the recruitment of medical personnel for the Billings area.

1. PROCUREMENT ACTIONS

Red Eagle Productions wrote a proposal on July 19, 1979, to complete the work. The price of that proposal was $7,500. Apparently, the work started in August of 1979 based upon a letter dated August 22, 1979, from an IHS official to Red Eagle Productions which set the amount at $6,800.

A letter dated September 20, 1979, from Red Eagle Productions requested "* * * reimbursement for additional costs and expenses" of $3,018 for a total of $9,818. The original proposal had been subsequently reduced by $700 for costs of tapes, as reflected in the August 22, 1979, letter. Subtracting the $700 and adding the $3,018 made the total in this letter come to $9,818.

A requisition for the services of Red Eagle Productions to do the recruitment film was dated September 26, 1979. A purchase order for these services was dated September 27, 1979, and called for a completion date of September 27, 1979, for a total of $9,800. The request for payment was signed by a principal of Red Eagle Productions on September 27, 1979, and requested $9,800. The services were certified as received by an IHS Billings area office official on October 3, 1979.

A review of the September 20, 1979, letter revealed an error in the extension of the multiplication of the rate by the units of work. An item of $1,625 should have correctly shown $1,500. In a letter to IHS dated February 19, 1980, Red Eagle Productions acknowledged the error and suggested that it could either be refunded or applied to future work. The IHS requested that the $125 be refunded.

2. ERRORS IN THE PROCUREMENT PROCEDURES

Chapter 1–121 of DHEW General Administration Manual and subpart 3–4.54 of the DHEW Procurement Manual sets forth procedures for prior clearance and methods of contracting for all audiovisual

materials funded by contract and intended for use with the public. Video tape productions are specifically identified as an audiovisual material. In general, these manuals require:

- That the contract proposal be reviewed and approval must be granted at each organizational level of the Department up through the Assistant Secretary for Public Affairs (ASPA–OS),
- That all procurements shall be conducted on a competitive basis whenever possible,
- That contracts be a fixed-price,
- That the ASPA–OS concur in requests for sole source procurement justification.

The Billings area IHS agrees that they ignored these departmental manual requirements in processing the procurement of services from Red Eagle Productions.

All of the scope of work, negotiations, agreements and the work itself were completed before a requisition or purchase order was initiated. The purchase order was merely a confirmation order for agreements and work which had already been completed. It was handled like an emergency but those involved agree that it was not an emergency situation.

D. Contracted Anesthesia Services

The question arose at the December hearing as to the circumstances surrounding IHS contracting for anesthesia services from someone living in Minnesota when the services were being performed in Montana.

1. HISTORY OF SERVICES

The IHS has contracted with Anesthetists, Inc., of Minneapolis, Minn., for anesthesia services to be provided at IHS hospitals for periods of several days running. The service is performed by Ralph Kiffmeyer.

Most of the surgery has been performed in each of these periods by Dr. John O'Connor. Dr. O'Connor and Mr. Kiffmeyer have worked together for some time. Their work as a team for the IHS dates back to about 1974. At that time, Mr. Kiffmeyer worked out of Whitefish, Mont. Most of their work together for the IHS has apparently been performed at the IHS hospital in Browning.

Mr. Kiffmeyer moved to Minnesota in 1977. Even after this move he has continued to perform anesthesia services under contract for IHS in Billings. There was a lapse from August 1976 to July 1977, when he did not perform work for Billings area IHS. During this period, contacts were made to try to secure the necessary services from others. Mainly because others were willing to supply only a single day's service at a time, IHS has continued to use Mr. Kiffmeyer.

Since July of 1977, Mr. Kiffmeyer has provided services on at least six different occasions for periods of 1 week or longer on each occasion.

2. SELECTION OF ANESTHESIA SERVICES

Mr. Kiffmeyer was originally selected to perform anesthesia services for IHS because of the favorable fees he charged. In 1973 he had the

lowest price quotation of the individuals submitting quotations for the IHS communication disorders program. Since that time his work has been judged so superior that it has been the request of Dr. O'Connor that Mr. Kiffmeyer perform the anesthesia services when he is operating. An IHS service unit director stated in a memorandum: "It should be noted that the over-riding concern is one of quality of service and safety to the patients. Mr. Kiffmeyer's service has been requested by attending surgeons because of his excellent record of diligence, care and safety."

Also considered in the selection of Mr. Kiffmeyer has been his availability. Apparently he has been willing to work for periods of 1 week or more exclusively for the IHS. This has fit well into the system which has been developed to schedule numerous nonemergency surgery cases into blocks of time when they can be performed by a surgical team in an IHS hopsital. The improved efficiency by both the surgery team and the hospital has caused this system to be very cost effective for IHS. The Billings area IHS staff has indicated that other anesthesiologists and nurse anesthetists have not been willing to commit their services in blocks of time necessary to allow them to work within this system.

3. SCHEDULE OF FEES

It appears that the schedule of fees charged by Mr. Kiffmeyer is in line with others performing this type of service, even considering the travel and per diem costs which must be paid to him because he lives away from the area. His fees may be scheduled either by the case or by the hour. IHS has elected to pay by the hour. The charges are $72 for the first hour and $12 for each quarter hour thereafter. There has been no increase in fees since 1977. Others contracted by IHS or who have quoted fees to IHS for performing similar services have been slightly higher than Mr. Kiffmeyer.

Travel and per diem charges by Mr. Kiffmeyer have been actual cost of commercial transportation of 18 cents per mile plus $40 per day for meals and lodging. These charges are reasonable and in line with Federal allowances.

E. Northern Montana Hospital, Havre, Mont.

There were allegations of excessive charges by Northern Montana Hospital (NMH) for services provided to Indian patients and paid under contractual arrangements by IHS. The committee hearings in December 1979, probed these allegations. Additional inquiry was needed to resolve the matter.

1. INITIAL CONSTRUCTION AND APPLICATION FOR GRANT

In 1969, the Havre community was served by two hospitals—Kennedy Deaconess and Sacred Heart. At that time, plans were developed to replace both of these outdated hopsitals with one modern hospital. On October 9, 1970, the Board of Trustees of NMH made application for use of U.S. public health funds under provisions of Public Law 85–151. By resolution 136–70 at the regular meeting of October 5, 1970, the Fort Belknap Community Council supported this request for partial funding. Previously, on December 12, 1968, by resolution 96–68,

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the Chippewa Cree Tribe had supported this request. At that time the estimated cost was $5 million, to be funded as follows:

Community donations	$500,000
Hill-Burton funds	1,920,000
Mental health	350,000
U.S.P.H.S. (Public Law 85–151)	500,000
Mortgage	1,730,000

The trustees had purchased 28.3 acres of land near Northern Montana College. No use was to be made of the existing facilities.

By letter dated January 10, 1974, the Director of IHS notified the Board of Trustees of NMH that under authority of 42 U.S.C.A. 2005 (Public Law 85–151) financial assistance not to exceed $530,000 had been approved in order to provide that portion of the cost attributable to Indian health needs. The total construction project was to provide a new 119-bed general hospital facility of which 12 were designated for Indians.

Through acceptance of this grant, the NMH Trustees agreed to: (1) contract annually for a period of at least 20 years to provide hospital or medical care to Indians in the facility; (2) operate the facility without discrimination to Indians; (3) charge inpatient facility rates not in excess of the average annual per diem cost of operation and maintenance for the entire facility computed in accordance with joint form 1 (joint form 1, section C, indicates those expense items which are deducted from "total expenses" before computation of "average annual per diem rate". The most significant of these exclusions is "interest expense on capital indebtedness".); (4) charge outpatient rates not in excess of the actual cost of providing such services; (5) make available at all times 12 beds for Indian patients; (6) permit Indian Health Service physicians who are serving the Rocky Boys' Reservation and the Fort Belknap Tribe to admit Indian patients to the hospital to provide professional care while hospitalized; and (7) guarantee and appoint Indian representation on the governing body of the hospital with all the rights and privileges to vote, hold office and serve on committees. Currently, the two Indian representatives are John Mitchell, Rocky Boys' Reservation, and Lyman Young, Fort Belknap Reservation.

2. REIMBURSEMENT FOR SERVICES

The original contract for services was effective July 1, 1975, through June 1976 and was extended to September 30, 1976. For the initial period, an inpatient rate of $105.24 per day and an outpatient rate of $58.20 per visit was established based upon budget estimates since there was no prior accounting period at the new hospital. The hospital subsequently prepared joint form 1 for the period July 1, 1975, through March 31, 1976, showing costs of $125.48 per inpatient day and $38.96 per outpatient visit. These rates were also used for the contract extension periods. By letter dated December 13, 1976, NMH indicated an underpayment of approximately $19,000 for the period July 1, 1975, to June 30, 1976, when actual costs were compared with budget estimates. They requested that, due to increasing inflation, payments be made based upon current costs rather than historical (past years) costs and adjusted at the close of each annual contract period.

This question was submitted to the Office of the General Counsel, DHEW. By memorandum dated July 26, 1977, the Assistant PHS General Counsel stated in part: "In our view, the Public Law 85–151 grant conditions do not preclude retrospective application of joint form 1 to determine inpatient costs * * *." In regard to reimbursement for outpatient cost, it was stated: "Furthermore, in our view the IHS may pay the hospital for outpatient services on the basis of actual current year costs." A restriction imposed by the PHS Assistant General Counsel required that funds for payment of adjusted rates must be available within the appropriation for the year in which the services were rendered.

As a result of this legal opinion, adjustments were made to billings submitted by the hospital based on joint form 1 certified figures for July 1, 1975 through September 30, 1976 (15 months) at $31,034.96 and October 1, 1976 through September 30, 1977 at $76,067.03. These two adjustments totaling $107,101.99 are presumed to relate to the estimated payment of $98,000 alluded to on page 5 of the Dceember 1979 hearing:

In the first instance, the total expenses for the hospital were $4,994,-488 less $425,487 deducted per provision of Public Law 85–151 for a net allowable expense of $4,569,001. Of this amount $4,098,884 was for inpatient services and $470,117 was for outpatient services. Total inpatient days were 30,377 for the period for an average per diem reimbursable cost of $134.94. Total number of outpatient services was 19,035 for the period or an average of $24.70.

Inpatient Indian days, 1971 at $134.94	$265, 966
Outpatient Indian days, 490 at $24.70	12, 103
Total	278, 069
Less amount paid on estimated rates	247, 034
Total adjustment	31, 035

For the period October 1, 1976, to September 30, 1977, the adjustment was computed as follows:

Total expenses	$4, 500, 443
Less nonallowable expenses	$365, 020
Net allowable expenses	$4, 135, 423
Inpatient cost	$3, 605, 400
Outpatient cost	$530, 023
Total	$4, 135, 423
Total inpatient days	21, 362
Average per diem reimbursable cost	$168. 78
Total outpatient services	15, 126
Average per diem reimbursable cost	$35. 04
Inpatient Indian days, 1,911 at $168.78	$322, 539
Outpatient Indian days, 588 at $35.04	$20, 603
Total	$343, 142
Less amount paid on estimated rates	$267, 075
Total adjustment	$76, 067

For the period October 1, 1977, to September 30, 1978 (fiscal year 1978), a new contract was written which provided for the payment of specific amounts of $185.66 and $38.54, both subject to interim adjustments on March 31, 1978, and June 30, 1978, upon submission by the hospital of cost figures for the period to date of the contract year. Additionally, a final adjustment to the payment was to be made upon submission of a properly prepared joint form 1 for the period October 1, 1977, to September 30, 1978. Payments were calculated as follows on joint form 1:

Total hospital expenses	$4, 969, 787
Less: Nonallowable expenses	$365, 385
Net allowable expenses	$4, 604, 402
Inpatient cost	$4, 017, 444
Outpatient cost	$586, 958
	$4, 604, 402
Total inpatient days	21, 947
Average per diem reimbursable cost	$183. 05
Total outpatient services	14, 071
Average per diem reimbursable cost	$41. 71
Inpatient Indian days, 1957 at $183.05	$358, 220
Outpatient Indian days, 637 at $41.71	$26, 569
Total	$384, 798

As a result of this contract, the hospital was reimbursed on a more timely basis through the use of interim payments more consistent with current costs rather than historical (past year) costs. Accordingly, a final adjustment of only $7,184.31 was required.

For the period October 1, 1978, to September 30, 1979 (fiscal year 1979), the same type contract calling for interim payments was used. Payments were calculated as follows on joint form 1 for the period of the contract:

Total hospital expenses	$5, 514, 910
Less: nonallowable expenses	$359, 364
Net allowable expenses	$5, 155, 546
Inpatient cost	$4, 538, 909
Outpatient cost	$616, 637
Total	$5, 155, 546
Total inpatient days	22, 932
Average per diem reimbursable cost	$197. 93
Total outpatient services	13, 472
Average per diem reimbursable cost	$45. 77
Inpatient Indian days, 2, 032 at $197. 93	$402, 194
Outpatient Indian days, 549 at $45. 77	25, 127
Total	$427, 321

The final adjustment for this contract period resulted in a small refund to the Government in the amount of $132.87.

Under the contracts discussed above, the total hospital expenses, which is the keystone of these calculations, are certified to be correct

by an officer of the Hospital and by a Certified Public Accountant based upon his independent audit of the hospital accounting records.

Based on the contracts reviewed, the ruling of the PHS Assistant General Counsel, and the facts above, it appears that the adjustments and retrospective payments made to NMH were legal, correct, and fair to both the contractor and the government in light of increasing inflationary costs.

3. COST COMPARISONS: NMH AND OTHER AREA HOSPITALS

Throughout the Billings area, there are three methods used to establish rates to be paid for hospital services—

(1) The Montana Rate Review System is used for most hospitals which determine a charge rate for each type of service to be furnished by the hospital, that is, room and board, laboratory fees, X-ray service, nursing service, operating room, et cetera.

(2) Where a hospital is not a member of the Montana Rate Review System, IHS negotiates a rate for room and board and other costs which does not exceed the charge to the general public.

(3) For hospitals receiving aid for construction under the provisions of Public Law 85–151, contracts are developed to include the inpatient facility rate not in excess of the average annual per diem cost of operation and maintenance for the entire facility computed in accordance with the provisions of joint form 1. Total expenses are reduced by certain costs, the most significant of which is interest expenses on capital indebtedness. Outpatient rates cannot be in excess of the actual costs of providing such service. These rates cover total services for the patient.

NMH is the only hospital in the Billings area currently providing services under the type of contract described in the third method listed above.

A proper comparison of the average cost per hospital day which includes cost *of all hospital services* of Montana hospitals of 100 or more beds indicates that NMH's average cost of $197.93 was much less than the other hospitals in fiscal year 1979.

Hospital costs in fiscal year 1979

Hospital:	*Average Cost Per Hospital Day*
Deaconess, Billings	$253.19
St. Vincents, Billings	238.94
Columbus, Great Falls	256.57
Deaconess, Great Falls	224.09
St. Peters, Helena	283.78
Community, Missoula	247.22
St. Patricks, Missoula	239.83
Flathead, Kalispell	270.78
Deaconess, Bozeman	279.78
Holy Rosary, Miles City	285.54

A more extensive list of 41 various size hospitals, including the 10 above, is shown on pages 166 and 167 of the committee hearings of December 21, 1979, and indicates 16 hospitals had an average daily cost

less than the NMH figure of $197.93 for fiscal year 1979. The average cost of these 41 hospitals, including NMH, was computed to be $207.07.

The testimony of the voucher examiner (now retired) at the December 21, 1979, hearing made the comparisons between NMH rates and other hospital rates. This testimony indicated that he had complete lack of understanding of the provisions of the NMH contract under Public Law 85–151.

The Contract Health Services officer attempted to clarify the special provisions of the NMH contract later in the testimony which was, of course, quite contrary to the testimony given earlier by the voucher examiner.

F. Assistant Area Director of Administrative Support Programs—5-Year Undocumented Detail

1. DESCRIPTION OF POSITION

This position is included in the GS–670, Hospital Administrative Series as "Hospital Administration Specialist" with a grade range of GS 13–15. It is carried under the functional title "Asst Area Director for Administrative Support Programs" as a GS–14, salary range $34,713 to $45,126. The duties listed in the job announcement are:

> As an Assistant Area Director, directs programs in administrative services, contract health services, financial management services, and personnel management services. Assures that these programs provide their services to the overall area in such a manner that the accomplishment of the area's mission and goal is facilitated. Overall area includes three hospitals, six major health clinics, and various satellite clinics. Combines with other Assistant Area Directors in developing and recommending area objectives and policies.

Individuals holding this position or aspiring to the position should have:

> Demonstrated experience and ability to work and deal with Indian people, and
>
> Knowledge and understanding of the Indian Health Service and procedures for formulating and presenting administrative program plans and policies for an Indian Health function, and
>
> Experience or training which may have been gained in a program working with minority groups which will clearly show ability to acquire a knowledge and understanding of the policies of the Indian Health Service.

2. LAST OFFICIAL INCUMBENT

Prior to October 19, 1974, this position was held by Mr. Stanley J. Rogers, with title of Deputy Director, in a full-time capacity. On that date, Mr. Rogers suffered a minor heart attack and was hospitalized. At that time, of course, it was not known whether he would be able to return to work. On March 28, 1975,Mr. Rogers filed a work-

man's compensation claim. On September 12, 1975, Mr. Rogers requested placement in a leave-without-pay status pending his recovery and possible return to work. At his request two extensions of the LWOP status were approved by the area director—to October 1977 and finally to March 1978. In November 1978, Mr. Rogers advised that he would not be able to return to work and his request for disability retirement was approved in February 1979. (Preceding chronology taken from testimony of area director, p. 16, December 21, 1979, hearing.) The area director further indicated that until his retirement in 1979, Mr. Rogers legally encumbered the position since he was entitled to return to the position, health permitting. *Contrary to this, the position was advertised in November 1977.*

3. DESIGNATION OF AN ACTING ASSISTANT AREA DIRECTOR, ADMINISTRATIVE SUPPORT PROGRAMS

On November 14, 1974, Billings Area Indian Health Service Bulletin No. 75.3 was issued to all service unit directors and all area program managers which read in part: "Due to the illness of Mr. S. J. Rogers, deputy director, Billings Area Indian Health Service, I hereby designate Mr. Bill R. Price, acting assistant area director, administrative support programs, to serve until Mr. Rogers returns to his office." It should be noted that the functional title of this position was changed at this point in time. As indicated by the personnel officer, Billings area, this is *not* an appropriate method since *it did not follow personnel regulations*. A detail of 30 days or less does not have to be documented, although a memo or letter is recommended. For details up to 120 days, area officials are authorized to make the detail with proper personnel action. Details beyond 120 days must be forwarded through HEW (now HHS) for approval of the (then Civil Service Commission) Office of Personnel Management. None of these requirements were met in this case. At the time of this current inquiry, the Billings Area Personnel Officer submitted a list of eight positions now filled by individuals in an "acting" capacity. All are documented by proper personnel actions with the exception of two: (1) the assistant area director, administrative support programs, the position in question; and (2) the area nurse consultant, commissioned corps officer—no personnel action is required by commissioned corps regulations. Mr. Price's official position title from August 24, 1969, to September 25, 1977, was general services officer, GS–301–13. On September 25, 1977, the position title was changed to administrative services officer, same grade. On January 28, 1979, the position was upgraded to GS–301–14 following a review by the Personnel Office, HSA. This is the position and grade now held *officially* by William R. Price. Approximately 1 year (December 12, 1975) subsequent to his designation as acting assistant area director, administrative support programs, he was awarded $300 for a special service award for performance. The justification for the award included the fact that he had acted in a variety of capacities, that is, deputy director, executive officer, and assistant area director, administrative support programs, during the period November 1974 to present (December 1975).

4. ANNOUNCEMENT OF POSITION VACANCY

On February 15, 1977, an announcement was issued soliciting applications for the position of supervisory hospital administration specialist GS–670–14, functional title assistant area director, administrative support programs. On April 28, 1977, the area director submitted a request for qualification and rating determination to the IHS Director. This was done because he considered this to be a key position and to avoid controversy he desired the ratings and rankings to be accomplished at a higher organizational level. As requested, a board was convened by the HSA personnel officer. On May 25, 1977, the HSA personnel officer submitted to the Billings Area Director through the IHS Director a selection roster containing the names of seven candidates deemed to be "highly qualified," including four having Indian preference eligibility, as follows:

Name	*Present position, grade, and location*
Conly, Julius	Service unit director, GS–13, Portland.
Estes, Frank [1]	Service unit director, GS–13, Portland.
Fleming, John F	Service unit director, GS–13, Billings.
Martin, Donald [1]	Service unit director, GS–13, Billings.
Nelson, Clay [1]	Program analyst, GS–13, San Francisco.
Price, Bill R	Acting assistant area director, GS–13, Billings.
Taylor, Robert [1]	Service unit director, GS–13, Portland.

[1] Indian preference eligibility.

A brief outline on the four Indian candidates follows:

Estes, Frank—date of birth: March 21, 1933; current position: service unit director, GS–13 since January 4, 1976; education: B.S. 1959, South Dakota State University, Brookings; M.S. 1961, South Dakota State University, Brookings; M.P.H. 1964, University of California, Berkeley.

Martin, Donald—date of birth: March 23, 1937; current position: Service unit director, GS–13 since September 1972; education: 1961, Montana State University, Bozeman.

Nelson, Clay—date of birth: January 12, 1931; current position: Program analyst, planning and evaluation, HEW, San Francisco, GS–13; education: B.A. 1956, Westman College, Lemars, Idaho; M. Ed. 1960, South Dakota State University, Brookings.

Taylor, Robert—date of birth: September 17, 1938; current position: Service unit director, GS–13 since April 4, 1975; education: Graduate 1958, Fort Yates High School, Fort Yates, N. Dak.

In testimony before the committee in Billings on December 21, 1979, the area director stated in regard to the Indian applicants:

They qualified based on civil service qualification. I, in my experience in IHS, had either had the opportunity to have all three of those gentlemen working for me or been in the position of knowing very intimately their capabilities. The position of assistant director for administration is a very important one in regard to the management of resources, particularly budgetary resources and these types of things * * * I did not feel, based on past experience, that either of the three could handle the position * * * I elected not to fill the position.

Personnel officials in HSA have indicated that the area director was not required to make a selection from the panel. IHS Circular 79–7, 6C states: "Selecting officials may decide not to make a selection from the roster of candidates presented for consideration. A decision, for example, may be made * * * (3) to readvertise the position in an effort to identify additional candidates * * * When a position is readvertised, all candidates who applied earlier for the position are notified of such readvertisement and that they are automatically considered under the new announcement."

5. CONCERN EXPRESSED BY CHARLES D. PLUMAGE, CHAIRMAN, FORT BELKNAP COMMUNITY COUNCIL

On November 30, 1979, Charles Plumage wrote to the Civil Service Commission (now OPM) in Denver, Colo., requesting an investigation of the personnel practices of the IHS Billings area and in particular the long-term designation of an Acting Assistant Area Director for Administrative Support Programs.

On April 2, 1980, the Director of the Rocky Mountain Region of the Office of Personnel Management (OPM) stated in part:

> We have completed an extensive review of personnel records and other information provided by the Billings Office (IHS). That review identified three instances where employees, including Mr. William Price and Mr. Antone O'Dea, were detailed beyond time limits. We have directed the agency to terminate the detail of Mr. Price immediately * * * We have also directed administrative action to assure that no future details will extend beyond applicable time limits.
>
> * * * * *
>
> The immediate impact of the above will be confined to Mr. Price since Mr. O'Dea and the other employee have since retired * * * Mr. Price will return to his official position as General Service Officer and the * * * Supervisory Hospital Administrator position he is now serving in on detail will be open for competition.
>
> * * * * *
>
> The organization has contacted us recently to obtain advice and technical assistance in filling the Supervisory Hospital Administrator position. We intend to provide whatever assistance we can to facilitate the recruitment and selection of a high-quality candidate in a timely manner.
>
> * * * * *
>
> (Signed) ROBERT J. DUNN, *Director.*

6. INVOLVEMENT OF OPM, DENVER REGION, AND THE HHS REGIONAL PERSONNEL OFFICE.

A letter from Robert Dunn, OPM regional director, dated March 28, 1980, to J. R. Smith, Billings area director, did indicate that the details of Messrs. Price, O'Dea, and Skrup were *improper* because:

(1) they were not documented after the first 30 days; (2) no prior Civil Service Commission or OPM approval was obtained to extend the details beyond 120 days; and (3) competitive promotion procedures which, at that time, were required for details to higher graded positions of more than 60 days were not followed. This letter directed the area director to *terminate Mr. Price's detail immediately* and to document the official personnel folders of all three employees or former employees in the manner prescribed by the agency to reflect the details. The letter raised concerns in OPM with respect to the use of details in the Billings area IHS. Mr. Dunn further indicated his willingness to provide assistance in alleviating the difficulties encountered by the Billings area in the recruitment of highly qualified candidates for key positions who are entitled to Indian preference.

On April 22, 1980, the area director requested official approval to continue Mr. Price's detail to the assistant area director, administrative support programs position which he had been directed to terminate immediately by OPM on March 28, 1980. *It should be noted that at no time has any personnel action been taken to legitimatize this detail.* In this letter, the area director indicated his confidence that the tribes of this area will support his action. This is certainly not true in the case of the chairman of the Fort Belknap community council, Mr. Charles Plumage, whose letter of April 24, 1980, to the area director is quoted in part as follows:

> I have been informed, verbally, per your instructions, by the acting service unit director Richard Salacinski of your intentions to leave Mr. William Price in his present "acting" capacity.
>
> * * * * *
>
> Your argument of not having anyone qualified to fill this particular position does not seem legitimate at this time.
>
> * * * * *
>
> And now after being told in writing by the Office of Personnel Management that certain irregularities were being practiced by you in regard to this assignment, you continue to ignore their directives.
>
> * * * * *
>
> Jim you were wrong on this particular detail when I brought it to your attention over 2 years ago. You were wrong when you finally forced me to write to Mr. Dunn on November 30, 1979. You are still wrong today. When is that going to sink in?
>
> * * * * *
>
> This particular "acting" detail now smacks of personal favoritism and bad faith on your part on behalf of Mr. William Price.
>
> * * * * *
>
> I feel that a letter such as this is most regrettable. However, you have left me no alternatives. You could have corrected the situation long ago.

The following letter of May 9, 1980, from the regional director, Office of Personnel Management, is an excellent summary of the se-

riousness of the personnel problems of the Billings area and the proposed remedies:

DEAR SENATOR MELCHER: This is to keep you informed of our efforts to resolve issues relating to the staffing of key positions in the Billings area of the Indian Health Service.

My letter of April 2 reported that we had directed the agency to terminate the detail of Mr. Price and take appropriate actions to assure that details will be properly controlled. Since that time, we have maintained continuing contact with both Indian Health Service management officials and Mr. Robert Thompson, Regional Personnel Officer for the Department of Health and Human Services, who, by virtue of a recent reorganization, has recently assumed responsibility for the personnel program at IHS, Billings. On May 8, Messrs. Sykes, and McLaren of your staff met separately with Mr. Thompson and me to discuss the current status of the situation.

As I indicated to your representatives, we see Mr. Price's case as being symptomatic of much more serious, general, and continuing problems that the organization is experiencing in filling key positions with highly qualified candidates who are also entitled to Indian preference. At this moment, the organization has four other key vacancies; Mr. Price has announced his intention to retire this August, which will create still another key vacancy in his position of record.

Mr. James Smith, Area Director, has requested an extension on our order to terminate Mr. Price's detail based on his belief that terminating the detail could seriously impair his organization's ability to provide critical services. I have granted this extension contingent upon:

1. The development of a comprehensive plan to systematically identify staffing needs for the total organization and specific plans to meet these needs on a continuing basis, and
2. The initiation of efforts to fill the position that Mr. Price occupies on a timely basis.

The Indian Health Service has already drafted an announcement for the GS–14 Health System Administrator position. We expect the announcement to be issued very soon. Our office and Mr. Thompson's office will provide IHS with whatever assistance we can in recruiting candidates. We have also received the comprehensive plan mentioned earlier and will monitor the agency's efforts to fully implement that plan on a monthly basis.

We have notified Mr. Smith that the requested extension has been granted. At the same time, we have alerted him that failure to make satisfactory progress toward either objective, i.e., filling this position on a permanent basis, and fully implementing the long-term staffing plan, will result in the immediate cancellation of our approval to keep Mr. Price in this job.

I want to emphasize that we remain deeply concerned about the regulatory violation that occurred in this particular case. However, we have an even greater concern that the entire recruiting and staffing process at this installation needs permanent improvement. The approach we have taken should not cause any delay in filling the job on a permanent basis. It will also minimize any potential disruption within the Billings organization. Most importantly, the long-term

solution that the agency proposes will significantly improve the effectiveness of the IHS organization.

We will monitor this situation on a continuing basis along with Mr. Thompson. We will keep you informed of progress and/or changes.

Sincerely yours,

ROBERT J. DUNN, *Director.*

The comprehensive plan or staffing study referred to follows:

STUDY SUMMARY

I. Purpose:
   A. Evaluate need for formal intern programs and senior level career programs.
   B. Evaluate need for special training programs.
II. Objective:
   A. Assure identification of fully qualified personnel.
   B. Advance application of Indian preference.
   C. Provide skills base for self determination.
III. Objective obtained by:
   A. Identification of occupational fields to be targeted for special staffing action.
   B. Identification of occupational fields to be targeted for special developmental/training action.
   C. Identification of needed resources.
   D. Propose identified alternatives to management.

STAFFING STUDY—BILLINGS INDIAN HEALTH AREA

Purpose.—This document proposes the conduct of a special study to assess and evaluate the need for: (1) Formal intern programs for entry level professional/career positions; (2) senior level career programs for critical mission oriented occupational fields; and (3) special training programs which will equip personnel in developmental assignments to acquire knowledges and skills to perform at full performance levels, within the Billings Area Indian Health Service.

Objectives.—Assure the acquisition, development, and retention of fully qualified personnel for the accomplishment of health care services within the area.

Advance the application of Indian preference provisions through the operation and administration of human resource development programs which are directed to Indians.

Provide a management-health care skills base which would permit operation of the programs by the Indian community under the provisions of Public Law 93–638.

Situation.—Management is concerned that the qualitative aspects of the work force may be suffering as selected candidates in many cases meet only minimum X–118 qualifications and are often in need of extensive training to perform at the full performance level. In order to enhance the administration of health care delivery systems, a need for a formal, structured, planned staffing program exists which takes into consideration the many and varied factors impacting upon the organization.

Results of study.—(The accomplished by actions are not all inclusive).

1. Identify nonclerical occupational fields/specific positions which should be targeted for special staffing action.

Accomplished by:

(a) Analysis of turnover for past 2 years.

(b) Analysis of projected turnover for 1-, 2-, and 3-year periods.

(c) Analysis of ability to recruit highly qualified personnel in a timely manner.

(d) Analysis of overall quality of personnel recruited.

(e) Analysis of differences in qualifications between Indian and non-Indian candidates, if any.

(f) Analysis of recruitment methods used to locate candidates—especially Indians.

(g) Analysis of environmental factors on recruitment and retention.

(h) Analysis of accessions for past 2 years:

(1) Where from.

(2) Number of preference eligibles.

(i) Analysis of impact of organizational structures:

(1) Entry levels.

(2) Advancement opportunities.

(3) Positions providing qualifying experience.

2. Identify occupational fields or specific positions that should be targeted for special developmental/training action.

Accomplished by:

(a) Analysis of locally sponsored management/technical training.

(b) Analysis of participation/attendance at centralized managerial/technical training.

(c) Evaluation of existing intern intake programs, including upward mobility.

(d) Survey of current incumbents of selected positions to determine type of training which would have been most helpful for the position.

3. Identify the need for manpower and financial resources for administration of local staffing and development program.

Accomplished by: Analysis of resource requirements needed to accomplish actions identified by results 1 and 2.

4. Propose to management alternatives available for consideration.

Accomplished by: Presentation of findings and submission of written report.

III. OTHER MATTERS OF CONCERN

In the process of developing the data and collecting the information relating to the specific items of inquiry mentioned in the committee hearing of December 1979, other matters came to light which seemed to merit consideration by members of the committee. There has been no attempt in the process of this inquiry to seek out additional items of expenditures to be questioned and time did not allow an in-depth inquiry into these additional matters which surfaced. They were pursued only to the extent that they were resolved or recommendations concerning further inquiry could be made.

A. Procurement Procedures

Each item of this inquiry which touched on procurement of goods or services to support the regular health care programs found that errors were made in the procurements. Confirmation orders and sole source purchases without the sole source justifications seemed to be commonplace practices in the procurement actions which were being reviewed. Purchase orders obligating funds within a few days of end of the fiscal year were noticed in the review. Considering these obvious signs of poor procurement practices, some additional reviews were undertaken to see if the extent of the problem could be determined.

1. REVIEW OF SMALL PURCHASES

There are several types of procurement actions which can be carried out and still be considered a small purchase. Generally it is any purchase for less than $10,000. There are a great many laws and regulations which govern these procurements; however, the following table is presented which outlines the requirements for these procurements and may help one to understand violations of procurement procedures.

PROCUREMENT ACTION REQUIREMENTS

Category of procurement	Dollar limitation	Competition requirements	Exception to procurement requirements
Small purchases	0 to $10,000	0 to $500, no competition, requires quotes on a rotating basis; $500 to $5,000, telephone quotes from 3 sources; $5,000 to $10,000, written quotes published in Commerce Business Daily.	(1) Purchase of commercial transportation; (2) employee training; (3) basic ordering agreements; (4) SF–44's; (5) GSA supply schedules.
SF–44	0 to $2,500	None	
Basic ordering agreement	None	(1) Accepted fee schedule; (2) if no fee schedule, same as small purchases above if under $10,000.	

The number of purchase orders processed by the IHS Billings area office has been running about 8,000 per year. The total value of these orders was over $4 million in fiscal year 1979. The total staff handling this part of the procurement activities is two and is generally considered to be adequate by the area office staff.

A review was made of some of the recent small purchases. About 200 folders of these purchases which were made during the last 2 months of fiscal year 1979 were examined. The examination revealed very few procedural errors:

- two instances were noted where the purchase orders were confirmation orders of prior purchases
- one instance of an open market purchase of greater than $500 where telephone quotes of prices were not in the file.

In one of the instances where there was a confirmation order, a letter of admonishment had been sent to the employee who had purchased the goods prior to having an approved purchase order. This is in sharp contrast to the many confirmations of purchase orders for items ordered by the area director's office and treated as accepted practice.

The very small number of errors noted in the spot review indicates that the Billings area office does have the ability and capacity to make proper procurement transactions. This would indicate that the high rate of errors found in the specific incidents reviewed in this inquiry were the results of deliberate decisions to handle the procurement actions in the exact manner in which they did occur.

It was also noted that SF–44's are generally used for over-the-counter purchases of small items where there is an immediate need and they cannot be obtained from other mandatory sources or it is not reasonable to use mandatory sources, such as GSA supply schedules. It was noted that the special assistant to the area director has frequently used SF–44's. He has used them to purchase such items as cameras, calculators, and binoculars. In a particular instance, $775.73 was spent for these types of items in one day at the same store.

The area director recently changed the limitation on the dollars per purchase on SF–44's from $250 to $100 for Billings area personnel. However, the special assistant to the area director was exempted from this limitation and his limitation is still $2,500, the maximum allowable under the Federal procurement regulations.

2. END-OF-YEAR PROCUREMENTS

It was observed during the course of this inquiry that many of the items procured were ordered very close to the end of the fiscal year. There is always a question in these cases as to whether the items procured were really needed or whether they are being acquired because the money is available and will lapse if it is not obligated before the end of the fiscal year. In checking on this point the following information was gathered:

TIMING OF PROCUREMENTS—IHS BILLINGS AREA

Date	Accumulated procurements as of the date			
	Supplies		Equipment	
	Amount	Percent of total	Amount	Percent of total
Fiscal year 1977:				
July 31	$1, 111, 113	74	$241, 462	52
Aug. 31	1, 251. 937	83	289, 417	62
Sept. 30	1, 506, 597	100	468, 632	100
Fiscal year 1978:				
July 31	1, 493, 047	70	208, 465	22
Aug. 31	1, 625, 655	76	259, 381	28
Sept. 30	2, 134, 793	100	931, 059	100
Fiscal year 1979:				
July 31	1, 435, 874	57	68, 355	15
Aug. 31	1, 654, 255	66	146, 338	32
Sept. 30	2, 508, 373	100	463, 476	100

The above table shows that an extremely high portion of the funds for supplies and equipment were obligated in the last month of the fiscal year. There were 17 percent of the supplies purchased in the last month of fiscal year 1977 and that increased to 24 percent in fiscal year 1978 and 34 percent in fiscal year 1979. This indicates a higher percentage in the most recent years with over a third of all the suppiies in the IHS Billings area being purchased in the last month of fiscal year 1979.

Equipment purchases are even more highly concentrated near the end of the year than supplies. The table shows that 38 percent of the equipment purchases were in the last month of fiscal year 1977 and 68 percent in fiscal year 1979. More than two-thirds of all the equipment purchased by the IHS Billings area in fiscal year 1979 was purchased during the last month of the fiscal year.

One of the major reasons why equipment purchases have occurred late in the year is because of the allotments from the national headquarters. Funds for equipment purchases are controlled nationally and separately identified on the allotment documents. Each year since fiscal year 1977 the equipment allotments have been later in the year. In fiscal year 1979, the bulk of the equipment funds for the Billings area were allotted on June 1 and $93,000 was allotted to the Billings area on September 14. It would be very difficult to complete the purchases for equipment before the end of the year when the equipment funds are allotted at such late dates.

B. Travel

As a part of the inquiry into private pilot training for the area director, the extent of aircraft rental and chartering of aircraft by the IHS Billings area became a matter of concern. This led to the more encompassing question as to the total extent of IHS travel.

1. IHS TRAVEL

The following table indicates the extent of IHS travel by area in fiscal year 1979 broken down by subobject classes:

IHS TRAVEL OBLIGATIONS, FISCAL YEAR 1979

[Amount by subobject group (thousands of dollars)]

Area	Program	Administration	Training	Conferences	Patient	Total
Aberdeen	855.7	133.1	218.8	23.9	356.4	1,588.8
Bemidji	249.6	32.4	51.9	28.6	30.6	393.1
Albuquerque	138.3	97.2	96.4	1.7	111.2	444.9
Navajo	415.1	132.8	255.2	23.9	1,156.0	1,982.9
Albug Hq W	212.7	83.1	20.0	1.6	----------	317.4
Alaska	2.9	2,950.7	289.6	81.7	1,696.1	5,021.0
Oklahoma	462.1	124.2	178.2	43.9	47.5	956.0
U.S.E.T	149.1	9.9	61.6	19.3	16.6	256.6
Phoenix	707.5	307.6	442.6	105.1	801.4	2,364.0
Tucson	436.7	9.2	191.0	6.8	49.3	693.0
California	19.9	149.0	8.5	23.3	----------	200.7
Billings	4.5	294.0	152.1	54.2	352.1	857.0
Portland	370.6	90.5	80.5	43.7	103.1	688.5
Headquarters	23.8	454.4	.6	10.5	----------	489.5
Total	4,048.5	4,868.1	2,048.1	468.3	4,820.2	[1] 16,272.7

[1] Includes $3,600 unidentified and $16,000 "regional travel". Totals may not add due to rounding.

The figures in the above table were provided by IHS in April of 1980. The total exceeds the 1979 actual columns in the President's fiscal year 1981 budget by about $200,000. This probably represents travel which was authorized in fiscal year 1979 that did not occur or occurred at a level less than the authorizing documents indicated. The obligations also exceed the 1979 estimate columns in the President's fiscal year 1980 budget by about $1 million.

The table shows large variations between areas for the portion that each subobject group is of the total for an area. For example, in the Billings area the program subobject group is 0.5 percent of the area total, while in the Portland area the program subobject is 54 percent of the area total. These wide variations make the accuracy of the codings very suspect. A thorough review of object class codings would probably reveal that there is a great difference in the way the definitions are being interpreted among the areas and perhaps within each area.

2. BILLINGS AREA TRAVEL

The IHS headquarters issued travel ceilings for the area office services (AOS) activities in fiscal year 1979. There was no limitation on other travel. Providing ceilings on only part of the total programs in an area encourages codings for travel to be made to those activities which have no ceilings. While the Billings area appears to have exceeded its ceiling for AOS travel in fiscal year 1979 by about $18,000, it is not very meaningful when you realize that they could have stayed within that activity easily just by interpreting the coding instructions differently.

In the review of airplane rentals, one of the points which stood out was the widespread use of charter aircraft in the Billings area. More than $50,000 was used for charter aircraft for 149 separate trips in fiscal year 1979.

Much of the charter aircraft was for air ambulance purposes. Some of these trips were very expensive. For example, there were at least eight air ambulance charters from the vicinity of Fort Washakie, Wyo., to Seattle, Wash., in fiscal year 1979 that cost an average of about $1,300 each. Apparently the physicians have full authority to send patients by air charter to whatever location they choose. In fiscal year 1979 there were only four other air ambulance charter trips to Seattle from all of the other Billings area locations. It certainly seems questionable that it was necessary to make twice as many air ambulance charters to Seattle from one location as all of the other locations combined. In addition to the charter flights to Seattle, there were six charter flights from the Fort Washakie area to Denver and four to Casper, Wyo. The Casper flights averaged about $230 each and the Denver flights about $460 each.

Many of the charter aircraft flights were for travel of area office personnel and others to locations where it is very questionable that it was the most advantageous method of traveling. For example, in August 1978, the area director chartered a plane in Billings which flew to Denver and picked up people attending an IHS Council of Area Director's meeting near Butte, Mont. Three days later the same flights were chartered in reverse. The cost of these charter flights was over $2,300. Another example is that at least twice in 1978, once by the area director and once by the special assistant to the area director, charter flights were made between Billings and Denver where at least six nonstop commercial flights are available each day.

C. Overhead

The fiscal year 1981 President's budget for IHS shows an activity called "Program Management" and identifies slightly over $50 million for this activity in both fiscal year 1980 and fiscal year 1981. Previous budgets had identified an activity by the same title but with much less funding at around the $4 million level. The new activity includes a broader definition which includes both "headquarters and area office staffs required for program direction and support." The definition for program management prior to the fiscal year 1981 budget included funding for only some activities at the headquarters level.

In reviewing the staffing of the IHS Billings area in connection with this inquiry, it was interesting to note how the staffing was identified to the various budgetary activities. The following table shows that distribution in the area office and the service units:

DISTRIBUTION OF POSITIONS AMONG BUDGET ACTIVITIES AND LOCATIONS

[Billings area IHS, Mar. 31, 1980]

Organizational unit	Area office services	Patient care	Preventive health	Ambulatory care	Total
Area director's office	13			15	28
Administrative support	52	8	3	1	64
Area office programs		7	34	22	63
Total, area office	65	15	37	38	155
Service units		129	156	247	532
Total, area	65	144	193	285	687

The new definition for program management in the fiscal year 1981 budget would include only the staff identified in the area services (AOS) column in the table above in the IHS Billings area. It is about 10 percent of the area total which is about the same ratio that the program management activity is to the total operating budget for all of IHS. It is important to note what AOS does and does not include. AOS includes:

- less than half of the staff of the area director's office
- about 80 percent of the administrative support staff

AOS does not include:

- over half of the area director's staff
- about 20 percent of the administrative support staff
- none of the other area office program staff which administers IHS programs area wide
- none of the service unit staff including no administrative personnel in the hospitals, clinics, or units

To assume that the administrative overhead, or as the fiscal year 1981 budget calls it "* * * staff required for program direction and support" for IHS operations, is only about 10 percent of the fiscal year 1980 budget is a gross underestimate based upon the staffing analysis of the IHS Billings area.

D. Surgery

The review of the circumstances surrounding the use of the out-of-State anesthesia services led to a review of the surgical procedures which were performed in those operations. A list was provided of the operations performed on several of those occasions. The testimony at the December 1979 hearings and subsequent interviews with the IHS staff at headquarters and in the Billings area gave the clear indication that these surgical procedures were related to otitis media or ear surgery cases. From the list provided, however, it appears that only about 20 percent of the surgery was for otitis media related cases.

Apparently the surgeon who performed the surgery for otitis media related cases is also a plastic surgeon. The bulk of the surgery procedures on the lists appear to be elective type and many would appear to be cosmetic. Tattoo removal, scar revision, and nevus removal are some of the procedures included.

A summary of funding distribution by service unit for unmet surgery for fiscal year 1980 was provided by the area office staff. Upon further inquiry a list of approved elective surgery cases was provided. This list reveals that funds have been approved for some surgery procedures which raise questions as to the extent of Federal responsibilities in providing for the health care of Indians. The following table gives some examples of surgery procedures which have been approved:

EXAMPLES OF APPROVED ELECTIVE SURGERY CASES

[In IHS Billings area for fiscal year 1980]

Diagnosis	Type of surgery	Estimated tota l cost
1. Family planning	Tubal ligation	$1,500
2. Wants to have children	Tubal reconstruction	3,500
3. Family planning	Vasectomy	400
4. Wants to father children	Reversal of a vasectomy	1,500
5. Marked obesity	Ileum bypass	5,000
6. Scar on left cheek	Scar revision	2,000
7. Acne scars on face	Dermabrasion	3,000
8. Leg scar	Scar revision	1,500
9. Tattoos, left arm	Removal of tattoos	1,200
10. Lop ear	Repair lop ear	3,000
11. External nasal deformity	Septorhinoplasty	3,000

Performing surgery can be very costly. Even in the most cost effective settings of the IHS Billings area, average costs per procedure is over $1,000. Total costs for surgery in the Billings area was over $4 million in fiscal year 1979. Considering the statements of the Director of IHS that the IHS is underfunded to carry out its mission, expenditures for surgery should be limited to those where a clear need has been established.

There are apparently only two decision points in the process concerning surgery for Indian patients. The first is strictly a medical decision made by the physician. The second is a fiscal decision which is dependent upon the availability of funds.

The intent and scope of this inquiry is too limited to make the kind of review necessary to see if IHS expenditures for surgery are reasonable. The very limited examination does reveal that there is little incentive on the part of the Indian recipients, the IHS and the contract medical personnel to be conservative in the use of surgical procedures. The possibility of unneeded surgery or a bias to perform surgery when there are other alternatives is certainly an area of concern which merits review. There is no intent to determine the extent of Federal responsibility in this inquiry. It is intended rather to bring this to the attention of the committee for consideration.

IV. LEGAL, INVESTIGATIVE, AND AUDIT OPINIONS AND REPORTS

During the course of this inquiry, comments and opinions submitted by legal, investigative, and audit authorities at echelons above and beyond the Indian Health Service were reviewed. These were the result of direct requests from the committee and/or GAO hotline complaints and other sources. Specifically, the authorities concerned were as follows:

A. The Attorney General of the United States

On March 21, 1980, the committee requested the Attorney General to investigate certain expenditures of the Billings area office. He was asked by what legal authority delivery of certain video equipment was accepted prior to preparation of a purchase order and the use of a sole source purchase order rather than a competitive bid procedure. Further, the committee asked by what legal authority the director of the Indian Health Service approved the use of Federal funds for private flying lessons for the area director after a contracting officer had requested that the purchase order be canceled, and approximately 1 year after the pilot training was ordered and received. The committee was most interested in knowing if these actions constituted any criminal activity and/or exceeded the authority of the IHS.

Receipt of the committee letter was acknowledged on March 21, 1980 with the indication that a review was underway within the department.

A committee staff call prompted a verbal response from Legislative Affairs on May 7, 1980, indicating that a reply had gone out on April 29, 1980.

On May 19, 1980, a letter dated May 13, 1980, was received from the Assistant Attorney General, Criminal Division, indicating the letter of April 29 had been forwarded inadvertently to the Labor Department. The letter states:

> Inasmuch as it *appears* that . . . Department of Health and Human Services (HHS) funds rather than Department of Labor funds *may* have been used for the video equipment and pilot training in question, we have referred this matter to the HHS Inspector General for consideration . . . (italic added for emphasis).

It took 1 month and 22 days to avoid the questions and forward the request to the Department.

On May 29, 1980, the chairman again wrote the Attorney General pointing out his dissatisfaction with the receipt of no answer to his questions, and that had he desired a report from the DHHS inspector general he would have requested it.

The chairman requested an early, definitive response on or before June 10. By letter of June 12, 1980, the Assistant Attorney General, Criminal Division, replied in part as follows:

> Our referral was predicated on the fact that the respective agencies have primary responsibility for the programs they administer including investigations into allegations of possible irregularities. When evidence of criminal violations are developed as a result of the Inspector General investigations, cases are then referred to the Department of Justice.

In other words, it is not possible to get an independent opinion directly from the Department of Justice.

B. The General Counsel of DHHS

On March 19, 1980, the chairman requested the DHHS General Counsel to advise the committee by what legal authority (1) delivery of video equipment was accepted prior to preparation of a purchase order, and (2) a sole source purchase order could be used rather than a competitive bid procedure. Additionally, the chairman indicated the committee would like to know by what legal authority did the director of IHS approve the use of Federal funds for private flying lessons for the area director after a contracting officer had requested that the purchase order be canceled and approximately 1 year after the pilot training was ordered.

On March 27, 1980, the DHHS general counsel responded. The following are quotations from her letter:

> Generally speaking, the authority to cover the cost of training employees of the IHS is implicit in 42 U.S.C. 2001 . . . The proposed budget which the President submits annually to the Congress provides funds for salaries and operating expenses of the IHS. The current IHS budget, for example, specifically includes, as an operating expense, funds for hiring aircraft. The cost of training employees is also an operating expense. . . . Dr. Emery Johnson, the Assistant Surgeon General and Director of IHS, apparently concluded that the training contract was legal and would further economy and efficiency in the IHS program. He gave his oral approval for the training . . . later confirmed by him in writing. . . . In 1976, the audit agency of this Department, which operates under the Inspector General and is independent of the IHS concluded that there was adequate documentary justification for the training and that the expenditure was proper.

* * * * * * *

I have no reason to question Dr. Johnson's judgment or the Audit Agency conclusion regarding this issue. The information provided by the IHS supports the view that it was a legitimate administrative expenditure. There is no doubt that one may conclude that Mr. Smith personally benefited from the training. Nevertheless, in that sense, the training is not distinguishable from any other training provided to employees in the public or private sector. . . . To the extent

that the training improves the employee's skills, the employee will personally benefit as well. This does not, alone, make the training improper or illegal.

* * * * * * *

We have also reviewed the procedures followed by the Billings IHS office for the purchase of the video equipment. The evidence in your record of the committee hearing does suggest that the Department's procurement procedures were not followed.

* * * * * * *

These irregularities are not criminal offenses. The Office of Investigations which, like the Audit Agency, is independent of the Public Health Service and operates under the Inspector General, reviewed this procurement as well as the matter of the pilot training and several other allegations of wrongdoing by Mr. Smith. The Office of Investigations, in a report dated October 26, 1979, concluded that none of the allegations constituted criminal misconduct. . . . The report of the investigation was sent to the Deputy Assistant Secretary for Health on November 8, 1979, for whatever administration action the Public Health Service determined was appropriate. We have asked if the Public Health Service contemplates any action as a result of the investigative report or your hearing. When I am advised, I will be glad to let you know.

This letter from the General Counsel very clearly states that, in her opinion, there were no criminal offenses. However, in regard to the benefits derived from these expenditures to the IHS, the General Counsel obviously took at face value all justifications submitted by IHS with little or no evaluation.

An exception to her statement in regard to the OI report of October 26, 1979, should be noted. The report makes no definitive statement as to criminal misconduct. It merely recommends that the OI report be closed and referred to PHS for any action they deem appropriate.

A followup letter has been sent to the General Counsel asking for clarification on this point and if she has received an answer from PHS as to any contemplated action on their part. Refer to last sentence of her letter quoted above. By letter of June 12, 1980, the General Counsel indicated basically the same as the Justice Department in the preceding section. It is not possible to get an independent opinion. If the departmental Inspector General's Office of Investigations recommends the case be closed in OI files, that indicates no criminal activity and no further inquiry is made.

C. Office of the Inspector General, DHHS

On October 26, 1979, a report was issued by the Office of Investigations concerning many of the issues covered by this inquiry. The report was initiated by GAO Hotline complaint No. L–257. The report spoke to the following issues: (1) Used Federal funds to buy furnishings for his office; (2) obtained private pilot training through unauthorized

use of Government funds; (3) used Government funds to purchase a van seat for personal use; and (4) purchased video tape equipment without Government contract.

As indicated in his letter of May 6, 1980, to the Assistant Inspector General for Investigations, the chairman pointed out that the report was a very nice chronology of the events which took place but presented no conclusions as to right or wrong. The report does conclude with: "Recommend this matter be closed in OI files and referred to Public Health Service for any action they deem appropriate." The committee has asked for clarification in a letter dated May 6, 1980.

The report also states "the Government has benefited many times over the original expenditure for the pilot training." An analysis by staff members of the committee does not agree with this statement. Clarification has been requested in a letter dated May 6, 1980.

Another item of interest included in the report but not a part of the committee inquiry relates to the purchase of 15 paintings at $150 each ($2,250 total), and 1 painting at $200, or a grand total of $2,450 from Government funds. The chairman, on May 6, asked the DHHS Assistant Inspector General for Investigations to provide a reference to the authority for these purchases and whether this is a widespread practice within DHHS. Additionally, the IHS was asked to furnish a complete inventory of art objects carried in the inventories of each area and the central office. The letter of May 6 was acknowledged on May 21, 1980, with an indication that PHS had been asked to provide the data. This response also indicated that they were attempting to verify the authenticity of the signature of Dr. Emery Johnson on the memorandum confirming the authorization for private pilot training. On June 3, 1980, the DHHS Assistant Inspector General for Investigations forwarded a reply from the Special Assistant to the Deputy Assistant Secretary for Health Operations transmitting a June 3, 1980. memo from the Director of Indian Health Services.

The inventory of all paintings and other artifacts in IHS areas and the central office provided to the committee by the Indian Health Service indicates that the Albuquerque, Billings, Navajo, Oklahoma City, and Portland areas have paintings and other art objects which, at the time of acquisition, cost a total of $27,294. This amount, however, does include $20,000 attributed to a wall mural in the Tuba City, Ariz., Public Health Service Hospital purchased by the facility contractor. The Billings Area Office inventory includes a $3,145 acquisition cost for 15 paintings purchased by IHS in 1974, 1975, 1976, and 1977. The Oklahoma City area inventory shows some 26 paintings and sketches at an acquisition cost of $3,217, twenty-five of which are located in the Claremore, Okla., facility and were purchased by the facility contractor in 1976.

In regard to the question of the authenticity of Dr. Johnson's signature on the May 5, 1976, confirming statement, Dr. Johnson states it is his signature and Dr. Exendine, Deputy Director, IHS, states in a letter dated April 21, 1980, that the memorandum was personally signed by Dr. Johnson.

The report from the IHS Director further states that "There has been no administrative action taken and none is deemed warranted as a result of the OI investigative memorandum report."

D. Regional Audit Director (Denver), DHHS

On July 9, 1976, the Regional Audit Director responded to an allegation of a possible improper expenditure to pay for private pilot training for the Billings Area Director. Based upon a justification submitted by IHS Billings and approval of the training by the Director of the IHS, he concluded that these documents justify the need for the training and show that the $1,500 expenditure was proper. (Reference page 28, December 1978 hearings.)

In response to a letter from the committee, the Regional Audit Director, on April 17, 1980, stated:

(1) In view of other audit priorities, an auditor was not sent to Billings but the matter was discussed with B. R. Price on the telephone;

(2) That on April 8, 1976, Mr. Price sent a memorandum justifying the need for the training. (Reference page 14, December 1979 hearing.);

(3) That he verified certain items of cost cited in the tables on pages 12 and 13 of the December 1979 hearing;

(4) That he requested that Dr. Johnson confirm his oral approval in writing. (Reference page 18, December 1979 hearing.); and

(5) That in view of the foregoing, I thought the expenditure for pilot training was proper and was justified.

In a subsequent interview with staff members on May 8, 1980, the Regional Audit Director indicated that his opinion was based mainly upon the fact that the Director of IHS had approved the training. More recently, the Regional Audit Office has indicated that they now intend to make a "financial" audit of the IHS Billings area, probably in September 1980.

V. FINDINGS AND CONCLUSIONS

As a result of several allegations of irregular activities within the Billings Area Office of the Indian Health Service (IHS), the Senate Select Committee on Indian Affairs held a hearing on December 21, 1979, in Billings, Mont. While the hearing shed light on the issues, it was not possible to determine the extent of any irregularities. To provide further information concerning the specific incidents which were identified, the committee instructed its staff to conduct additional inquiries and to report these findings back to the committee. This is a report of those findings.

A. Private Pilot Lessons

The IHS Billings Area Director took private pilot lessons and instrument training paid from appropriated funds during the period from June 25, 1975, to June 9, 1978. A total of $2,298 was expended for this purpose. A contract administrator for IHS in Billings questioned the legality of this action and reported it to the General Accounting Office (GAO). The matter was referred by GAO to the then Department of Health, Education, and Welfare (DHEW) Audit Agency. A justification for the training and a memorandum from the Director of IHS confirming the verbal authorization of the training were supplied by the IHS Billings Area to DHEW Audit which found the training "justified" and the expenditure "proper"

The justification for the training included an analysis of costs to travel from Billings to six locations within the IHS Billings area by renting an airplane and driving an automobile. Per diem costs and value of lost production time were included in the analysis. The analysis indicated a savings of about $250 per trip by renting an airplane.

The assumptions used in the analysis were not the same for the two travel methods, however. When the same assumptions are used for both methods the average savings are reduced to $143 per trip for the airplane rental alternative.

The justification did not include an analysis of a possible third alternative, which is to fly commercial airlines from Billings to a close commercial airport, then drive to the location. When this alternative is considered the average savings for airplane rental goes down to $53 per trip. This is the most common method used by most employees of both IHS and the Bureau of Indian Affairs in the Billings area.

The DHEW audit accepted all of the justifications without question. Their major concern was whether or not the training had been authorized by the IHS Director and not if it were justified economically or by improvement in the effectiveness of the program. As of May 21, 1980, the Office of the Assistant Inspector General for Investigations, Department of Health and Human Services (DHHS),

notified the Chairman that "we are seeking to verify the authenticity of the signature of Dr. Emery Johnson on the memorandum".

Out of the 27 airplane rental trips made through fiscal year 1979, 23 were made while instruction was being received. However, none were made in the last 11 months of fiscal year 1979. Once the training was completed, the airplane rental trips reduced dramatically.

There were some procedural errors in the procurement of the private pilot training. There was no solicitation of quotes from other vendors and no justification for sole source procurement. Also, the purchase order for the instrument "package" was a confirmation order made subsequent to the actual delivery of the product.

CONCLUSIONS

1. The private pilot training should not have been started and should have been adequately justified before it was authorized by the IHS Director.

2. The private pilot training was poorly justified to DHEW Audit and the justification should have been more closely reviewed by DHEW Audit.

3. The reduced use of rented airplane travel by the area director after the training was completed certainly raises questions as to the original motive. Either he was more interested in the training for his personal use from the beginning or his need for airplane rental trips has been greatly reduced.

4. The savings to the Federal Government are artificial when lost production time and travel cost of accompanying passengers are considered in the analysis. Lost production time does not actually reduce Government costs. It raises the unanswerable question as to what more productive activity would the traveler have been doing if he were not traveling. Credit for accompanying passengers encourages more than one to travel when it may not be necessary.

The committee staff could not elicit from IHS a detailed estimate of how the cost was computed. In the latest information submitted on April 1, 1980, by the Chief, Health Care Administrative Branch, PHS, the table merely shows a cost by air charter lease and travel by cheapest mode. In the case of the Browning trip, August 20, 1976, the figures are $143 and $376; no explanation included. In the information submitted and printed on page 12 of the December 21, 1979, hearing, the air rental for a trip to Browning is shown as $112; and on page 13, the travel costs by automobile is $182.

Staff computations of a trip to Browning using commercial air and car, as other Government employees do, indicate travel costs of $124 and total costs of $191 when per diem and production loss are considered. The total funds saved, taken apparently at face value by DHHS auditors and inspectors, are highly suspect.

5. The area office was probably aware of the procedural errors in procuring the private pilot training when they occurred. There appeared to be at the time a general attitude in the area office that if the area director's office wanted something it was to be procured without question.

B. Video Equipment Purchases

The Billings area IHS added over $22,000 to their stock of video equipment during the summer of 1979. The bulk of the equipment was purchased and delivered before there was a purchase order. Most of the items of equipment were on GSA schedules but over $3,400 was purchased without competitive bids and no sole source justification.

Other video equipment was already available within the area. The new equipment would produce tapes in color and facilitate editing and would produce a better quality product. It has been used to produce a recruitment film and to tape therapy sessions with mental health patients.

The equipment was purchased from funds collected for treatment of individuals eligible for medicare and medicaid. As these patients are treated at IHS hospitals, charges are identified and funds are made available to areas from national headquarters of IHS on the basis of plans submitted and not on the basis of funds earned.

The plan submitted by Billings did not include the purchase of video equipment. In fact, the Billings area obligated only 35 percent of these funds in accordance with their approved plan in fiscal year 1979.

There were also procedural errors noted in the procurement of the video equipment:

- None of the open market purchases were bid competitively and there was no sole source justification.
- Most of the purchase orders were confirmation orders completed after the actual purchases had occurred even though there was no emergency need for the equipment.

CONCLUSION

It was an unwise use of scarce funds to make unplanned expenditures to acquire additional, more sophisticated video equipment at a time when the Director of IHS had declared that additional appropriations were needed.

C. Services Acquired From Red Eagle Productions

The IHS Billings area hired Red Eagle Productions to provide assistance in the production of a video tape for recruiting medical personnel. Red Eagle Productions is a small, local film production company. One of the principals is a local television news reporter who is Indian. The price for the services was $9,800.

Records show that the agreement on prices and tasks had been reached and work had been completed prior to the completion of the requisitions and purchase orders. The purchase order was merely a confirmation order.

There are DHEW manual instructions which cover acquiring this type of audiovisual material. Certain special requirements are directed by the manual which must be made. These instructions were ignored in processing this action.

CONCLUSION

It was poor judgment to proceed with the acquisition of these services without following all of the proper procurement procedures.

D. Contracted Anesthesia Services

The IHS Billings area has contracted with Anesthetists, Inc., of Minneapolis, Minn., to provide anesthesia services at IHS hospitals in the Billings area. The service is performed by Ralph Kiffmeyer.

Mr. Kiffmeyer has been providing anesthesia services for IHS since 1974. In the beginning, he worked out of Whitefish, Mont. In 1977 he moved to Minnesota. Since 1977 he has returned to the Billings area on at least six occasions to provide anesthesia services for periods of 1 week or longer on each occasion.

Surgeons who have worked with Mr. Kiffmeyer prefer his work and have requested his services. His fees are in line with or below others who perform anesthesia services. He has been willing to be available for several days at a time so that the most cost effective use of facilities and personnel can be attained by IHS.

CONCLUSION

Anesthetists, Inc., appears to be providing good services to IHS in the Billings area at a reasonable rate and allows them to make the most effective use of their facilities and personnel by scheduling several operations within a short timeframe.

E. Northern Montana Hospital, Havre, Mont.

Northern Montana Hospital (NMH) was constructed in 1975. Part of the construction costs—$530,000 was approved—were paid from Federal funds authorized by Public Law 85–151. In accepting this grant, NMH agreed, among other things: To make available at least 12 beds for Indian patients; to enter into annual contracts with IHS for 20 years to provide hospital and medical care to Indians; and to establish inpatient facility rates not in excess of the average annual per diem cost of operation and maintenance for the entire facility computed in accordance with joint form 1. This form indicates those expense items which must be deducted from total expenses before computation of average annual per diem rate. The most significant of these exclusions is interest expense on capital indebtedness. This excluded amount ranged from $425,487 for the period July 1, 1975 to September 30, 1976, to $359,364 for the period October 1, 1978 to September 30, 1979. Under these contracts the total hospital expenses, which is the keystone of these calculations, are certified by a hospital official and a certified public accountant based upon his independent audit of the hospitals' accounting records. NMH is the only hospital in the Billings area currently providing services under this type of contract involving the provisions of Public Law 85–151.

The Montana rate review system is used for most other hospitals to determine a charge rate for each type of service to be furnished by the hospital; that is, room and board, laboratory fees, X-ray services, nursing service, operating room, et cetera.

The basic difference is that the NMH rate covers *total services* whereas the other hospitals negotiate for each type of service in the hospital. A proper comparison of the average cost per hospital day, which includes cost of all hospital services, concludes that NMH's fiscal year 1979 per day cost of $197.93 was much less than other comparable hospitals of 100 beds or more. Comparable hospital costs ranged from $285.54 to $239.94. The average cost of 41 hospitals—large and small—was $207.07 for the same time period.

Over the past 4 fiscal years, 1976–79, the following adjustments were made to billings submitted by NMH based on joint form 1 certified figures:

July 1, 1979 to Sept. 30, 1979 (15 months)	$31,034.96
Oct. 1, 1976 to Sept. 30, 1977	76,067.03
Oct. 1, 1977 to Sept. 30, 1978	7,184.31
Oct. 1, 1978 to Sept. 30, 1979	[1](132.87)

[1] Refund to Government.

These adjustments were made at the request of the hospital that payments be based upon current costs rather than historical—past year—costs and adjusted at the close of each annual contract period. By memorandum dated July 26, 1977, the PHS Assistant General Counsel stated in part: "In our view, the Public Law 85–151 grant conditions do not preclude retrospective application of joint form 1 to determine inpatient cost * * * and furthermore, in our view the IHS may pay the hospital for outpatient services on the basis of actual current year costs."

CONCLUSIONS

1. It appears that the adjustments and retrospective payments made to NMH were legal (ruling of Assistant General Counsel, PHS, DHEW), correct (based on figures certified by hospital official and independent certified public accountant) and fair (considering inflationary cost) to both the contractor and the Government.

2. The comparisons made at the December 21, 1979, hearing of NMH's costs per day and other hospital's costs were erroneous. A complete lack of understanding of the provisions of the NMH contract under Public Law 85–151 and other hospital contracts was exhibited at the hearing by an individual who had been auditing and approving payments to hospitals for services rendered. When proper comparisons are made, NMH costs are quite favorable.

F. Assistant Area Director for Administrative Support Programs—5-Year Undocumented Detail

From November 14, 1974, to the present time the duties of this position have been performed by an individual on an acting basis without benefit of proper personnel action. The last official incumbent of this position, then deputy director, suffered a heart attack on October 19, 1974, was never able to return to work, and subsequently retired on disability in February 1979.

On February 15, 1977, an announcement was issued soliciting applications for the position of supervisory hospital administrator specialist, GS–670–14, functional title: Assistant area director, administrative support programs. On April 28, 1977, the Billings area director sub-

mitted a request for qualification and rating determination of applications received. The personnel officer, Health Services Administration (HSA), DHEW, convened a board for this purpose on May 25, 1977. He submitted to the Billings area director through the IHS Director a section roster containing the names of seven candidates rated as highly qualified. Four of these candidates had Indian preference eligibility. One of the listed Indian candidates was 44 years old, had been a service unit director, GS–13, since January 1976, and held the following degrees: B.S., 1959; M.S., 1961; and MPH, 1964. The other three Indian candidates had similar paper qualifications. On December 21, 1979, the area director testified in Billings that he knew these individuals from past experience and did not feel that they could handle the position and therefore elected not to fill the position. Personnel officials in HSA indicate that the area director was not required to fill the position. However, when the position is readvertised all qualified applicants are automatically considered under the new announcement.

On March 28, 1980, the regional director of the Office of Personnel Management (OPM) for the Denver region notified the area director that this detail and two others were improper and directed him to terminate the detail to the position of assistant area director, administrative support programs. He further indicated his willingness to provide assistance in alleviating the difficulties encountered by the Billings area in the recruitment for key positions of highly qualified candidates who have Indian preference.

Contrary to the directive from OPM of March 28, 1980, the area director requested on April 22, 1980, official approval from OPM to continue the improper detail and made no effort to legitimatize the detail through proper personnel action.

The OPM regional director, in his letter of May 9, 1980, to the chairman of the committee indicated that his office had:

(1) Granted an extension of his order to terminate the improper detail based on the Area Director's belief that terminating the improper detail could seriously impair the area's ability to provide critical services. The extension was granted contingent upon:

> (a) the development of a comprehensive plan to identify needs of the total organization and specific plans to meet these needs; and
>
> (b) the initiation of efforts to fill the assistant area director position on a timely basis.

(2) Information that the IHS has drafted another announcement for the GS–14 position which should be issued very soon.

(3) Offered to assist in the recruitment of qualified candidates.

He also emphasized that his office is deeply concerned about the regulatory violation that has occurred in this particular case, and even greater concerned that the entire recruiting and staffing process at this installation (Billings) needs permanent improvement. He indicated that the approach OPM has taken should not cause any delay in filling the job on a permanent basis, and OPM will monitor this situation on a continuing basis and keep the committee informed of progress and/or changes.

CONCLUSIONS

1. Personnel regulations have been flagrantly violated with the full knowledge of all concerned by filling the assistant area director, administrative support programs position for over 5 years by improper detail.

2. The request for an extension of the OPM directive to remove the individual improperly designated reflects a continuing definance of personnel regulation.

3. The nonselection of a candidate for the position, from among four applicants rated as "highly qualified," with "Indian preference eligibility" raises a very serious question as to possible circumvention of Indian preference.

G. Other Matters of Concern

In the process of conducting the inquiry of the specific items mentioned in the committee hearing of December 1979, other matters come to light which are worthy of the committee's consideration.

1. Procurement

One of these items was the frequent occurrence of procedural errors in the procurement actions by the IHS Billings area office. Each time that a procurement action was reviewed there seemed to be some type of error. A logical conclusion was to question the abilities of those handling procurement actions. To determine if this were the situation, a review was made of some recent actions to see if there were recurring errors.

About 200 folders of small purchases made during the last 2 months of fiscal year 1979 were examined. Three errors were found. One of those had resulted in a letter of admonishment. This is in sharp contrast to the many errors and lax procurement methods noted in those items ordered by the area director's office. It indicates that the procurement office does have the ability and capacity to make proper procurement transactions.

The frequent use by the area office of SF–44, which is a purchase form generally used for small over-the-counter purchases, was noted. The special assistant to the area director was identified as a particularly frequent user. He had used SF–44's to purchase some items which should not ordinarily be purchased in that manner. His limit on the size of an SF–44 purchase is $2,500 while other personnel have recently been reduced to $100.

Purchases near the close of the fiscal year were also observed. A tabulation of obligations of funds for the object classes for supplies and equipment, by months, revealed that an extremely high portion of those funds were obligated in the last month of the fiscal year. Over a third of all supplies were purchased in the last month of fiscal year 1979. More than two-thirds of all equipment purchased in fiscal year 1979 was purchased in the last month of the fiscal year. Late allotment of funds for equipment by the national headquarters was one of the reasons given for the close of the year purchases.

2. Travel

Travel expenses of IHS amounted to over $16 million in fiscal year 1979. Alaska accounted for almost a third of that amount. Travel in the Billings area was $857,000.

One of the major travel expenses (over $50,000) in the Billings area was for charter airplane rentals. They were particularly heavy from the vicinity of Ft. Washakie for air ambulances. Long and expensive air ambulance charter trips to Seattle and Denver were common. Many air charter trips by area office personnel were very questionable as to the appropriateness of the expenditure.

3. Overhead

The IHS budgets, prior to fiscal year 1981, identified about $4 million for program management activity. This was increased to over $50 million in the fiscal year 1981 budget by a new definition which is described as "headquarters and area office staffs required for program direction and support."

A review of the staffing distribution among budget activities in the Billings area revealed that less than half of area office staff is identified with the program management activity. Not even all of the administrative support staff of the area director's office are paid from program management. None of the area office program staff and none of the administrative personnel in the service units are part of the program management.

4. Surgery

A review of some of the surgical procedures performed in the Billings area raised questions about the appropriateness of Federal funds being used for elective type surgery. Apparently the decisions concerning surgery are largely made by individual physicians and are dependent only upon availability of funds. While the number of operations in the Billings area is not out of line with national averages, there is a real question of use of Federal appropriations to perform all of these operations. Additional inquiry is needed to describe the extent of the problem.

CONCLUSIONS

1. The Billings area office is fully capable of transacting regular procurement actions properly. Procurement actions which are handled improperly are probably the result of intentional misapplication of procurement procedures.

2. More close review and supervision of travel expenditures would reduce the amount considerably, especially for chartered airplane rentals.

3. The program management activity described in the President's fiscal year 1981 budget understates the overhead costs of IHS significantly.

H. Opinions and Reports

Several executive branch organizations have made reports, or stated opinions, with regard to some of the recent expenditures of IHS in the Billings area.

1. Justice Department

The committee requested the Attorney General to investigate the legal authority for some of the procurement actions which had been taken. As of the end of this inquiry the only actions, about which the committee has been informed, is to acknowledge the request and refer it to the DHHS Inspector General. The committee has requested a more definitive response. By letter of June 12, 1980, the Assistant Attorney General, Criminal Division, stated in part: "Our referral was predicated in the fact that the respective agencies have primary responsibility for the program they administer, including investigations into allegations of possible irregularities. When evidence of criminal violations is developed as a result of the inspector general investigations, cases are then referred to the Department of Justice."

In other words, it is not possible to get an independent opinion directly from the Department of Justice.

2. General Counsel of DHHS

The committee also requested advice from the General Counsel of DHHS concerning the legal authority for some of the procurement actions which had been taken. The response indicates that in the General Counsel's opinion there were no criminal offenses and that the matter was being referred to the Public Health Service for any action. The committee requested clarification of the opinion and report of actions taken. By letter of June 12, 1980, the General Counsel indicated basically the same as the Justice Department in the preceding section. It is not possible to get an independent opinion. If the Office of Investigations of the DHHS Inspector General's office recommends the case be closed in 01 files, that indicates no criminal activity and no further inquiry is made.

3. Office of the Inspector General, DHHS

The Office of Investigations of the Inspector General's Office issued a report covering several of the issues of expenditures in the Billings area. It presented no conclusions and recommended that the matter be "closed in 01 files." The report also discussed purchase of paintings with government funds. The committee requested a clarification on points in the report. That request has been acknowledged and additional information is now apparently being sought. It indicates there is some question of the authenticity of the signature of the Director of IHS on the memo confirming the approval for private pilot training of the area director. On June 3, 1980, the DHHS Assistant Inspector General for Investigations forwarded a reply from the Special Assistant to the Deputy Assistant Secretary for Health Operations, transmitting a copy of the June 3, 1980, correspondence from the Director of Indian Health Services.

In regard to the question of authenticity of Dr. Johnson's signature on the May 5, 1976, confirming statement, Dr. Johnson states it is his signature and Dr. Exendine, IHS Deputy Director states in a letter dated April 21, 1980, that the memorandum was personally signed by Dr. Johnson.

The report from the IHS Director further states that: "There has been no administrative action taken and none is deemed warranted as a result of the OIG investigative memorandum report."

4. Regional Audit (Denver), DHHS

The Denver Regional Audit of DHHS made the original response to allegations of improper expenditures by the Billings area IHS in 1976. In response to further inquiry by this committee, the regional audit director has reconfirmed his position that the expenditures for pilot training was proper and justified. This position is primarily based upon the opinion that the Director of IHS has the responsibility and authority to approve such expenditures. On June 5, a representative of the Denver Regional Audit Office indicated an intent to make a "financial audit" of the Billings area IHS, probably in September of 1980.

VI. RECOMMENDATIONS

1. The committee should require the Director of IHS to implement semiannual program and administrative reviews of the Billings area office and report the results of these reviews to the committee.

The first review should cover the period April 1, 1980 to September 30, 1980, for submission not later than December 31, 1980.

2. The committee should conduct additional "oversight" hearings at the other IHS area offices to receive remarks and comments from interested local Indian individuals, tribal organizations, IHS employees, and other concerned citizens who have information about the conduct of IHS operations in each area.

Based on the information received, inquiries similar to Billings could be instituted for any area concerned, if deemed appropriate.

3. The committee should conduct additional inquiry into the program effectiveness of IHS expenditures, including a review of the procedures used to determine the need for medical services and how the cost to the Federal Government is factored into these determinations. The inquiry should place special emphasis on the use of the appropriations by Congress for "unmet" surgery needs. (It should be recognized that this will be a most sensitive matter, since it will necessarily require extensive information on decisions made by medical personnel.)

4. The committee should require the Director of IHS to submit a detailed statement of the cost of operation of each of the 48 IHS Government hospitals.

5. The committee should request the Director of IHS to report disciplinary actions he has taken for violations of procurement and personnel regulations identified in this inquiry. By memorandum dated June 3, 1980, to the Associate Administrator of HSA, the Director of IHS stated: "There has been no administrative action taken and none is deemed warranted as a result of the Office of Investigations (HHS) investigative memorandum report. In addition, Dr. Joseph Exendine, Deputy Director, IHS, in a recent speech (June 1980) to the Billings area office staff, as quoted in the Gazette by Pat Dawson, praised Smith's (Billings area director) leadership and told the staff to ignore political attacks on the agency.

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