

INDIAN JAILS: A CLARION CALL FOR REFORM

HEARING
BEFORE THE
COMMITTEE ON FINANCE
UNITED STATES SENATE
ONE HUNDRED EIGHTH CONGRESS
SECOND SESSION

SEPTEMBER 21, 2004



Printed for the use of the Committee on Finance

U.S. GOVERNMENT PRINTING OFFICE

21-032—PDF

WASHINGTON : 2005

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

COMMITTEE ON FINANCE

CHARLES E. GRASSLEY, Iowa, *Chairman*

ORRIN G. HATCH, Utah	MAX BAUCUS, Montana
DON NICKLES, Oklahoma	JOHN D. ROCKEFELLER IV, West Virginia
TRENT LOTT, Mississippi	TOM DASCHLE, South Dakota
OLYMPIA J. SNOWE, Maine	JOHN BREAUX, Louisiana
JON KYL, Arizona	KENT CONRAD, North Dakota
CRAIG THOMAS, Wyoming	BOB GRAHAM, Florida
RICK SANTORUM, Pennsylvania	JAMES M. JEFFORDS (I), Vermont
BILL FRIST, Tennessee	JEFF BINGAMAN, New Mexico
GORDON SMITH, Oregon	JOHN F. KERRY, Massachusetts
JIM BUNNING, Kentucky	BLANCHE L. LINCOLN, Arkansas

KOLAN DAVIS, *Staff Director and Chief Counsel*

RUSSELL SULLIVAN, *Democratic Staff Director*

CONTENTS

OPENING STATEMENTS

	Page
Grassley, Hon. Charles E., a U.S. Senator from Iowa, chairman, Committee on Finance	1
Baucus, Hon. Max, a U.S. Senator from Montana	2
Smith, Hon. Gordon, a U.S. Senator from Oregon	9

ADMINISTRATION WITNESSES

Devaney, Hon. Earl, Inspector General, Department of Interior, Washington, DC	4
Anderson, David W., Assistant Secretary for Indian Affairs, Bureau of Indian Affairs, Department of Interior, Washington, DC	21
Henke, Tracy A., Deputy Associate Attorney General, Office of Justice Programs, Department of Justice, Washington, DC	24
Lamar, Walter, Acting Director of Law Enforcement Services, Bureau of Indian Affairs, Department of Interior, Washington, DC	29

PUBLIC WITNESSES

Sohappy, Corinna, Warm Springs, OR	17
Talks About, Hon. William, Jr., Chairman, Blackfeet Tribal Business Council, Browning, MT	26

ALPHABETICAL LISTING AND APPENDIX MATERIAL

Anderson, David W.:	
Testimony	21
Prepared statement	39
Baucus, Hon. Max:	
Opening statement	2
Devaney, Hon. Earl:	
Testimony	4
Prepared statement	40
Final Report of the Office of Inspector General	44
Grassley, Hon. Charles E.:	
Opening statement	1
Henke, Tracy A.:	
Testimony	24
Prepared statement	106
Lamar, Walter:	
Testimony	29
Smith, Hon. Gordon:	
Opening statement	9
Sohappy, Corinna:	
Testimony	17
Prepared statement	107
Talks About, Hon. William, Jr.:	
Testimony	26
Prepared statement	109

COMMUNICATIONS

Navajo Nation.....	111–119
Fort Belknap Indian Community.....	120–126

INDIAN JAILS: A CLARION CALL FOR REFORM

TUESDAY, SEPTEMBER 21, 2004

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 10:05 a.m., in room SD-215, Dirksen Senate Office building, Hon. Charles E. Grassley (chairman of the committee) presiding.

Also present: Senators Thomas, Smith, Baucus, and Bingaman.

OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM IOWA, CHAIRMAN, COMMITTEE ON FINANCE

The CHAIRMAN. I will call the hearing to order.

I thank everybody for their patience, but more importantly, for your interest in this very important subject.

This is a great day for Native Americans because of the opening of the new museum. It is something they, and all Americans, ought to be celebrating as we have this museum on the Mall devoted to honoring American Indian culture.

Unfortunately, while it is a great day for many, it is not the case for those in government, given the very important charge and responsibility of ensuring that prisoners in Indian country jails are treated humanely.

If we did not know it already, recent events in Iraq have reminded us all that our country's commitment to human rights and to fair and proper treatment of individuals is measured, in part, by how we treat those that are incarcerated.

Today's report by the Inspector General of Interior, Earl Devaney, is very troubling. To be honest, in over 20 years of conducting oversight, I can hardly recall a government report that has been so hard-hitting and exposed such a level of government waste and mismanagement. So, I commend you, Mr. Devaney, and not only you, but your hardworking staff, for the efforts that you put forth.

I think that the Inspector General has it exactly right when he says that these jails are a national disgrace. The Inspector General notes that the conditions are often worse than those in third world countries. Once again, our government has failed to uphold its responsibilities to Native Americans.

And let me make it clear. Like so many problems that I have done oversight on over the years, this is not a problem of just this administration or just the previous administration. This is a prob-

lem of an entrenched bureaucracy that just is not getting the job done. So, we need to look at new ways to solve this problem.

Let me close by saying that, just as it took great determination and a great deal of hard work, and even great resolve by American Natives to bring us this great new museum on the Mall, it will take a similar, if not greater, effort by our Federal Government to end this national disgrace.

I now call upon Senator Baucus.

**OPENING STATEMENT OF HON. MAX BAUCUS,
A U.S. SENATOR FROM MONTANA**

Senator BAUCUS. Thank you, Mr. Chairman. I very much appreciate your calling this hearing. It is very important. I am a bit embarrassed, frankly, as a public servant, that this issue has not been addressed earlier. But better late than never. We are here, and hopefully we can get something done about it.

I think it is important to recall that the Bible tells us that God created man in his own image. That account teaches that every person reflects a little bit of the divine spark. It teaches that we owe at least a basic amount of respect to all human beings, no matter who they are, because of their humanity.

This April, we saw another image of man. The searing photos from Abu Ghraib prison in Iraq involved every one of us, because they showed us what can happen when people with power lose that basic respect for other people's humanity. That is what happened in prisoner abuse.

Today, we hear reports of mistreatment of American prisoners right here in the United States. And while no one has alleged deliberate abuse—not yet—the deplorable conditions that the Inspector General documents also reflect a loss of that basic respect for prisoners' humanity.

The Inspector General's report paints a dismal picture of many prisons on Indian reservations: facilities housing scores of inmates where there is often never more than one person on staff at a time; juveniles killing themselves because no one supervised them; and at the Blackfeet prison in Montana, every single officer has been assaulted in the past year, every one, in 1 year.

Some facilities have inadequate plumbing. Sewage floods the jails. Many facilities have no kitchens. Many have no medical units. Some prisons do not even have adequate locks; conditions, clearly, totally unacceptable. We cannot fight for human rights abroad if we fail to protect them at home. In these facilities, we have failed.

Today we will hear about problems, and we will also be looking for solutions. The Inspector General will chronicle years of neglect by the Bureau of Indian Affairs. That neglect must end.

The report will make important recommendations. The Bureau should implement them immediately. What are they? One is, the Bureau of Indian Affairs must develop reporting protocols to identify serious incidents and problems with facilities that require immediate assistance. The BIA has not done that. It must begin immediately.

The Bureau must establish clear channels of accountability. They have not done that, incredibly. The Bureau must improve staffing

immediately to avert further tragedies like those chronicled in the report.

Finally, the recommendation of the Inspector General is that the Bureau must make major improvements in detention facility standards, and also within their policies, their maintenance, their health care, social services, personnel training, and hiring practices.

Mr. Chairman, as you know, I have been working on a proposal to help address some of the inadequate financing on Indian reservations, particularly with respect to tribes. One way to address this is to give tribes the authority to issue tax credit bonds for the construction, maintenance, and operation of their detention facilities.

These bonds give off tax credits rather than interest to their investors, allowing tribes with little resources to earn interest off the proceeds. This interest can provide a steady stream of income designed to maintain and staff the jails.

Mr. Chairman, you will hear from various people today. We will hear from the Bureau of Indian Affairs. I especially want to hear from them to see how they can explain the gross incompetence. I hope that they will offer concrete steps that can be taken to identify these problems.

I must say, Mr. Chairman, I am not terribly sanguine about that. We have been dealing with the Bureau for many, many years. I know I have. I have been very disappointed with the Bureau of Indian Affairs.

I, frankly, sometimes think it is an agency that perhaps should be abolished. They do such a poor job, and have for so many years. It is another level of middle management. It is not needed, in my judgment, and I think they cause many more problems than they solve.

We will also hear from the Department of Justice. The Department of Justice is responsible for making budget requests for the funding of Indian jail construction, and I am eager to hear what they have to say.

Finally, we will hear from two witnesses who have been personally touched by this crisis. It is my honor to introduce William Talks About, Jr., who is chairman of the Blackfeet Business Council from my home State of Montana.

Chairman Talks About is a good friend, and I am proud to have him here as a witness. I know that the Bureau of Indian Affairs-run facility on the Blackfeet reservation is one of the worst facilities in the country.

I look forward, Mr. Chairman, to hearing your thoughts on how this situation can be improved, and what steps we in Congress need to take in order to make these conditions much better.

Ms. Sohappy, I am deeply sorry for your loss. We are holding these hearings today and plan to introduce our legislation in order to prevent the type of tragedy that you have had to endure. The committee and the country owe you a terrific debt, a debt for all you have gone through, for coming here today and telling us your story. Thank you.

We in government cannot fix every problem. But ensuring the basic human dignity of Americans is perhaps one of our most solemn responsibilities. Today and in the years ahead, let us rise to

that duty. Let us do what we can to ensure that every person receives at least the basic amount of respect that we owe to every human being, every one of them created in the image of God.

Mr. Chairman, before I end, I want to just quote a statement from the Inspector General's report to give us a flavor of the depth of the problem. Let me just quote from the report.

"Early in our assessment it became abundantly clear that some facilities we visited were egregiously unsafe, unsanitary, and a hazard to both inmates and staff alike. BIA's detention program is riddled with problems and, in our opinion, is a national disgrace."

Let me repeat that. The Inspector General report is saying that, in their opinion, "the BIA detention program is riddled with problems, and," in their opinion, "is a national disgrace, a national disgrace with many facilities having conditions comparable to those found in third world countries."

Further on, the report goes on to read, "Despite these audits, despite inspections, despite reports and other warnings about the woeful conditions of the detention program, BIA has failed utterly to remedy the problems."

Whether it lacks the organizational will or infrastructure, or both, BIA cannot sustain its focus on the problems at its detention facilities long enough to resolve them. Absent relentless pressure and the unflagging support of senior BIA management, we fear it is unlikely to do so in the future.

Mr. Chairman, we have got a problem here. The Bureau of Indian Affairs has a problem, a big problem. It is deplorable, what they have allowed to happen, and I would just strongly encourage all of us to finally begin to do something here to address the conditions that we all find so deplorable.

Thank you, Mr. Chairman.

The CHAIRMAN. Well, I thank you for your strong statement.

I now have the pleasure of welcoming a person I have already referred to, the Inspector General of the Department of the Interior, Earl Devaney. In January of 2003, he appeared before our committee on the issue of border security, so we welcome him back.

I would ask my colleagues to be cognizant of the fact that he needs a little more time than normal to present his case, so it will be a while before we will be asking questions.

I would ask the Inspector General to proceed, please.

**STATEMENT OF HON. EARL DEVANEY, INSPECTOR GENERAL,
DEPARTMENT OF THE INTERIOR, WASHINGTON, DC**

Mr. DEVANEY. Mr. Chairman and members of the committee, I want to thank you for the opportunity this morning to come before you to talk about our report concerning Indian detention facilities.

Mr. Chairman, with your permission, what I would like to do is submit my full statement and final report for the record and make a few oral remarks as we proceed.

The CHAIRMAN. Yes. It is received.

[The prepared statement and final report of Mr. Devaney appear in the appendix.]

Mr. DEVANEY. I would like to then show a short video which supplements our report, if you would concur.

The CHAIRMAN. Sure. Proceed.

Mr. DEVANEY. Thank you.

Mr. Chairman, as part of the ongoing effort of my office to examine law enforcement and security programs within the Department of Interior, we began our assessment of BIA's detention program in September of 2003.

At the risk of repeating remarks already made by Senator Baucus, I think it is important to maybe reiterate some of your remarks, sir.

At the very outset of our investigation, we did find that the facilities we were visiting were very unsafe, unsanitary, and a hazard both to the inmates and to the staff, alike.

We found BIA's detention program riddled with problems and, in our estimation, it is a national disgrace. Many facilities have conditions comparable to those that you would find in the third world.

Our final report found clear evidence of a continuing crisis of inaction, indifference, and mismanagement, and without the relentless pressure and unflagging support, in my opinion, by the Secretary and other senior department managers, I fear, little will change.

In April of this year, I briefed the Secretary and our senior staff about the serious problems we had found up until that time. In June, I issued an interim report, and also testified before the Senate Committee on Indian Affairs to further highlight the egregious conditions we were uncovering.

Yesterday, I delivered my final report and its 25 recommendations to the Secretary. To her credit, Secretary Norton immediately responded to both my briefing and interim report by directing senior department and BIA managers to take ownership of these problems and to implement concrete reforms.

She also promptly requested the assistance of the Bureau of Prisons, which resulted in a senior-level professional being detailed to the Department to assist BIA.

Unfortunately, as we continued our assessment of the detention program, our work uncovered a plethora of additional problems. Sadly, while BIA has now produced a strategic plan, no real progress has been made to make the detention facilities safer or more secure. For instance, just since August 1, there have been two new deaths, at least five more suicide attempts, and an alarming 16 new escapes from Indian country jails.

Since 2000, the detention program has been coordinated by a single detention program manager working out of the central office of Bureau of Indian Affairs Law Enforcement. Unfortunately, this manager was provided with limited training, virtually no staff, and minimal authority to accomplish his duties.

Six BIA district commanders are responsible for managing the jails on a day-to-day basis in the field. We found the oversight of these district commanders to be virtually non-existent. In fact, several commanders had never even visited some of the jails under their oversight.

The Department's Office of Law Enforcement Services is responsible for overseeing all of the Department's law enforcement and security programs, including BIA's. However, we found no evidence that they have ever provided any oversight for BIA's detention program.

Based on our visits, we learned that serious incidents are almost never communicated up the chain of command. In fact, in just the 27 jails we visited, we discovered over 875 serious incidents, including 11 deaths, 236 suicide attempts, and 631 escapes. Ninety-eight percent of these incidents were never even reported to BIA Law Enforcement.

Thus, our anxiety is high, not only because of what we found during the visits to the 27 jails, but because of what we fear remains undiscovered at the 45 jails we did not visit.

I will note here that, among the deaths which were reported to BIA, was the death of Cindy Gilbert, a 16-year-old student who died while in a detention cell at the Chemawa Indian Boarding School in Oregon. This case has been under active investigation by my office since her death, and we have just recently referred the case to the Department of Justice.

I am pleased to see that Ms. Gilbert's aunt has traveled from Oregon to speak to you today about this horrible tragedy.

Based on our findings, suicide attempts appear to be a regular occurrence at many of these facilities. Mr. Chairman, when I testified before the Committee on Indian Affairs, I spoke about my personal visit to the Yakima Jail and the extraordinarily high rate of suicides at that facility.

Just 2 days after my testimony, an inmate at Yakima hanged himself from a broken light fixture. Despite assurances to the contrary, BIA, inexplicably, did not inspect the conditions at this jail until just last week.

For the most part, the correctional offices at these facilities convey stories of prisoners' escapes with an air of casual inevitability. We found that some facilities do not even notify local law enforcement when a prisoner escapes. It is simply irresponsible to allow escaped prisoners to travel freely in a community while local law enforcement authorities have no information about their escapes.

Maintenance shortcomings can have a direct impact on officer and inmate safety, yet there is little indication that any emphasis is placed on expediting repairs. For example, we found sprinkler systems inoperable, keys so worn that they cannot lock or unlock the jail cell doors, and a camera in a high-risk cell facing the ceiling.

Mr. Chairman, in the last 4 years, Congress has given BIA \$637 million for law enforcement. In addition, since 1999, BIA has also received supplemental funding totaling \$31.5 million, specifically designated for hiring detention officers and for preparing new detention facilities for operation.

BIA, however, was unable to produce any annual budget submissions for the detention program when we asked for them. In addition, we discovered that funds allocated to individual jails are not even tracked. BIA's failure to make an effort to assess the true cost of jail operations or to have any internal controls becomes, in effect, a self-fulfilling prophecy.

These fiscal management failures also impact new detention facilities built with funds awarded as grants by the Department of Justice. Since 1997, DOJ has provided over \$150 million in construction grants for new detention facilities.

However, these grants are only for the construction of the facility. BIA is then responsible for providing funding for operational costs.

Given the poor budget planning and execution by BIA, we were not surprised to learn that the facilities built with DOJ grant monies often do not get the necessary funding to actually open for business.

We have many other concerns, including, but not limited to, a lack of training for staff, horrible over-crowding at some of the jails, the practice of housing juveniles with adults, no workable or practical jail policies or procedures, and the exposure of the program to unthinkable liabilities.

Mr. Chairman and members of the committee, to be fair, I feel I should indicate to you that BIA law enforcement officials have made some recent management and staffing changes at various levels within the detention program which are a positive development.

A strategic task management plan with assigned personnel has been proffered and they are beginning to seek assistance from outside professional corrections organizations. A process to ensure that maintenance issues are promptly communicated has been implemented.

Finally, Mr. Chairman, the responsibilities for the conditions and failings we found at Indian country detention facilities cannot be attributed to any particular individual or to any particular administration.

Some of these problems are decades old. Thus, the solutions will not be easy to achieve and may take considerable time, effort, and additional funding. Although a task management plan for improving detention facilities is admirable, absent strong leadership, tireless management, and extensive hard work, plans alone will not do anything to correct the many failings chronicled here.

As we say in our final report, nothing less than a Herculean effort to turn these conditions around would be morally acceptable.

Mr. Chairman, this concludes my oral remarks and I would now like to show the committee our video.

The CHAIRMAN. Yes. Proceed with the video.

[Whereupon, a videotape was played.]

Indian reservations, covering some 56 million acres in 35 States, are home to 1.5 million American Indians and Alaska Natives who are members of 562 federally recognized Indian tribes.

Their link to the Federal Government is BIA, the Bureau of Indian Affairs, whose programs include law enforcement and detention services provided by LES, the Office of Law Enforcement Services.

Law Enforcement Services operates 17 detention facilities. It also provides funding and oversight to 46 detention facilities operated under contract by the tribes.

In one of those jails on the Yakima Reservation in Washington State, on June 25, 2004, an inmate committed suicide under conditions that dramatically illustrate BIA's failure to remedy long-recognized deplorable conditions.

In staffing, no dedicated detention officer was assigned to monitor the jail's inmates. In safety and security, an over-burdened police dispatcher was required to add jail monitoring, which should be a full-time job, to her other duties.

In training, the inmate was able to take his own life because a common bucket had been carelessly left in his cell. In maintenance and repair, a broken light fixture that had gone unrepaired for months was the mechanism that made the suicide possible.

The sad irony of this episode? It occurred one month after the Inspector General of the Department of Interior and a team of investigators visited the Yakima Jail, and 2 days after the Inspector General testified before the Senate Committee on Indian Affairs about the deplorable conditions of the detention centers.

The Office of Inspector General's report, "Neither Safe Nor Secure: An Assessment of Indian Detention Facilities," says this: "BIA has failed to provide safe and secure detention facilities throughout Indian country."

Our assessment revealed a long history of neglect and apathy on the part of BIA officials which has resulted in serious safety, security, and maintenance deficiencies at the majority of the facilities.

The OIG report is based on the work of investigators who conducted site visits at 27 detention facilities in Indian country. They observed routine operations at each jail, reviewed detention and budget records, conducted interviews with BIA and tribal officials, and with local and Federal detention professionals.

Again and again, detention officers at the inspected sites conveyed stories of serious, dangerous incidents with an air of casual inevitability. Sadly, the recent Yakima suicide was not a singular episode.

The final report states: "We discovered there have been 11 fatalities, 236 attempted suicides, and 631 escapes in Indian country jails over the last 3 years."

We believe these numbers to be conservative, given that 98 percent of these incidents have never been reported to BIA LES. One jail administrator confirmed our concerns that incidents were under-reported when he stated, "What happens on the reservation stays on the reservation."

The result of this attitude? Public awareness has been deflected from these physically run down, deplorably maintained facilities that offer ample opportunity for escape.

An example. At this jail, a recreation guard gate was held together and locked by handcuffs because inmates had learned the combination to the cipher lock.

Even more disturbing than the circumstances and frequency of inmate escapes is the lack of response and poor recordkeeping by detention officers and facility administrators alike. Talking about a juvenile escape incident, one administrator simply stated, "We haven't seen him since."

The frequency and number of serious incidents, deaths, suicide attempts, inmate assaults and escapes, are indicators of a detention system in crisis, struggling to maintain effective day-to-day operations.

Another contributing factor? Staffing. Overall, investigators found that, on a regular basis, 79 percent of the facilities fell below minimum staffing levels.

According to the report: "Inadequate staffing greatly increases the potential for BIA liability when injuries, deaths, or escapes happen. We believe there is a direct correlation between insufficient staff and the number of serious incidents and escapes that occur at Indian country jails."

OIG investigators found that, in many facilities, detention officers had collateral duties which pulled their attention away from security issues. Astoundingly, some jails were found to have shifts with no detention officers on duty at all.

OIG investigators discovered numerous unsafe situations that increased the risk to detention personnel and inmates. At the Mescalara Jail, a lone female officer was confronted at knife-point by a former inmate, who entered the facility through an unlocked door. The officer locked herself into a detention cell. A trustee convinced the intruder to leave the officer alone. Another inmate summoned the police.

Clearly, detention officers should not be forced to place their personal security, even survival, in the hands of inmates during a crisis, assault, or for any other reason.

The problem of inadequate staffing is compounded by over-crowding. For example, this jail has a rated capacity of 34, but routinely holds more than 110 inmates. Consequently, more than half the inmates must sleep on cell floor mats, increasing the potential for altercations as inmates step over and move around other inmates in the cramped space.

Another critical area addressed in the final report is training. Utilization of untrained or poorly trained personnel places inmates and officers at great risk, and obviously raises concern about the overall safety and security of many of the detention facilities.

Another assessment criterion used by investigators was facility maintenance and repair. The report states, "We found the condition of the majority of the jails we visited to be abysmal, the result of years of neglect and failure to perform even routine repairs in a timely manner."

Responsibility for maintenance and repair of BIA-owned detention facilities is the domain of the Office of Facility Maintenance and Construction, OFMC, which operates independently of BIA's Law Enforcement Services.

Consequently, jail administrators have no direct authority over local maintenance personnel, and therefore no authority to prioritize maintenance and repair work at their facilities.

Investigators found that many maintenance shortcomings have a direct influence on officer and inmate safety, yet there is little indication that OFMC or detention personnel place much emphasis on expediting repairs that affect detention officer or inmate safety.

An example. In several jails, virtually all the Plexiglass was scratched, burned, or damaged to the point that it was extremely difficult, if not impossible, for detention officers to see inside the cells to monitor inmates.

Closely related to maintenance and repair, budget and funding issues were closely scrutinized by auditors and investigators during the review process. The final report had this to say: "We found that detention program funding is haphazardly managed by BIA and, once distributed to the tribes, it becomes virtually unaccounted for. BIA could produce little evidence of basic budget planning, budget execution, or budgetary control."

According to an April, 2004 Department of Justice status report, construction of 13 new jails was to have been completed. Today, only two of those completed jails are actually open and occupied. Nine remain unoccupied due to staffing shortfalls.

The final report goes on to say this: "This overall neglect of detention program funding oversight has created an environment in which fraud can be perpetrated with impunity and waste can continue undiscovered because nobody at BIA is paying attention."

To improve Indian country jails, BIA managers face a range of tough challenges as they develop a plan to correct deficiencies documented by the OIG assessment. Perhaps the most significant will be to overcome the frustration, cynicism, and apathy expressed by many detention personnel.

This vicious cycle of apathy and substandard performance can lead to nothing but worse conditions in the future and greater risk today.

Among BIA's obligations to Indian country is the management of detention facilities and the assurance of their safety and security. The OIG assessment across the board? This is not presently the case. There is no safety where rampant mismanagement and neglect prevail.

There is no security where frustration, apathy, and cynicism are the norm. The assurance of a safe, secure environment requires attention, not just increased funding. It requires action, not just planning. Safety and security can be assured. The time is now.

[Videotape ends.]

Mr. DEVANEY. Mr. Chairman, I would be glad to answer any questions now.

The CHAIRMAN. Yes. I have been asked by Senator Smith, because he has to go, if he could make a short statement. I will do the same for other colleagues if you are under time constraints.

OPENING STATEMENT OF HON. GORDON SMITH, A U.S. SENATOR FROM OREGON

Senator SMITH. Thank you, Mr. Chairman, Senator Baucus. It is a very important hearing you have called. I do appreciate your letting me intervene in this hearing at this point to give a special welcome to Corinna Sohappy, who is from my State, and the Warm Springs Indian reservation. Her family suffered a terrible tragedy last year with the loss of Cindy Sohappy at the Chemawa Indian School in my State.

It is not easy to make a public issue out of a private tragedy, but I want Corinna to know that good will come of this and that your courage will result in Congress doing more.

I thank the Inspector General for being here. I know, twice, he has been at hearings where I have been present, and is very mindful of this terrible, even tragic, oversight. I think you, Corinna, are helping us to lay the foundation for a much-needed improvement.

I do want to also take note that, in addition to the circumstances that resulted in this young life being lost, Cindy's life specifically, there is an epidemic of suicide in detention facilities on reservations. This is an issue which touches me very much in a personal way. The Congress has done something about this very recently. It has done it in a way that tribes are included, both with the authority and the appropriations that will flow from it.

So I encourage the tribes, as we meet here in Washington, DC to open this beautiful new museum, to focus on this piece of the puzzle, and that is lowering the rates and eliminating, if possible, the rates of suicides on the Indian reservations and other places, specifically in detention facilities, because there are few things more tragic than a life that is ended in such a way.

So, I thank you, Mr. Chairman, for letting me say these things, and to welcome you, Corinna, and thank you for your participation.

I also want to acknowledge Assistant Secretary David Anderson, who is scheduled to testify here today. He recently was in Oregon and he showed great compassion, was very inspiring and uplifting to the people there, and I want him to know that we are mindful of his efforts and appreciate his very positive message about overcoming drug and alcohol abuse among our tribal youth, and frankly among all our youth.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Did either one of my other colleagues want to, because of time constraints, participate now? Otherwise, we will go immediately to questions and take 5-minute turns.

[No response.]

The CHAIRMAN. I take it from your testimony that you are not impressed with the coordination between the Interior Department and the Department of Justice. So my question is, what needs to happen before those of us in Congress consider giving more money to building jails in Indian country?

Mr. DEVANEY. Well, you are right, Mr. Chairman. I am not impressed with that coordination. I think when DOJ started awarding grants, I believe it was in 1997, the Department of Interior simply stopped prioritizing where they thought jails should go. Today, there is very little evidence of any collaboration between the two departments.

The most common thing we heard during our travels was that new jails are built where they have the best grant writers as opposed to where they are really, truly needed.

The film, and I think the report—and I will say it again—talks about 13 new jails having been constructed, and only 2 are actually open today for business. Nine have not been opened because of staffing reasons.

As I said earlier, the DOJ grants only provide money for the construction, and then BIA is supposed to come in with the monies for staffing and for the operations of the jail. That simply is not happening, and there is no coordination there.

As I mentioned earlier, there was \$35 million in supplemental funding for this very thing. We spent a year, and only could find 11 percent of that money. The rest of it is unaccounted for.

The CHAIRMAN. Obviously, we have had it pointed out by you, by Senator Baucus, and by Senator Smith thus far about how alarming the number of suicide attempts are.

Do you have a view of why this is happening in Indian jails? I assume it is happening in Indian jails more than other jails, generally, right?

Mr. DEVANEY. I think suicide is a problem in all jails, but in Indian jails, just in the jails we visited, it seems to be rampant. I think there is a strong nexus between, at the intake stage when a prisoner comes in intoxicated, with no medical screening and no special concerns about watching that inmate to make sure that that inmate either does not commit suicide or just simply dies from asphyxiation, is very tragic.

There just does not seem to be, as you might find in a county, State, or Federal jail, an effort made to treat an intoxicated inmate, or an inmate that might be on drugs in a special way when they are brought into the facility. Most of these suicides that we looked at involved intoxicated inmates.

The CHAIRMAN. Is there any way you can quantify the problem in the Indian jails compared to the rate of deaths in other Federal detention facilities?

Mr. DEVANEY. Well, it is very hard to get a grip on the number of attempted suicides in Indian country because, as I mentioned, 98 percent of the things that we found had never been reported to BIA, and we only visited 27 of the 72 jails. My suspicion is that this is a far greater problem than we are reporting on today, and the gravity of it is really astounding.

The CHAIRMAN. Senator Baucus?

Senator BAUCUS. Thank you, Mr. Chairman.

Thank you, General. You are doing great work. It is not easy being an Inspector General. That is not the most popular job in the world, and, frankly, good government depends very much upon you and other IGs doing very good, solid work.

I, and I know I speak for the committee and the rest of us in Congress, and I know a lot of American people, thank you for being so solid and independent. Your integrity is unquestioned. We deeply appreciate your efforts in bringing these tragedies to light.

I have several questions. As you know, some jails are not run directly by BIA, but through Section 638 contract authority. And you, in your report, say that those jails tend to be better managed. Why is that?

Mr. DEVANEY. I am not sure, but that was the observation. We visited 27 jails; 10 of those were run by BIA, and 17 were run by the 638 tribes. We found the ones run by the tribes generally to be better managed, better maintained, and more likely to have some of the best practices we found out there.

Those best practices would include sort of in-service training being done at Hono Odum, youth counseling and educational opportunities for youth at Hila River, and a dollar-saving experience using modular facilities at Nasquale. So, there are best practices out there, and where we found them, they tended to be in the 638 facilities.

Senator BAUCUS. Why, do you suppose, though? What is your best guess?

Mr. DEVANEY. I think that the tribes obviously care about something that is in their immediate proximity and want to do right by their people, and BIA is at a distance. I am sure that that plays a role.

Senator BAUCUS. Would you tend to encourage tribes, if they find the resources and the personnel, to run their own prisons?

Mr. DEVANEY. Based on what I have seen, I think they are as capable of it, or more capable of it, than BIA is today. Yes.

Senator BAUCUS. What is your basic recommendation? Let us say the tribes were to come to you and say, Mr. Devaney, you have studied this. What is the solution here?

Mr. DEVANEY. Well, I think that I would say that money is not the only answer. My suspicion is, you might hear from some of the other witnesses today that more money is the solution to this problem.

I think it is a part of the solution, but there has to be a commitment on the part of both BIA and the tribes, and the will to take care of some of these things that do not necessarily need money.

Putting internal controls on the existing money, for instance, before this Congress decides to give them any more money, I think would be a very good idea.

Senator BAUCUS. Do you know whether the BIA has asked? I think money is part of the solution, but not the entire solution. Has the BIA made an earnest request for more funds?

Mr. DEVANEY. Well, I do not think they have. I think our report chronicles the fact that the BIA's Law Enforcement program, which runs detention facilities, simply used historical figures for their funding requests for the following year and never really asked for, or set out to find out how much money was actually needed from the jail administrators so they could ask for additional funding from Congress. It is simply a matter, they never asked for it. Now, if they were to decide today, of course, we are 2 years behind in terms of budget years.

Senator BAUCUS. What about internal controls? Are you aware of any effort to try to institute any?

Mr. DEVANEY. Well, I am alarmed by the fact that we spent a year trying to find where that \$35 million went, and only were able to account for 11 percent of it. The idea that the money is given out to the jails and then not tracked is a prescription for, as the video said, fraud, waste, and abuse.

Senator BAUCUS. But are you aware of any effort to try to get a handle on the trends?

Mr. DEVANEY. No. No, I'm not.

Senator BAUCUS. And why do you suppose there has been no effort thus far?

Mr. DEVANEY. I have not been able to figure that out, Senator.

Senator BAUCUS. Your best guess.

Mr. DEVANEY. My best guess is that it is going to take some focus by the Assistant Secretary and his senior leadership to put in place the right people in the finance shop in BIA, which is, quite frankly, not there now.

We find this same phenomenon when we do our CFO audits every year. BIA always has trouble accounting for the monies given to it.

Senator BAUCUS. It is a huge problem and cannot be entirely solved immediately. What are some of the first steps that come to mind to you that could be taken here?

Mr. DEVANEY. Well, the first steps were to try to get a grip on some of the serious issues. Not that maintenance and money is not serious, but escapes into a community without notification to law enforcement, the high rate of suicide attempts, actual suicides, deaths, get a grip on that.

We have made some recommendations, both in our interim report and in our final report, that specifically address those things. And then other things like training policies, procedures, maintenance, those are things that can come after that. But at the end of the day, it is going to take a whole amount of will and focus that is not there, or has not been there in the past.

I am not willing to judge the current will, because I think the Secretary has certainly expressed to me her desire to implement change.

But I am worried that, when the spotlight shifts off of this program or this problem, we will be adrift again. There have been countless other studies that have found some of the things that we have talked about today, and nothing has changed.

Senator BAUCUS. And when you brought those studies to the attention of BIA and others, what was their response?

Mr. DEVANEY. We remember that and we are working on it, and we have a plan. But I am looking for action. It is one thing to have the plan. It is quite another to actually implement the plan.

Senator BAUCUS. Well, that is exactly right. Mr. Chairman, I am going to suggest, at the appropriate time, that we ask the BIA to come back to us with steps and benchmarks, and steps at a time, and that kind of thing.

My personal view is, if we do not do that, as the Inspector General says, not a lot is going to happen when the spotlight tends to be focused elsewhere. I have been dealing with this general kind of problem for years, and that is just my personal opinion. We are going to have to have some very definite benchmarks here reported back to us at specific dates.

The CHAIRMAN. Do you propose that in a private meeting or in a committee?

Senator BAUCUS. Well, let us discuss that.

The CHAIRMAN. All right.

Senator BAUCUS. But I think something along these lines is necessary.

The CHAIRMAN. Senator Thomas, then Senator Bingaman.

Senator THOMAS. Thank you, Mr. Chairman.

Thank you for being here. I want to talk a little, pretty much like the Senator from Montana, in terms of process. I do not think there is any argument that there is a need here. The question is, how do we get there? What is the role of the Inspector General?

Mr. DEVANEY. The role of the Inspector General is primarily one of oversight of the Department and the programs within the Department.

Senator THOMAS. This is not a new issue.

Mr. DEVANEY. No, this is not a new issue. We did an audit, as differentiated from this assessment, I think back in 1994, where we

found similar problems in the financial accountability, and made a number of recommendations which seemingly have not been implemented.

GAO did an audit more recently and found that the maintenance system that BIA has is riddled with problems, and made recommendations. I am not so sure those issues have been addressed, either.

Senator THOMAS. I guess that is part of the problem. I mean, if you are going to do these things, how do you implement them? Why did it take so long to do this?

Mr. DEVANEY. Yes. I reject the notion that it is simply a matter of money. I think it is a matter of will and focus by the senior managers to ensure that these recommendations made, whether it is my office, GAO, or anybody else, that these things get done. I think it would be a good idea for both the Secretary and the Congress to check back in on occasion and make sure that is happening.

Senator THOMAS. I would think so, too, as a matter of fact.

Generally, what is the role between BIA and the tribes in terms of actually managing these? Is that a choice the tribes can make, or how is that done?

Mr. DEVANEY. Well, as I mentioned, there are really three types of jails. There are those jails that are run exclusively by BIA, there are those jails that are run by the tribes through the grant process, and there are some other jails—I think about nine—that are actually owned and operated by the tribes without the grant process being involved.

BIA's role is one of funding in terms of operations and staffing, and one of oversight. But when I go to a jail, like I did, and ask the head person at the jail, when was the last time you saw somebody from BIA, and they say they have not been here in 5 years, I am concerned about the fulfillment of that oversight role. Obviously, there has not been any.

So in terms of ensuring that the jails are safe and secure, that is a BIA role. It can be done a couple of different ways. I would suggest that the way to do it is in consultation with the tribes, providing guidance and help to the tribes as opposed to some dictatorial kind of mode. But, as we sit here today, I do not think it is being done in any mode.

Senator THOMAS. Well, running a jail is not a mysterious thing. There are jails all over the country, and it is not a brand-new idea. We do not have to depend on BIA to do it, I would think. I mean, the tribes are there. Tribes have leadership roles. They have operating governments. What is the best way to do this?

Mr. DEVANEY. Well, there are enormous challenges in terms of staffing and competence of staffing in this area. Some of these jails are in really remote areas and it is very tough, for instance, to recruit and have people move into those areas. They are low-paying jobs, especially at the officer level.

But we did find some wonderful sort of best practices in one jail. We found a non-Native American jail administrator who had been brought in from the outside by the tribe who had extensive correctional background in State jails, I believe.

He told us that he thought his mission was to prepare the Native American staff that he had to take over that role when he left and

retired. We thought that was terrific, and we have urged the program to look at that one example as a way of maybe addressing some of the other jails.

Senator THOMAS. Thank you.

The CHAIRMAN. Senator Bingaman?

Senator BINGAMAN. Thank you very much.

Senator Baucus was asking about possible first steps. In the case of State prisons and local jails, one of the ways that corrective action is forced in those institutions is when the Federal courts step in and issue an injunction that says, if you cannot maintain prisoners in a safe and secure manner, you cannot maintain prisoners in this facility.

Why does the Secretary of Interior not issue a directive to all of the facilities that you found to be not safe and secure, or at least saying they cannot take additional inmates into those facilities, but possibly even saying they cannot maintain any inmates in those facilities until they demonstrate that they can do so in a safe and secure manner?

Mr. DEVANEY. Well, Senator, I would think that the immediate problem would be where to house the prisoners that are coming through the system right now. The truth of the matter is, all of these jails are over-crowded. All of these tribes need new jails, or will need new jails, soon.

New jails and new staffing can be very helpful. We found a jail, for instance, which was terribly over-crowded, had four correctional officers, I believe, and, because of the over-crowding and the lack of officers, has been in a virtual lock-down for 24/7 for over a year.

Sitting down the street is a brand-new jail that cannot be opened. How do they get the 64 corrections officers out there in this remote area to open this jail? That is the kind of thing I think you need to start thinking about when you decide to put the jail there, not after the jail has been built and you suddenly realize you do not have the staff to run it.

I am all for the tough approach I think you are advocating here, but I would worry about the sudden turning off of the ability for tribal courts and the reservations not to have any place to house these people.

Senator BINGAMAN. Well, I agree that it does put the heat on the tribal courts and the tribes and the BIA to issue an order to them, and perhaps they should be given 90 days in which to take corrective action or close the facility, or take whatever other action is appropriate.

But it seems irresponsible, to me, for the Secretary of Interior to know what you just related to us and to see that video that you just played for us and to think that this is a problem we can resolve over the next several years.

It strikes me that, when you have an instance—you talk here about a juvenile being raped in a particular facility. The juvenile was being held for social services and was being raped in this facility.

Why would it be in the Secretary's interests, or anyone else's interests to allow other juveniles to be put in that facility? Should that not be prohibited? Should any juveniles currently held there not be ordered to be released?

Mr. DEVANEY. I think we found a lot of instances where juveniles were being held with adults, and to BIA's credit, they did immediately, at the point of my interim report, order that no more juveniles could be housed in adult facilities. My understanding is that is no longer happening, but it is the kind of thing that has to happen.

Senator BINGAMAN. So it is your understanding that at the current time, in any of these facilities that you are talking about here, there are no juveniles being housed with adults?

Mr. DEVANEY. Well, the order has been given that that not happen. Absent being out there, actually making sure it has not, I would be reluctant to say it is not. But at least the direction has been given, and we have anecdotal evidence that that is happening.

Senator BINGAMAN. Your testimony concentrates most on the BIA and the failures of the BIA, and I understand that. You say the Justice Department has provided \$150 million in grants to build facilities.

Is there not some responsibility on the part of the Justice Department to follow that funding to be sure it is, in fact, being used in an appropriate way? You say we have got all sorts of facilities sitting empty that have been constructed. Where is the Justice Department audit, or Inspector General, or whatever oversight the Justice Department ought to be exercising?

Mr. DEVANEY. Well, I think you make a good point, Senator. I do intend to speak to the DOJ Inspector General about this issue. He and I have collaborated a little bit in the beginning of our assessment to be in a position for me to forward to him some of these issues, so I will be doing that.

Senator BINGAMAN. This strategic plan that you refer to, is there a single person who has been identified by the Secretary of Interior to actually implement the strategic plan, and is there a budget that has been developed as part of an implementation plan for the strategic plan, as far as you know?

Mr. DEVANEY. Senator, I would defer those questions to the Assistant Secretary, who is going to follow me. My understanding is, a team has put together the plan. My assumption is that is the same team that is going to try to implement it, but please ask that of the Assistant Secretary. He would know more about that.

Senator BINGAMAN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

I asked Senator Baucus if he had any other questions. We do not have questions to ask right now, but you might think in terms of members who cannot be here that might submit questions for answer in writing, and we would appreciate your cooperation in regard to that.

So unless you have anything in closing, we will bring on the second panel.

Mr. DEVANEY. Thank you, sir.

The CHAIRMAN. All right. Thank you, General.

It is now my pleasure to welcome Ms. Corinna Sohappy. Ms. Sohappy is the legal guardian to a young woman who died while being detained in a detention facility in Chemawa School in Salem, Oregon.

We thank you for your testimony. You can proceed any way you want to, but if you have longer testimony, we would be glad to have the entire testimony printed in the record, and then any summary you want to give, or if you just want to read from your testimony, that is all right, too.

So would you proceed, now?

STATEMENT OF CORINNA SOHAPPY, WARM SPRINGS, OR

Ms. SOHAPPY. In the words of my people, ne-hik-mike-ski, which means good morning, I greet you.

Mr. Chairman and members of the committee, my name is Corinna Sohappy. I am here this morning to talk about the death of my niece, Cindy Gilbert Sohappy, in a jail operated by the Bureau of Indian Affairs.

First, I would like to tell you about Cindy. Cindy was 16 years old when she passed away. She was tall, beautiful, popular. She was a smart young lady. She was not afraid to go off on her own and to take a chance. Unfortunately, she was born into a very chaotic family environment. Cindy's mother was plagued with a variety of personal issues.

I was given legal custody of Cindy by the court in August of 2003, after her mother was placed in an alcohol treatment program in California.

Cindy attended the Chemawa Indian School in Salem, Oregon. Although it was more than a 3-hour drive from our home in Warm Springs, Chemawa offered her many more educational opportunities than our local high school. Cindy was doing very well at Chemawa and had many big dreams about what she wanted to do with her life.

At the time of her death, she was only two credits short of becoming the first person in her family to graduate from high school. She planned to go to college after graduation. She was learning to drum and to sing.

She also jingle-dress danced, a tradition in our tribe that you may know of as a "pow-wow." She dreamed of traveling, and she hoped that by joining the Army or the Marines someday, that she would have that opportunity.

Given the unstable environment in which Cindy grew up and the many challenges that she had faced, our family took great pride in Cindy's success.

On the evening of December 6, 2003, after attending our local Christmas lights parade, I received a message that changed my family forever. I was told to call Chemawa because Cindy was not breathing.

When I called them, I was told that they lost her. I asked, "What do you mean? Did she get up and walk away?" They told me that she had passed away. I asked if they were sure it was Cindy. Excuse me.

The CHAIRMAN. Take your time.

Ms. SOHAPPY. The man told me that he knew Cindy, and that was her. I was devastated. I dropped the phone. My cousin was with me. She picked up the phone and was told that the FBI and the Oregon State Police wanted to know what to do with Cindy's body. I asked them to leave it where it was until I got there.

We left immediately and we arrived at Chemawa around 6 in the morning. A security guard escorted us to what looked like a facilities or a maintenance shack located well from the school building.

As we entered the building, we walked through a small office that looked like a booking room. As the daughter of a patrolman, a police dispatcher, and the tribal chief judge, I had grown up around a jail and I know what a booking room looks like.

As we continued, we entered the jail. There were four cells, all made of cement blocks with heavy steel doors on each of them. We continued walking to the last cell where Cindy was lying on the floor.

The cell was about 4 or 5 feet wide and about 10 feet long. There was a mattress lying near the door with blood spattered on the mattress. Cindy was lying on her back with her right hand extended upward. She had blood around her nose, her mouth, and on her shirt.

The staff could not explain to me why she was bleeding. I tried to move her arm to rest it across her chest, but she was already cold and her arm was very stiff. Throughout her life, Cindy had rarely gotten herself into trouble.

We were told that on this evening, however, Cindy had been provided with alcohol by an older friend and was caught drinking near the school. She was placed in the cell to sober up at about 8:15 p.m.

When the staff next checked on her nearly 3 hours later, she was not breathing. We were told that she had stopped breathing because of the amount of alcohol in her body.

My nephew, who also attended Chemawa at the time, had followed Cindy to the jail that evening to make sure that the staff gave her the supervision that she needed. He had seen how intoxicated she was and warned the jail staff that it was not safe to leave her alone.

My nephew told me that, while Cindy was being carried to the cell, since she was too drunk to walk on her own, that the jail staff made jokes about her. Until that morning, I did not know that this dreadful jail even existed at Chemawa.

I have since learned about many prior incidences in which high school students had been locked up with poor supervision. My youngest brother, who also attended Chemawa for a time, told me that he was once locked in this jail without supervision, after drinking, nearly 20 years ago.

Other relatives of Chemawa students told me about the annual homecoming celebration at the school last year, when as many as 92 students had been locked into these four small cells at one time.

This is a dreadful tragedy that simply did not have to happen. If the staff at Chemawa had provided even the least amount of supervision in the jail, Cindy would be with us today.

The loss of Cindy has left my family in a fragile state. I worry about the effects of her death on my parents and on Cindy's two young siblings, who I care for.

I would like to thank the committee for considering this important issue. It is my sincere hope that, by coming to Washington this morning and by sharing Cindy's story with you, that no one else will have to die unnecessarily.

[The prepared statement of Ms. Sohappy appears in the appendix.]

The CHAIRMAN. Thank you very much. Obviously, you have our sympathies. I have just one question, but it is not really a question, it is more an opportunity for you to tell us of other instances of like situations that maybe you would not have been familiar with except for the circumstances of your niece's death, and your then getting contacts from other people, so it gives us a chance to broaden the record if you would tell us of some other instances you have heard, and why they were overlooked for so long.

Ms. SOHAPPY. During the funeral services of my niece, it was a devastating time. Chemawa bussed about 30 students to the funeral in Warm Springs, which is about a 3-hour ride.

During that time, several students came up to me and told me that they had also been locked up in these cells and left for long periods of time without supervision. They were just locked in there and then never checked on for hours on end. I do not recall their names, because there were so many of them.

Even after my brother graduated from Chemawa, in about 1984, from that time, he and his friends were also locked in these same cells without supervision, just locked in there and left without being checked on for periods of time.

The CHAIRMAN. So then what you just related to us was instances involving the single facility, not other places around the country or close by.

Ms. SOHAPPY. Yes. This was just at Chemawa.

The CHAIRMAN. Yes. All right.

Senator Baucus?

Senator BAUCUS. Ms. Sohappy, we extend our deepest sympathies to you. You have gone through a lot, clearly. You are very courageous in coming here and sharing your experiences with us. As far as I am concerned, your trip is not in vain. Your presence here has a searing impact on all of us.

It is our responsibility and our duty to follow up and do our very best to assure that incidents like this do not reoccur. There is always some chance that things sometimes happen, but these circumstances you have had to deal with, life there on the reservation, and other descriptions we have heard, certainly indicate that we have a lot to do.

As I had mentioned earlier, I think if we had set some deadlines—the fancy term is benchmarks—or some standards and so forth, that perhaps we could address the problem very, very aggressively and very effectively.

But the main point I want to make is, as far as I am concerned, your trip is not at all in vain. You have made a real difference here, and we are going to spend a good bit of time trying to figure out how to solve it, and by gosh, we will solve it. Not totally, probably, but certainly it will go a long, long way. Thank you very much.

Ms. SOHAPPY. Thank you.

The CHAIRMAN. Senator Bingaman?

Senator BINGAMAN. Thank you. I join the others in thanking you for coming.

This tragedy occurred last December, as I understand it, December 6?

Ms. SOHAPPY. Yes.

Senator BINGAMAN. Since then, are you aware of any action by the BIA or the Secretary of Interior to prevent other juveniles from being incarcerated in this same facility?

Ms. SOHAPPY. Yes. They removed the doors a couple of days after the death and locked up the facility, so that the only person that has a key to that building is a BIA law enforcement officer.

Senator BINGAMAN. So at the current time, there are no inmates in the facility?

Ms. SOHAPPY. No. No. According to newspaper articles, they send them to either IHS, which they have right there on the Chemawa campus, or to one of the medical facilities in Salem.

Senator BINGAMAN. So, before they were incarcerating people who were intoxicated in this detention facility. Now they are sending them to the Indian Health Service.

Ms. SOHAPPY. Yes.

Senator BINGAMAN. And presumably they have some kind of facility for helping them or detaining them. Is that right?

Ms. SOHAPPY. Yes. Yes.

Senator BINGAMAN. All right.

Ms. SOHAPPY. They send them to IHS for a medical evaluation to see their level of intoxication, and the same with the hospital. I am not sure what their process is after they are evaluated, if they are kept at the hospital. I am not sure what they do after.

Senator BINGAMAN. All right. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. Ms. Sohapp, we do not have any more oral questions now. You may get some questions in writing from people on the committee who could not be here. If you do and you have never been involved in answering, my staff would help you do that by telephone, whatever the case might be.

Ms. SOHAPPY. All right.

The CHAIRMAN. So, we will be glad to help you if that happens. It may not happen, but if it does, it would be just answering questions like you have for us orally.

Ms. SOHAPPY. All right.

The CHAIRMAN. Thank you very much for your testimony.

I will call the third panel. Mr. David Anderson, Assistant Secretary of Indian Affairs at the Bureau of Indian Affairs; Tracy Henke, Principal Deputy Associate Attorney General, Department of Justice; and Mr. William Talks About, Jr., the chairman of the Blackfeet Tribal Business Council, Browning, Montana.

Then, finally, I would like to note that Mr. Robert Ecoffey, former director of Law Enforcement Services, had planned to be with us this morning, but unfortunately he was out of time. But we have Mr. Lamar, Acting Director of Law Enforcement Services at the BIA available for questions, but would not be making testimony. That is my understanding.

Mr. Lamar, is that your understanding, just to be available for questions, or did you have a statement that you were going to make, too?

Mr. LAMAR. I will be available for questions.

The CHAIRMAN. All right.

We are going to go in the order that I introduced you: Mr. Anderson, Ms. Henke, and then Mr. William Talks About, Jr.

Then anybody who has got people with them that they want to introduce for consult, let our Recorder know who those people are.

Mr. Anderson, we will start with you.

STATEMENT OF DAVID W. ANDERSON, ASSISTANT SECRETARY, INDIAN AFFAIRS, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC; ACCOMPANIED BY MR. WALTER LAMAR, ACTING DIRECTOR OF LAW ENFORCEMENT SERVICES, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Mr. ANDERSON. Thank you, and good morning, Mr. Chairman and members of this committee. I would like to maybe first break from my statement to begin with, and I will be submitting a full statement for the record.

I would like to just address some of the things that I have heard earlier that are not in my testimony. I was very taken by Senator Baucus' comments. I think it is for those reasons that I want to explain the reason why I am here this morning.

I have been on board only since February of this year. When I was first asked by the White House to consider the Assistant Secretary's role, I was not interested. All of my life I have avoided any involvement in the political affairs of my tribe, although I have been involved with Indian development.

But as a young person, I had always felt that my calling was in the areas of business. I have had a number of very successful businesses throughout my lifetime. It was because of that that the White House insisted that I reconsider being able to come on board as Assistant Secretary.

I think part of that was, they realized that, throughout my lifetime, I have overcome much adversity, hardships, and challenges in my own life. I have been sober 9½ years. By all rights, I probably should be in one of those detention centers myself.

But I believe, because of this great country that we live in, that it does not matter what you have been through. It does not matter where you have come from. The important thing that matters is that all of us, especially us as America's first people, have an opportunity.

With the success that I have realized in my career, one of the things I have done was to give back to my community and working with Native youth. I have created a foundation that works with the leadership and life skills of our Native youth.

I believe that is one of the major reasons why I was asked to look into this position. In fact, my work has been recognized not only here, but also in Canada, and most recently, last year, on "Oprah Winfrey."

The reason I say these things, is because I take very seriously my role. I take very seriously the guidance that was given to me when I first came on board by the Inspector General, Mr. Devaney.

So, I just wanted to be able to set that frame of mind, because I have been very frustrated myself since I have been on board. I was warned by many people when I told them that I was consid-

ering accepting this position as Assistant Secretary for Indian Affairs. They said that this is probably one of the toughest, most challenging jobs in Washington, DC.

But the reason why I am here today is because I do care. I have lived through those tough times. I have experienced those hardships. I am here because people need to step up and accept responsibility to make that difference.

So, this morning I share Mr. Devaney's concerns. I share the portrayal that many of our jail cells are like third world developing countries. I will also share with you that this is only one area that I am faced with. Our housing programs are much like third world developing programs.

We are faced with one of the highest unemployment rates found anywhere, 50 to 80 percent on some of these reservations. We have the highest suicide rate. We have been hearing today how suicides are high in the jails.

Well, as Indian people, we have, out of any people group, a suicide rate that is greater than any people group in the United States. We have the highest drop-out rate. Many of our people drop out of school by their second year in high school.

I think all of the committee knows that we also experience probably some of the highest substance abuse found anywhere in the country, including much of my own people and my own tribe.

I also agree that we have had a problem in the budget process within the Bureau of Indian Affairs. In the past, the way the budgets were held is that pots of money were sent to the regions and then that was distributed out.

When I first came to the Bureau in February, there was almost this mustiness, a historic, archaic mustiness about that whole department. I have realized, and quickly realized, that business as usual is not how we are going to go forward.

We have been in the process of developing budgeting. We have been in the process of updating our technology. I think everybody within Indian country recognizes that the technology that we have had available to us was not adequate to be able to provide the type of recordkeeping necessary.

This year, for the first time in history, we have been able to have our archival center be able to hold our records. For the first time, we have been able to electronically inventory that. So, this year, much has happened.

We are reviewing our accounting procedures. In fact, I met with OMB yesterday and I was told that, probably for the first time, they have seen significant progress in the way we are handling our accounting.

I believe this is another reason why I am here today, because I have been part of three publicly traded companies on Wall Street, been very familiar with the fiduciary responsibility in providing true and accurate accounting.

We have a long ways to go, but under my watch, accountability has been a key component. However, we have been faced with an enormous task of bringing up to date our accounting procedures, not just in the accounting procedures themselves, but providing the technology and the equipment that spreads throughout Indian country. We have a lot of work to do.

But I will also share with you that, since coming on board, as Mr. Earl Devaney has indicated, Secretary Gail Norton and senior administration have been very concerned about this. From what I understand, probably for the first time in a long time, senior administration staff has actually looked into what is happening within law enforcement.

So, I want to just make sure about some of the things we have heard today, and, again, in the Inspector's report he says it's no one person and no one administration—what we are hearing is really failed policies by the whole Federal Government for a long time.

So, since coming on board, and when I had first been made aware of this, I sent a clear message out into the field that it was not going to be business as usual. My success in business is in the restaurant industry. The health, safety and welfare of our customers is of the highest importance. I sent that message out. Since then, we have done a lot of work.

Have we been able to solve a lot of what we are dealing with? No, we have not. But this will give you an idea. This document here represents an incredible amount of work that we have compiled about some of the things that need to be fixed within our detention centers.

When I was first made aware of Mr. Devaney's concerns, within 24 hours I had assembled a team to start working on this. By the end of the week, we had mobilized over 100 people to begin our own investigative process.

In the past, we had only \$1.4 million for repairs and maintenance, and I was able to go, within our budgeting process, and we were able to find an additional \$5 million to start immediately in taking care of some of the repairs and maintenance that we could take care of right away.

So, I just wanted to set the tone, that it is not business as usual, that I and my staff have taken a tremendous amount of concern about this problem.

I would also like to share that there is very aggressive talk about what has taken place. I understand that. But I also want to make sure you know that people like Mr. Lamar and some of the staff that we have within the Bureau are very hard-working people. I hope that we also recognize, even though we have been understaffed, that we just do not paint a portrayal that these are all inefficient or bad people.

The reason why they are there, and many of them working through weekends or working longer hours, is because we do have Indian people who care. So, I want to make sure we acknowledge the people within our staff for the hard work that they have done.

Since February when I first found out, many of these fine people within our law enforcement offices have been working throughout the weekend, working long hours. We set up a war room within the Department of Interior where we have actually started looking at all of our policies and procedures.

Within the first several months, we took immediate and corrective action. We have been able to take almost 40 percent of the work that needed to be done and completed it. We still have a long ways to go. Within our own investigations, we do concur with the

Inspector General's report. It has been a very eye-opening experience for me.

Like I said, the reason why I am here today is because I do care. It would be very easy for me to go back to the private sector, but that is not the answer. We need to stick to this, we need to address it, and we need to be able to take care of these matters.

I would also like to say that, when we had heard about this unfortunate tragedy at the Chemawa School, that immediate action was taken there, too. Today, we do not have any juvenile holding cells within any of our Indian schools. We also implemented immediate policies where what happened there would no longer happen again.

Now, any youth that is suspected of inebriation, they are immediately taken to a hospital or Indian Health clinic where they are monitored, and they are not released unless they have a doctor's signature. Then once they are brought back to the school, they are held under 24-hour watch until they are capable of going back. So, we have taken immediate steps in many of these instances.

Also, we are no longer holding youth in any jail cells with any adult inmates. So, I wanted to make those comments. I believe it was important to let the committee know where I come from, the reason why I am here, and that I take these things very seriously. It is not business as usual at the Bureau of Indian Affairs. We do have a long way to go.

So, I would like to start my testimony. I would like to thank you for inviting me to speak today on the conditions——

The CHAIRMAN. Can I ask you, before you start your testimony, your testimony is going to be included in the record as a whole. So can you summarize it? We have got three more witnesses, and Senator Baucus has to be downtown at a certain time. Is it possible? Quite frankly, I thought you were going to include your testimony in the record, and then you gave your oral testimony just now.

Mr. ANDERSON. Yes. All right.

The CHAIRMAN. All right.

[The prepared statement of Mr. Anderson appears in the appendix.]

The CHAIRMAN. Ms. Henke?

STATEMENT OF TRACY A. HENKE, DEPUTY ASSOCIATE ATTORNEY GENERAL, OFFICE OF JUSTICE PROGRAMS, DEPARTMENT OF JUSTICE, WASHINGTON, DC

Ms. HENKE. Thank you, Mr. Chairman, Senator Baucus. If I can ask that my entire statement be submitted to the record, and if I can also correct the record. I currently serve as the Deputy Associate Attorney General for the U.S. Department of Justice, not the Principal Deputy.

The CHAIRMAN. We will correct the record.

Senator BAUCUS. But they were giving you a promotion.

Ms. HENKE. I did get a promotion, sir. Thank you. I think. I am not one hundred percent certain some days.

Today, as you are probably well aware, there are 33 States that contain approximately 300 Indian land areas, or reservations. Jurisdiction over crimes in Indian country depends on several factors,

including the identity of the victim and the offender, the severity of the crime, and where the crime was committed.

There are two groups of Indian offenders who may be in Federal custody. First, there are prisoners who have committed an offense under Federal law. Often, these offenses fall under 18 U.S.C. Section 1152 and Section 1153. Section 1153 is known as the Major Crimes Act, and Section 1152 is known as the Indian Country Crimes Act.

Offenders in this category are under the jurisdiction of the Bureau of Prisons and are not in Indian tribal facilities.

The second group are prisoners who have committed offenses under tribal law. Indian prisoners in this group are under the jurisdiction of the tribe whose law has been violated.

As part of their inherent sovereignty, Indian tribes have jurisdiction to prosecute all crimes committed under tribal law by Indians in Indian country. These prisoners are generally in facilities operated by the Bureau of Indian Affairs or the tribal government.

The Department of Justice's involvement with Indian country detention facilities is generally limited to our Correctional Facilities on Tribal Lands Program. This program provides funds to American Indian and Alaska Native tribes to construct correctional facilities on tribal lands for the incarceration of offenders subject to tribal jurisdiction.

Specifically, the Department of Justice has administered tribal correctional facility grants totaling approximately \$60 million since fiscal year 2001. It is important to understand that these grants are statutorily limited to brick and mortar construction costs only.

Grantees are responsible for fully supporting, operating, and maintaining these correctional facilities. Since the inception and funding of the program, the Department of Justice has provided funding to 23 tribes for jail construction.

Of these 23 facilities, 8 facilities are exclusively juvenile, 12 are combined adult/juvenile, and three are exclusively adult. All 23 tribes are actively implementing design or construction initiatives. Some add beds to existing facilities, but most involve new construction.

In addition to the Correctional Facilities on Tribal Lands Program, the Department's Bureau of Justice Statistics compiles statistics relating to detention facilities in Indian country. In November of 2003, the BJS published "Jails in Indian Country, 2002," the most recent survey of adult and juvenile detention centers in Indian country.

Data for the bulletin was obtained by a mailed questionnaire, and accompanied by phone calls and faxes. In total, 68 of the facilities in Indian country responded. For the committee's review, copies of the bulletin, as well as the questionnaire that was sent to the facilities, have been provided.

It is important to note that, while the BJS bulletin contains statistical information about Indian detention facilities, it does not gather information regarding condition in the jails.

As the administration, through the Bureau of Indian Affairs, works to improve Indian detention facilities, the Department of Justice will continue to assist, as we are able.

Most recently, an experienced administrator from the Department's Bureau of Prisons was detailed to the Bureau of Indian Affairs to assist in the development of strategies to improve the delivery of detention services in Indian country. The Department of Justice looks forward to this opportunity to work with the Department of Interior to address this issue.

Mr. Chairman, Senator Baucus, Attorney General Ashcroft has pledged to honor our Federal trust responsibility and to work with sovereign Indian nations on a government-to-government basis. The Attorney General and the entire Justice Department will honor this commitment and continue to assist tribal justice systems in their effort to promote safe communities.

We also recognize, however, that the most effective solutions to the problems facing tribes comes from the tribes themselves, and that our role is to help them develop and implement their own law enforcement, detention, and criminal justice strategies.

Thank you for the opportunity to be here. I welcome the opportunity to answer any questions you might have.

The CHAIRMAN. Thank you.

[The prepared statement of Ms. Henke appears in the appendix.]

The CHAIRMAN. Now, Chairman William Talks About.

Senator BAUCUS. Mr. Chairman, I would like to just say a word, if I could, about our next witness.

The CHAIRMAN. Please do that.

Senator BAUCUS. Mr. Talks About is the chairman of the Business Council of the Blackfeet Indian nation. He is a solid, wonderful guy, and I am very glad that he is here to help us out. Thank you.

Mr. TALKS ABOUT. Thank you.

STATEMENT OF HON. WILLIAM TALKS ABOUT, JR., CHAIRMAN, BLACKFEET TRIBAL BUSINESS COUNCIL, BROWNING, MT

Mr. TALKS ABOUT. Oki. This word is a word of greeting spoken in our tongue, the Blackfeet language. So we greet all our friends this way.

Oki, Chairman Grassley, Senator Baucus, and members of the Senate Finance Committee. My name is William Allen Talks About, a full-blood member of the Blackfeet tribe of Indians of the State of Montana.

I am pleased to have been invited to present testimony on behalf of my tribe before this honorable committee. I am the chairman of our tribal council, which consists of nine council members who are the representative government of the members of our tribe, the Blackfeet tribe.

Today, I have two members with me that are a part of this testimony, so I want to introduce Mr. Fred Guardipee, who sits on the Law and Order Committee, and our Congressional assessment officer, Shannon Augare, who had set this meeting up for us, and we are very thankful.

Our council is in full agreement about the relevance of this issue, and they have empowered me to speak on their behalf, and that of our membership.

The Blackfeet Indian reservation borders Canada and Glacier National Park. Our reservation consists of 1.5 million acres. The

enrolled population is approximately 15,500 members, of which over 8,000-plus reside on the Blackfeet reservation. The reservation makes up most of Glacier County and a small portion of Ponderay County.

As public safety becomes a greater issue everywhere, detention and correctional facilities have become a greater concern for the Blackfeet tribe. The Blackfeet tribe has seen a dramatic inmate population growth, operational and management changes, and an increase in the special needs population.

With your permission, if I can use the distinction of non-Indian jails, meaning other jails in America versus Indian jails, with those jails on Indian reservations. Then through studied perception, we will see that there is a distinct contrast between Indian and non-Indian jails.

That is, the non-Indian jails are built properly and have adequate staffing and funding, staffing and funding from tax monies. The need for new correction and detention facilities is preeminent on the Blackfeet reservation.

The conditions relative to the Blackfeet community jail are immense and intense. The conditions are typical and are a good example of Indian jails across the Nation.

It is a simple analogy that if one jail in Indian country is the only jail that needs to be corrected, then the answer would be to fix that one jail. But if there is a continuous pattern of deplorable conditions, as exists across the Nation in Indian jails, then reform needs to take place.

Just as much that there is a sense of urgency to reform the system of incarceration on Indian reservations by the Federal Government, then the same sense of urgency is felt by those actively involved in the law and order on Indian reservations and the people that are affected.

Across the board and throughout the hallmarks of justice, this committee will hear of the nature of those conditions in Indian jails that will add credence that reform is needed.

In 1970, the Blackfeet tribal jail was constructed and was condemned shortly thereafter because of a bad sewer system. It is approximately 9,197 square feet and has 12 cells. To date, it is still a condemned facility. Renovation took place, but it was a Band-Aid effect, and gradually moved back to the current situation of being bad, and a blight.

The jail has a very small recreation area that is only accessible in the summer months. The building is constructed out of brick, so in the summer months, it is up to 20 degrees hotter inside the facility. Further, the plumbing in the cells only works sometimes. Many inmates have sentences longer than 30 days.

Our current juvenile detention facility was originally built for the youth as a safe haven. Eventually, it was turned into a correctional facility and has been eroding because of the material it was built out of. Today, we have had many inspections by the BIA, the Federal Government, State, and tribal agencies that require renovations.

What can we do together to address the issue of jail reform? My suggestions would be to build a larger adult detention facility to ac-

commodate more prisoners in a safe and sanitary environment. The capacity for the 34-year-old jail is 45 total, men and women.

Currently, the over-crowding of prisoners presents a threat to the health and welfare of the incarcerated individuals. At times there have been as many as 110 total men and women incarcerated at the Blackfeet jail.

My suggestion would also be to build a larger juvenile detention facility to accommodate more prisoners in a safe and sanitary environment. The current capacity for the juveniles is 5 females and 9 males, and two safety cells, which adds additionally two incarcerated juveniles, for a total of 16, maximum.

Upon certain celebrations, holidays, and occasions, our detention facility has had as many as 35 incarcerated at one time, which is twice the building capacity.

I suggest that we promote that the tribal court and the Northern Police Training Center be built with our adult and juvenile detention facility to create stability and integrity to the Blackfeet nation. Without the tribal court and law enforcement collaborating closely together, our law and order will not be, and is currently not, balanced.

Within the new structure we will have the added floor space for the rehabilitation that is currently lacking in both the adult and juvenile facilities, which is the counseling offices and the outdoor recreation.

I suggest that the Police Training Center would not only be for our Blackfeet members, but for all the northern tribes that do not have the financial ability to continue to send their members to Albuquerque, New Mexico.

With this, I would like to thank you for your time, Senators. I, and our people, are eager and anxious to work toward this great effort.

Additional written testimony is added to this oral testimony.

The CHAIRMAN. Of course, we will receive that additional testimony.

[The prepared statement of Mr. Talks About appears in the appendix.]

The CHAIRMAN. I am going to take 5 minutes for questioning.

First, a friendly admonition for Secretary Anderson. That is something I would probably give to other people in addition to just you. I will gladly accept what you said, that you want to end "business as usual," and I hope you can do that.

You will find yourself faced with awful efforts to maintain the status quo from the bureaucracy that has been there 20 years before you, and will be there 20 years after you.

You have got to remember that you are either going to run the show or the show is going to run you. You have got to realize that there are going to be people, when you try to make changes, that are going to try to destroy you.

So I am sure that, with what you have done in business and what you have done to overcome the personal issues that you have brought before us, that you are strong to do that. But do not be naive about the battle that you are up against.

My first question is to you, Mr. Anderson. What have you done to look at new ideas, such as regional jail concepts, or maybe even privatizing Indian jails?

Mr. ANDERSON. Currently, we are taking a look at the whole system itself. We have actually set up what was like a war room within the Department, and we started bringing in some of our talented people from within our system, as well as reaching out to Mr. Janis, at the Federal Bureau of Prisons, to take a look at what we were doing. All of those things are under consideration.

I would also like to defer some of these questions to Mr. Lamar, who we brought in, who has been working diligently on these issues.

The CHAIRMAN. Mr. Lamar?

Mr. LAMAR. Good morning, Mr. Chairman, Senator Baucus. If I might further introduce myself, I am Walter Lamar. I came to the Bureau of Indian Affairs, where I have been appointed as the Acting Director for the Law Enforcement program.

I came to the Bureau of Indian Affairs with 18 years with the Federal Bureau of Investigation as a special agent. I am a member of the Blackfeet tribe of Montana.

We are currently looking at and exploring the regionalization concept, and we have contracted out a study to determine if that is, in fact, feasible for Indian country.

Senator BAUCUS. I am sorry. You are doing what?

Mr. LAMAR. The question was whether we are exploring regionalization.

Senator BAUCUS. Thank you.

The CHAIRMAN. Thank you very much.

Mr. Anderson, obviously, too often people say more money is an answer to a terrible situation. I do not want to deny you that as a legitimate answer, but I would like to have some idea about how you intend to address the suicide rate and the escapes from these jails.

Mr. ANDERSON. Like I said earlier, I think suicides, in general, are higher than anywhere in the country with our Indian people. We have taken a closer look at the system itself, the practices within the jails.

One of the things that we have recognized, is that we need training programs. Just training, in general, is missing within our Bureau system, whether you are in law enforcement, education, or other areas within the Department. Training has not been the best there is.

When I came on board, I personally asked what training programs were available, and I was told, none. The only training programs that we have within the Department are GPRA and PART, more policies and regulations. So, we are looking at the training programs within the law enforcement. We need to better train our law enforcement officers. I think that is one of the fundamental keys to that.

The CHAIRMAN. I want to say that it is nice to hear that you are getting some monetary controls in place, or you have some in mind that you are going to put in place.

Do you have any idea where the money went that Congress has already given to the agency? Who are you holding accountable for missing funds?

Mr. ANDERSON. Sir, I do not know if you can hold any one person accountable. I think what is important, and like I said earlier, the Office of Management and Budget has said they have seen more progress within the last few years than they have ever seen in history.

A lot of this is, our entire Bureau system did not have access to technology. Much of our accounting was done by hand, very archaic. We have since undertaken a very major effort to bring our agency offices, our regional offices, as well as our law enforcement, into the 21st century.

We still have a long ways to go. Accountability has been one of my highest priorities, and being able to provide access to the technology to do that. So, we are not there yet. It is on the radar screen. We are working hard. It will take some time. It is a very large system, but we had been behind the times for so many years. We have that as a major concerted effort.

The CHAIRMAN. All right.

Senator Baucus?

Senator BAUCUS. Thank you, Mr. Chairman.

Let me, first, ask about personnel. Mr. Lamar, how long have you been with the BIA?

Mr. LAMAR. I have been with the Bureau of Indian Affairs for 6 years.

Senator BAUCUS. And why, then, should you be named as part of the solution when you have been part of the problem?

Mr. LAMAR. I came to the Bureau of Indian Affairs 6 years ago as—

Senator BAUCUS. This has been going on. This problem has been going on in the last 6 years.

Mr. LAMAR. Yes, sir, Senator. It certainly has. I came to the Bureau of Indian Affairs 6 years ago from the FBI.

Senator BAUCUS. I am not talking about the FBI. You have been with the Bureau the last 6 years.

Mr. LAMAR. Yes, sir. I have.

Mr. ANDERSON. He was just brought on when I came on board, about a month after my coming on board.

Senator BAUCUS. Six years ago?

Mr. ANDERSON. This year. I just joined. I came on in February of this year.

Senator BAUCUS. My concern, frankly, is taking somebody who is part of the bureaucracy, that is part of the problem, and trying to name that person in charge of a potential solution. I am not sure it is going to wash. You ought to bring in somebody who is going to really make something happen, not somebody who has been part of the organization, part of the problem, it seems to me.

Mr. LAMAR. Senator, I might add that I am in an acting position. The position has been advertised and posted, and I would expect that a selection would be accomplished, hopefully, in the next few months.

Senator BAUCUS. All right. Well, that is not my point, but I think you got my point. I am a little concerned about anything being ac-

complished here when somebody who has been part of the problem has been named to be the solution, has been put in charge of trying to solve this problem here.

That is just a big concern of mine. It is a deep concern, frankly. Mr. Lamar has been with the Bureau for the last 6 years, and part of the culture, part of the institution.

You need somebody outside, it seems to me, who is going to make something happen here. This needs an outside stimulus, corrective action, not somebody who is, again, for all intents and purposes, as far as I can tell thus far, a part of the problem.

Mr. ANDERSON. Well, I am going to stand up for my people, since what I have seen of him since I have been on board, he has really stood up and taken a very proactive approach. Have we solved all of the problems? No, we have not.

Senator BAUCUS. I am just curious. I know that everybody in this room and the country would be curious. What are some examples? Maybe, Mr. Lamar, you could tell us what, specifically, you have done.

Mr. LAMAR. I returned to the Bureau of Indian Affairs after a 2-year detail to the Department of Interior Office of Law Enforcement and Security. I was asked to take over as the Acting Deputy Director for Bureau of Indian Affairs Office of Law Enforcement Services, and at that point—and I clearly recognize what the problem is.

The problem has been defined over and over, and we welcome the most recent findings of the Inspector General. I do not think there has been a time where we in the Bureau of Indian Affairs Law Enforcement have attempted to hide this situation. In fact, there are many occasions where we have spoken out and attempted to obtain help.

I can tell you that, during the past 5 years when the program came into being—the Law Enforcement in the Bureau of Indian Affairs is a new program. And while we have been building a program, certainly mistakes have been made. I returned to the Bureau of Indian Affairs in this position.

What I did was, I attempted to put together, and have put together, a team of people. In the past year, we have hired three new detention managers. That brings us to a grand total of five. I can tell you that illustrates the issue that we face.

On a recent visit to the Inspector General's office, I found that there were six people that were just taking the opportunity to edit the very report that we are looking at today. We have five people overall managing an entire program, and we have five people that we expect to be able to fix these deplorable conditions in Indian country.

I can suggest to you that, when we talk about in the report where it suggests there has been inaction, I would say that the five people that we have out there working—in fact, the detention specialist headquartered in Billings, Montana, I would hate and hesitate to have to tell her that her work has been characterized as “inaction” when she recently was hospitalized for stress-related chest pains. We have devised a strategic plan, and have the very benchmarks and milestones that you call for.

We have a team in place. Unfortunately, it is a very limited team because we have very limited resources to dedicate to this program.

Senator BAUCUS. All right. Could you provide a copy of that plan, please, to this committee?

Mr. LAMAR. I most certainly will, Senator.

Senator BAUCUS. I would appreciate that.

Mr. Anderson, I was a little disturbed, frankly, when you said that the IG report was "an eye-opener" to you. Those are your words.

Mr. ANDERSON. Yes, sir.

Senator BAUCUS. How in the world could this be an eye-opener when this has been going on for so long? Have you not been doing your job?

Mr. ANDERSON. Sir, I beg to differ with you. I came on board in February, and you missed when I first started talking. But when I first came on board, within 1 week after I came on board, Mr. Devaney came to me.

Within 24 hours, I had taken corrective action. I had put together a team. By the end of that week, within 48 hours, I had assembled a team to start our own investigation. By the end of that week, I had mobilized over 100 people.

We have put together probably one of the most comprehensive pieces of work that this Department has ever had. I have over 4,000 entries in here where I can tell you every shower head, every screw that is missing in one of these detention centers. I have not taken this light-heartedly. I have been faced, as I said earlier while you were gone, we just do not have third world conditions in jails.

I am faced with third world housing problems. I am faced with third world substance abuse problems. We have 50 to 80 percent unemployment throughout Indian country, and on a daily basis these are things that I have to deal with.

But when I came on board, I have personally gone out and started visiting the jails. I have started personally visiting the tribes. I have also been to Chemawa, and they tell me I am the first Assistant Secretary that has actually started addressing our students in the high schools.

I believe that one of the reasons why I am here is because I have a vision. That vision starts with our young people. We are currently working on a memorandum of agreement with the Boys and Girls Club.

A lot of our reservations are rural, where our children are growing up. The real problems of suicide, substance abuse, and unemployment are not really symptoms of a failed Federal Government. These are all symptoms of young people growing up without hope.

One of the things that we have been working on, we just do not need bigger jails, we need a whole overhauling of how we have been treating Indian people. We need to provide dreams for our young people. I have worked with the Boys and Girls Club.

We are close to signing a memorandum of agreement where, for the first time in history, we are going to be opening up our schools after hours so our kids can access our gymnasiums, access our libraries. Our children do not have places to study. We have very dysfunctional communities.

So, I believe that we are not only looking at the detention center problem themselves, but we are trying to address a far greater problem of what has been happening within Indian country.

Senator BAUCUS. Well, you have a tremendous opportunity—tremendous—because your predecessors certainly have not sufficiently addressed the problem, and I do not care which administration it is. They have not sufficiently addressed the problem.

As I mentioned earlier, I sometimes wonder whether BIA should be abolished. The record passed has been so dismal. But you have an opportunity here. It is a huge opportunity, and I wish you the very, very best of luck, because a lot of people are counting on you.

A lot of people need those problems that you mentioned addressed. You are right, the question is really hope. There is a lack of hope on Indian reservations. That is the fundamental problem. There are lots of ways to get at that. It is economic, and it is also in other ways.

By your showing up, that helps a lot, too. I would just encourage you and Mr. Lamar to get around and visit as many locations as you possibly can, because you are going to learn a lot, you are going to see a lot. You will not get caught up in the BIA bureaucracy, the inertia, the dead weight that is in the BIA. There is a lot of dead weight in the BIA. It should be cleaned out.

I would just encourage you to take advantage of the opportunity that you have. Since you are new—and I apologize for not knowing that you are new on the job—you do have a great opportunity and I wish you well.

I also think that our committee, Mr. Chairman, should go ahead, at the appropriate time, ask for those benchmarks, results, and data and all that that is going to determine whether or not there are results.

I appreciate, Mr. Lamar, all the people you appointed. But that has nothing to do with results. You might get five instead of three supervisors, and so forth, but that is just process. We need results here.

The results really are the conditions of the facilities, the degree to which there is crime, the degree to which there is a reduction in suicide. You know what they are. We are talking about results here. We are not talking about process.

The only way to determine results, is to get deadline, data, and dates. That is what you need, and that is what we are going to ask for, and appropriately. We will give you time, but not too much time. Enough time to get the job done. Again, it is a tremendous opportunity that you all have.

I might have been a little tough on you, Mr. Lamar, but on the surface I am a little suspicious because you have been part of the organization that is part of the problem here. But, still, you can redeem yourself by providing the results that we all want.

Mr. LAMAR. Senator, if I might state, I am not looking for redemption. I do not believe I need redemption. But I will tell you that I understand the issues in Indian country. I have visited all of those jails over the course of my Bureau of Indian Affairs career.

Senator BAUCUS. All of them?

Mr. LAMAR. I have visited the majority of the Indian country facilities. Yes, sir, I have.

Senator BAUCUS. Not all of them, a majority.

Mr. LAMAR. Not all of them. I have visited a majority of them, and I completely understand the issues and problems. I did not present the numbers of people that we hired to suggest that those were nearly enough, or that was a vast improvement. That is barely even a beginning.

Senator BAUCUS. Can you tell me whether the Yakima facility, the light fixture and the camera, have been fixed?

Mr. LAMAR. The fixture has not been fixed.

Senator BAUCUS. It has not been fixed?

Mr. LAMAR. But since that suicide has occurred, they have not used that cell. They have shut down that cell block.

Senator BAUCUS. Will it be reopened?

Mr. LAMAR. It will be reopened, I would hope, after all of those improvements have been made. We have sent people out there. We have sent people out there to examine the facility. Shortly after the suicide, we sent an investigator there to investigate the suicide. We have counseled the tribe and urged them not to even consider opening that cell block until the improvements have been made.

Senator BAUCUS. Ms. Henke, what responsibility does the DOJ have? Does the Department of Justice send grants to tribes for construction of jail facilities?

Ms. HENKE. As I stated in my testimony, our role is very limited. There is the Correctional Facilities on Tribal Lands Program, which is a grant program that the Department of Justice operates. So, yes, we do have a grant program for brick and mortar construction costs only.

Senator BAUCUS. All right.

I have just a couple of other questions, Mr. Chairman.

So you do have that responsibility. What follow-up do you have? What follow-up responsibility do you have?

Ms. HENKE. Well, the way that the Department of Justice and the grant program works, is they draw down on the funds as expenses are incurred. So from an accountability perspective, we have that information.

Something that is important for me to point out, however, is that neither the Department of Justice, nor the Department of Interior, had been provided any flexibility on where to direct those funds.

Senator BAUCUS. Have not?

Ms. HENKE. We have not been provided. Congress has provided that direction to us, so the Department of Interior and the Department of Justice, for a number of years, have coordinated and collaborated on where resources should be provided.

The Department of Justice, with involvement in the process with the Department of Interior and the Bureau of Indian Affairs, is involved in the selection process of those grantees. However, over the past several years, Congress has not provided us any flexibility on where to provide those resources.

Senator BAUCUS. What is the problem?

Ms. HENKE. The problem is that the funds are 100 percent directed by Congress on which recipients receive them, and that is not necessarily based on need.

Senator BAUCUS. Well, that is not the question I am asking. I am asking more with respect to accountability and follow-up, irrespective of what Congress has directed or not directed.

Ms. HENKE. Once again, from an accountability perspective, as I stated, our grants that we award, once again, those grantees do provide their regular reports, financial accounting, as well as program accounting for those awards. We can track those resources.

Senator BAUCUS. Do you know if the IG has a concern about the DOJ's follow-up and accounting?

Ms. HENKE. Currently, the Department of Justice's Inspector General has not provided us any relevant information on whether or not he has undertaken any investigation on his own on our program.

Senator BAUCUS. Do you tend to agree or disagree with the IG's report, as presented today?

Ms. HENKE. We have no reason to disagree with the Department of Interior's report.

Senator BAUCUS. I am concerned. I heard somewhere that 11 percent of the \$31 million supplemental was accounted for. My math indicates that about 89 percent, then, was unaccounted for.

Mr. Anderson, what about that?

Mr. ANDERSON. I cannot comment on that. What I can say, is that I think what you are getting at is, how are we going to start accounting for it. I cannot answer for what has happened before me, what has happened before I came on board.

But what I will tell you is, we are undergoing probably one of the most comprehensive overhauls of our whole accounting system. Everybody has recognized that the Bureau of Indian Affairs, in the past, has probably had one of the most archaic accounting systems, I think, just the way the whole system was set up.

Our regional offices that used to be responsible for the Bureau's detention center systems were just given pots of money, and then the money was doled out. Today, probably one of the most challenging obstacles, but one of the most challenging missions I have had to undertake, is the budgeting process and working with tribes.

I will tell you that tribes, today, are understanding of what we are trying to do. It has been a very difficult process, but we have seen where our agency offices, our regional offices all have different accounting systems.

Our jails have different accounting systems. Being able to access information has been very difficult. But we are in the process of where we are creating a standardized accounting system throughout the Bureau.

Senator BAUCUS. Mr. Lamar, the 89 percent. Does that sound about right?

Mr. LAMAR. Yes, Senator.

Senator BAUCUS. Well, does that sound correct?

Mr. LAMAR. Yes, Senator.

Senator BAUCUS. Where is it, do you suppose, that 89 percent? What happened to it?

Mr. LAMAR. I would suggest that the dollars were spent by the tribes and by the Bureau of Indian Affairs for the law enforcement programs.

Senator BAUCUS. How do you know that if it is unaccounted for?

Mr. LAMAR. I do not know, Senator. What I would suggest, and the Inspector General laid it out very clearly and identified the problem, is that there are not proper accounting procedures, that it is, in fact, very difficult to hold the programs accountable. What we are working to do is to break those dollars out.

Previously, the dollars were presented to the tribes in lump sum. They were even presented as direct service programs in a lump sum, with no line authority or no line items for detention, uniformed patrol, or criminal investigations. We are changing that practice. We are changing that practice and we are instituting accounting codes to be able to better track the dollars.

Senator BAUCUS. Did you know during your 6 years' service, if not more years of service, to the BIA about the laxity in accounting, or did you need the IG to point that out to you?

Mr. LAMAR. I recognized it. I recognize the tremendously insufficient infrastructure that we had to be able to institute effective—

Senator BAUCUS. Did you ever monitor it in your 6-plus years you have been at the Bureau?

Mr. LAMAR. Senator Baucus, we have, on numerous occasions, worked to create awareness and create awareness that the problems existed.

Senator BAUCUS. Can you give us an example of that?

Mr. LAMAR. We presented briefings to upper management in the Bureau of Indian Affairs. We have presented briefings to management in the Department. I think that the assessments, the long history of assessments in Indian country, have clearly pointed the problem out over and over.

Senator BAUCUS. Did anything come out of all of those briefings within the Bureau and within the Department?

Mr. LAMAR. No, sir.

Senator BAUCUS. Why not?

Mr. LAMAR. As you suggest, there is bureaucracy afoot. In fact, what started out when I said that the program was continuing to build, we accepted line authority. The Bureau of Indian Affairs Office of Law Enforcement Services accepted line authority, full line authority, for any country programs in 1999. That full line authority is for detention, criminal investigations, and uniformed patrol.

The philosophy then was to take as much of that new money and put it to the programs in the field, so an absolute insufficient infrastructure, managerial infrastructure, was put in place for headquarters.

Second to that, our headquarters was located in Albuquerque, New Mexico, far away from the mechanisms of Washington, DC, the budget machine in Washington, DC. There was a difficulty communicating the urgency of this situation throughout Indian country law enforcement, including detention, from that far outpost in Albuquerque.

The Department has recognized that, the Bureau of Indian Affairs has recognized that, and is in the process of moving the entire headquarters back into Washington, DC.

The problems have been clearly identified. I have got to tell you that I understand clearly that I am held suspect. I would urge you to recognize that I have a tremendous sincerity.

Senator BAUCUS. Sincerity counts, but results are what we are looking for.

Mr. LAMAR. Absolutely.

Senator BAUCUS. And so, again, I deeply appreciate your sincerity. That is good. But it is results we want. We will give you time to provide those results.

Mr. Talks About, the Blackfeet prison, as the Inspector General reported, in the past year, everyone who works there has been assaulted. Could you just help us better understand the problem? Describe the conditions, and also your ideas as to what some of the solutions maybe should be.

Mr. TALKS ABOUT. The conditions there that exist are very bad. I believe we have a video that will be presented for the testimony here that will show the conditions. But we are talking assaults. There needs to be that authority. We either do it ourselves, or the Bureau needs to do their visit and, I guess, implement their authority.

One of the things I am very thankful for, for the government, is that we have self-governance. I think the Blackfeet tribe is looking toward this area. I feel, personally, that the Bureau needs to be scaled back and let the tribes run our law enforcement.

Some of these problems that we have talked about here, the accountability, I feel we just need the education and the authority. We need line officers to come to Blackfeet and to educate all involved in Blackfeet law enforcement on how contracts and grants are to be executed. They need to understand compliance, monitoring, and accountability.

We have had an Inspector General audit, and it revealed a lot. But, overall, I do feel that our people need to be educated. I think all the tribes need to be. There are a lot of tribes that are more advanced and have taken that responsibility. But these things are in the past for the Blackfeet.

Like most of us on the council now, yes, there is government assistance, but we are looking to our natural resources, to the things that we have, and to use those to move forward with self-sufficiency or cooperation with the government, and we can do this.

Yes, I know there is that need for a jail, and we are working very hard and we want to work with whatever agency needs our help. We do have resources that we also can bring to the overall plan from our part. But I know, if government funds this, they fund our jail, we will need to implement all these things that I have just spoken of.

But there are good plans. Like I said, we need to work together. I am willing to work with the BIA. Like I said, I, like you, understand that scaling back the Bureau of Indian Affairs would bring up a lot more money that I feel our tribe could benefit from. Thank you.

Senator BAUCUS. Thank you. Thank you very much, Mr. Chairman.

Mr. Chairman, I have no more questions. I would like to think that there are a couple of themes here. One, as mentioned, the chairman talks about, namely, cooperation and working together to get some solutions here. Another, is all of us take responsibility for

this problem. All of us. That is including Mr. Anderson, Mr. Lamar, Ms. Henke, and it is also Congress, too, that takes responsibility.

I am happy to hear that very few people are blaming or pointing the finger of blame totally, although I must say I am a little critical of the Bureau. But I think that criticism is warranted based on past experience.

We must take this opportunity, this challenge for all of us. I would urge all of us, all the employees, all of us here, the bosses, to step out and exercise that responsibility for the people that we represent.

So, I thank you all very much. We have got a huge problem here. Huge. Some will say it cannot be done, but let us prove them wrong. Let us get it done.

The CHAIRMAN. Thank you, Senator Baucus.

Just one last point I would make, and one last, short question of Mr. Anderson. But it would be to repeat something I said to you, Mr. Anderson, about your desire to make change. Bureaucracy and government resist change. I am glad when there are people like you that come in with the sincerity who want to make change, and would just encourage you to stand all the tests that you are going to get.

Then my question to you is, I think that the Inspector General said that he is making 25 recommendations. My question is, if you know what all those 25 recommendations are and you can commit yourself to following his recommendations, say yes.

If there is some exception or modification that you want to be careful about what you can do or not do, or want to do and not do, then I would ask you to submit a point on each of those that you think you cannot commit to doing. But how do you feel about the 25 recommendations? Do you think that those are something that you are committing to accomplishing?

Mr. ANDERSON. I am familiar with the 25 recommendations that the Inspector General has put forth. We are actually pretty much in full agreement with them. Those recommendations, some of them, directly reflect the same findings that we have found in our subsequent investigations.

I just want to say something I did not say earlier. This whole discussion strikes closer to home with me than probably what you would know.

Just a month ago, my own 80-year-old parents were victimized by our youth on drugs, and were robbed in their home in the middle of the night, and their vehicle stolen. So, I have a very sincere concern about this.

Like I said, I believe that in my own life, the reason why I am here today is because three times I should have been dead, but I believe that God's hand has been over my life. I believe the success I have had in business is one of the reasons why I am here, because of my willingness to give back to my community, because I do care.

The CHAIRMAN. I thank you, and I thank all of the panel. The hearing is completed. Thank you all very much.

[Whereupon, at 12:25 p.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF DAVID W. ANDERSON

Good morning, Mr. Chairman and Members of the Committee. I am David Anderson, Assistant Secretary—Indian Affairs. Thank you for inviting me to speak with you today on the conditions of Indian country detention center facilities, especially regarding the issues raised by the Department's Office of the Inspector General (OIG) in an interim report issued in April 2004. The OIG plays a critical role in providing objective oversight, which promotes efficiency and effectiveness in the Department. We take very seriously the deficiencies raised by the OIG interim report and are actively working on implementing improvements. On June 23, 2004, I testified before the Senate Committee on Indian Affairs on this issue. We appreciate the opportunity to provide this Committee with information concerning improvements that have been made to detention centers.

Problems with Indian country detention centers have been decades in the making. At the beginning of my term as Assistant Secretary, I was briefed on the problems with these detention centers. Within 24 hours, I convened the necessary resources to address these serious issues. We immediately inspected all 39 BIA detention centers for health and safety problems. We completed more than 1,000 physical condition repairs. This year we have committed \$5 million more than last year in making these corrections. I have personally visited several detention centers to see the conditions firsthand. We sought, received and retained expert advice from the Department of Justice's Bureau of Prisons. We are surveying our facilities and have developed a strategic plan to address immediate issues and build long-term infrastructure in the detention operations. Many of the recommendations in that strategic plan are echoed today by the OIG report. We are addressing the problems of health and safety issues and escapes by improving management and oversight, increasing training for detention personnel, and repairing facilities. We are making progress, but recognize a lot more work needs to be done. I stand committed to addressing these problems.

BACKGROUND

Until the 1960s, jail construction on Indian lands was very limited. Department of Justice Law Enforcement Administration Assistance grants were provided for construction of jails in Indian country. Many of these facilities, now forty years old, are still in operation today. Older detention centers present many challenges, such as ongoing maintenance and needed improvements to these aging, high-use facilities.

There are seventy-four confinement facilities, detention centers, jails, and other facilities—to be referred to in this testimony as “detention centers”—operated by tribal authorities or the Bureau of Indian Affairs in Indian Country. Nineteen facilities are BIA operated. The remaining fifty-five are tribally operated. Thirty-nine facilities are BIA owned (three of these detention centers do not house inmates and are used for Law Enforcement offices). The remaining thirty-five detention centers are owned and operated by tribes, either independently or through P.L. 93–638 contracts or self-governance compacts. The BIA administers and monitors these contracts facilities. We recognize the need to be more active in the administration of these contracts. In addition, within the past two years we have opened three new Department of Justice funded detention centers and anticipate that an additional seventeen new detention centers will be completed in 2005. Eight of these new DOJ facilities will replace existing centers. These detention centers are being built by the

tribes from grants issued by the Department of Justice. Funding for staffing, operating and maintaining these facilities is provided by the BIA.

IDENTIFICATION OF DEFICIENCIES

In February 2004, when I became Assistant Secretary—Indian Affairs, I was briefed on Indian country detention programs and the ongoing challenges related to the physical conditions and management structure and the issues raised by the OIG interim findings. At this briefing I immediately determined that critical improvements were needed, in addition to those that were already underway. Since February, the BIA has taken immediate and proactive steps to identify the deficiencies at the detention centers and to take appropriate action.

Within forty-eight hours of my February briefing, I assigned key personnel to be responsible for identifying and addressing detention center issues. All 39 of the BIA owned detention centers were inspected for operational, health, and safety concerns by March 10, 2004. The twenty detention centers in the poorest condition that are owned by the BIA were also inspected for structural, plumbing, electrical and environmental concerns by March 10, 2004 and inspections of the remaining nineteen were completed by June 1, 2004. Inspections were completed in compliance with BIA handbooks that are based upon national standards, uniform building codes, National Fire Life—Safety codes, and all pertinent environmental standards.

We have identified 4,313 deficiencies; 57% of which were life safety problems, 31% physical plant problems, 8% handicap problems and 3% environmental problems. All needed repairs have been entered into the BIA's Facility Management Information System for tracking of project completion and full financial accountability.

PREPARED STATEMENT OF HON. EARL DEVANEY

Mr. Chairman and members of the Committee, I want to thank you for the opportunity to address the Committee this morning concerning the state of Indian detention facilities.

As part of the ongoing effort of my office to examine law enforcement and security programs within the Department of the Interior (DOI), we began an assessment of the Bureau of Indian Affairs' (BIA) detention program in September of 2003.

At the very outset, it became abundantly clear that some of the facilities we visited were egregiously unsafe, unsanitary, and a hazard to both inmates and staff alike. Simply stated, we found BIA's detention program riddled with problems and, in our estimation, it is a national disgrace with many facilities having conditions comparable to those found in third-world countries. Our final report, being issued today, found clear evidence of a continuing crisis of inaction, indifference, and mismanagement throughout the entire BIA detention program.

We also discovered a long history of neglect and apathy on the part of BIA senior management officials, despite repeated warnings about the woeful conditions of their detention program. Whether it lacks the organizational will, or infrastructure, or both, BIA has not been able to sustain its focus on the problems at its detention facilities long enough to resolve them. And, absent relentless pressure and the unflagging support of senior Department management, I fear it is unlikely to do so in the future.

In April of this year, I briefed the Secretary and her senior staff about the most serious findings we had discovered up to that point in our assessment. This spring and early summer, I issued an interim report and also testified before the Senate Committee on Indian Affairs to further highlight the egregious conditions we were uncovering. Unfortunately, as we continued our assessment of the detention program, our work exposed a plethora of additional problems.

To her credit, Secretary Norton immediately responded to both my briefing and interim report by directing senior Department and BIA managers to take ownership of these problems and to implement concrete reforms. She also promptly requested the assistance of the Department of Justice, Bureau of Prisons, which resulted in a senior-level detention professional being detailed to the Department to assist BIA.

Sadly, while BIA has now produced a strategic tasking plan, no real progress has been made to make the detention facilities safer or more secure. For instance, since just the first of August, there have been two new deaths, at least 5 more suicide attempts and an alarming 16 new escapes from Indian country jails.

Our final report makes 25 recommendations to help the Secretary realize genuine change for this broken program. These recommendations focus on the following issues.

OVERSIGHT AND COORDINATION

Senior BIA Law Enforcement Services (BIA-LES) officials have acknowledged that the detention program is severely understaffed, that facilities are overcrowded, and that neither has received the attention or funding to adequately address these deficiencies. Not once during our assessment did BIA-LES officials deny the dire condition of the program or the profound and serious maintenance issues at the facilities. These officials readily admit that they have placed a higher priority on the policing aspect of law enforcement rather than on detention matters.

Since 2000, the detention program has been coordinated by a Detention Program Manager working out of the BIA-LES Central Office. This manager was provided with limited training, virtually no staff and minimal authority to accomplish his duties. At the outset of our assessment, we discovered that he had been assigned as the BIA-LES Acting Deputy Director of Operations, effectively leaving the detention program without a functioning manager.

Six BIA District Commanders are responsible for managing BIA jail day-to-day operations. Our assessment, however, found the oversight of the jails by these District Commanders to be virtually non-existent. In fact, several District Commanders had never visited some of the jails under their command or spoken with the jail administrators.

The Department of the Interior, Office of Law Enforcement Services (DOI-LES) is responsible for overseeing all Department law enforcement and security programs, including BIA's. However, we found no evidence that they have ever provided any oversight for the Indian detention program.

Our report concludes that BIA-LES simply does not have the administrative infrastructure to properly manage and oversee the detention program. They are further challenged by the frustration, cynicism, and apathy that infect Indian Country detention personnel. The overall mismanagement and neglect of the program has left many personnel with the attitude that management is not interested in the detention program and that nobody cares about the jails, the staff, or the inmates.

SAFETY AND SECURITY

Our report chronicles 11 fatalities, 236 attempted suicides, and 631 escapes at Indian Country jails over the last three years. We believe these numbers to be conservative given that 98% of these incidents have never been reported to BIA-LES. Our efforts to determine more precise numbers were frustrated because local records are often inconsistent or poorly maintained by jail administrators. One jail administrator confirmed our concerns that incidents are underreported when he stated, "What happens on the reservation stays on the reservation."

We relate the circumstances surrounding all of the fatalities in our report, including the death of Cindy Gilbert, a 16-year old student who died of alcohol poisoning while in a detention cell at the Chemawa Indian School in Oregon, and I note that Miss Gilbert's aunt and guardian has traveled from Oregon to speak to you today about this tragedy.

Suicide attempts appear to be a regular occurrence at many of these facilities. Data obtained from our 27 site visits alone indicated a total of 236 suicide attempts over a three year period. In addition to our findings, the Bureau of Justice Statistics (BJS) reported that during the period of June 2001–2002, suicide attempts had more than doubled, while there had only been a 32% increase in jail admissions for the same time period.

Mr. Chairman, when I testified before the Committee on Indian Affairs, I spoke about my personal visit to the Yakama jail and the extraordinarily high rate of suicides at that facility. Just two days after my testimony, another inmate hanged himself from a broken light fixture. Only a lone dispatcher was on duty that night, similar to the night in 1997 when another inmate committed suicide at the same jail. Despite assurances to the contrary, BIA inexplicably did not inspect the conditions at this jail until just last week.

While we could not identify a specific cause for what appears to be a high rate of suicides and suicide attempts in Indian Country detention facilities, we do note that many studies have shown that careful and thorough screening is absolutely necessary to identify suicidal tendencies, and the importance of having properly trained personnel on duty to conduct suicide screening, especially during intake. During our site visits, we found little evidence that this kind of screening takes place.

Escapes from Indian jails appear to be routine and are casually viewed by detention officers at the jails we visited as inevitable. Physically rundown and deplorably maintained, many of the facilities provide ample opportunity for escape.

Another means of escape comes when inmates need medical attention. Inmates are regularly left unguarded in the care of medical staff or hospital security personnel who are not trained to handle or restrain inmates. At one facility we visited, inmates who require medical care, which the jail cannot afford to pay for, are actually released from custody on the hope that they will return on their own after treatment. Not surprisingly, detention officers at this facility told us that inmates have learned to feign illness because they know that they will be released if they claim a need for medical treatment.

Perhaps even more disturbing than the actual circumstances and frequency of inmate escapes at these facilities are the lack of response and importance placed on these incidents by both detention officers and facility administrators alike. We found that some facilities do not even notify local law enforcement of prisoner escapes. Clearly, it is irresponsible to allow escaped prisoners to travel freely in a community and surrounding areas while the local law enforcement authorities have no information about their escapes.

DETENTION FACILITY STAFFING

When conducting our site visits, we discovered that 79% of the facilities fell below minimum staffing levels on a regular basis. One manager remarked, "We are often down to none."

In fact, we found that the majority of the detention facilities we visited operated with only one detention officer per shift and often times the officer had several collateral duties that took his/her attention away from the inmates. Even more disturbing was our discovery that a number of jails have shifts with no detention officers on duty. In these instances, dispatchers, cooks or police officers fill in while continuing to do their primary jobs.

It is unreasonable to expect one detention officer to perform all of these duties under normal conditions. During periods of increased inmate population such as weekends and holidays or when jails are overcrowded, the challenges faced by a single detention officer become overwhelming.

Lone detention officers are also at great risk of being assaulted, injured, or even killed during the performance of their duties. During our assessment, we were told of countless incidents of assaults on detention officers. In fact, one BIA District Commander told us, "Every officer here has been assaulted." BIA management has been aware of the unsafe conditions created by insufficient staffing for over six years, with little evidence to indicate that there has been any more than a token effort to correct the staffing shortage.

DETENTION FACILITY MAINTENANCE

We found the condition of the majority of the jails we visited to be abysmal—the result of years of neglect and failure to perform even routine repairs in a timely manner. Records reflect that BIA and the tribes have consistently failed to adequately maintain their detention facilities. In a 1994 Report, my office found that BIA and the tribes had not adequately maintained detention facilities or corrected hazardous health and safety conditions at these detention facilities. Most of the facilities we visited then were unsanitary and in disrepair. Ten years later, in this assessment, we found the very same conditions—unchanged.

Unless this trend is reversed, many of the newer jails in Indian Country will prematurely deteriorate due to a similar lack of upkeep and maintenance. In fact, many of the newer jails we visited are already showing signs of accelerated aging and wear due to delay of necessary repairs.

Maintenance shortcomings can have a direct impact upon officer and inmate safety; yet there is little indication that any emphasis is placed on expediting repairs. For example, we found sprinkler systems inoperable; keys so worn that they cannot reliably lock or unlock cell doors; and an observation camera in a high-risk cell facing the ceiling.

Many other maintenance shortcomings impact sanitation. We observed toilets that do not flush, showers and sinks that do not work, and inoperative hot water heaters that have not been replaced.

BIA has an enormous maintenance backlog, but little has been done to correct the majority of the problems. Our examination of BIA's Facility Management Information System found it sorely lacking in accuracy or reliability. In July 2003, GAO expressed similar concerns about the quality of data being entered into this system.

FUNDING OF THE DETENTION PROGRAM

In the last four years, Congress has given BIA \$637 million for law enforcement. In addition, since 1999, BIA has also received supplemental funding totaling \$31.5

million specifically designated for hiring detention officers and preparing new detention facilities for operation.

BIA-LES was unable to produce any annual budget submissions for our review. We later learned that BIA-LES managers use historical funding levels as their new annual budget requests and have rarely asked for actual budget increases. In addition, we discovered that BIA-LES does not seek to obtain accurate or realistic budget projections from detention facility administrators. In fact, funds allocated to individual jails by BIA-LES are not even tracked. Their failure to make an effort to assess the true cost of operations or to have any internal controls in place becomes a self-fulfilling prophecy.

These fiscal management failures also impact new detention facilities built with funds awarded as grants by the Department of Justice (DOJ). Since 1997, DOJ has provided over \$150 million in construction grants for new detention facilities. However, these grants are only for construction of the facility. BIA is then responsible for providing the funding for operational costs. Given the poor budget planning and execution by BIA-LES, it was not surprising to learn that facilities completed with DOJ grant monies often do not get the necessary funding to actually open for business.

OTHER CONCERNS

Training for detention staff presents yet another challenge in Indian Country. We found that 52% of all the detention officers at the sites we visited had not received detention officer training. We learned of two officers who were on the job for twelve and seven years, respectively, before attending any detention office training. Untrained or poorly trained personnel place both inmates and officers at great risk.

Another finding that caused us concern, was the housing of juveniles together with adults. At one facility, we were told that a juvenile had been raped by an inmate while being held in the jail for social services, because there was no other place to hold the child.

Overcrowding is the norm. Of the facilities we visited, over half of the jail personnel said their facilities were habitually overcrowded. Inmates often sleep on the floor.

Although a detention policy handbook was published in 1996, BIA consistently fails to follow its own guidelines for the detention program, in part, because the handbook imposes one-size-fits-all policies and procedures. In response to our interim report, BIA-LES reports that they are working to develop new standards that finally will be tailored to facility size, staff and inmate population.

BIA's neglect and mismanagement of the detention program has resulted in over \$850,000 being paid to settle lawsuits over the last three years. Another \$11 million in claims is pending. Obviously BIA is sitting on a liability time bomb and must act to diffuse it now so that the modest funds available can be used for their intended purpose, instead of potentially being consumed by legal fees, fines, and judgments.

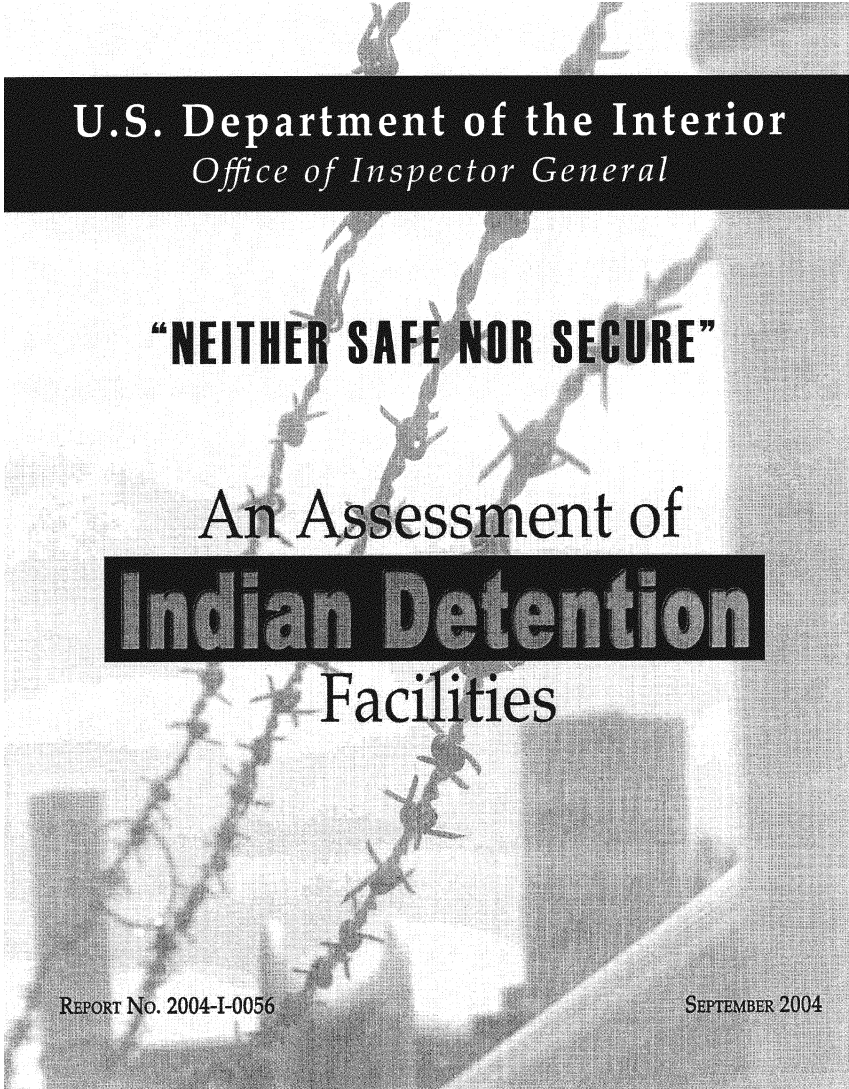
POSITIVE FINDINGS

Mr. Chairman and members of the Committee, to be fair, I feel I should indicate to you that BIA-LES officials readily acknowledged the deplorable conditions at the detention facilities and have expressed grave concern over our findings. They have also made some recent management and staffing changes at various levels of the detention program which are positive developments. A strategic task management plan with assigned personnel has been proffered and they are beginning to seek assistance from outside professional corrections organizations. A process to ensure that maintenance issues are promptly communicated has been implemented.

We also cite in our report a number of facilities we visited with best practices, which might be used as models to advance the needed improvements in Indian detention facilities.

CONCLUSION

The responsibility for the conditions and failings we found at Indian Country detention facilities cannot be attributed to any particular individual or administration. Some of these problems are decades old. Thus, the solutions will not be easy to achieve and may take considerable time, effort, and funding. Although a tasking plan for improving detention facilities is admirable, absent strong leadership, tireless management and extensive hard work, plans alone will not do anything to correct the many failings chronicled here. As we say in our final report, nothing less than a Herculean effort to turn these conditions around would be morally acceptable.



U.S. Department of the Interior
Office of Inspector General

“NEITHER SAFE NOR SECURE”

An Assessment of

Indian Detention
Facilities

REPORT NO. 2004-I-0056

SEPTEMBER 2004

Table of Contents

Introduction	1
Results in Brief	3
Background	6
Chapter 1 – Oversight and Coordination	9
Recommendations	12
Chapter 2 – Safety and Security	14
Serious Incidents	14
<i>Fatalities</i>	14
<i>Attempted Suicides</i>	17
<i>Escapes</i>	19
Recommendations	24
Chapter 3 – Detention Facility Staffing	26
Recommendations	29
Chapter 4 – Detention Facility Maintenance	31
Maintenance Funding	34
Maintenance Accountability	36
Recommendations	36
Chapter 5 – Funding of the Detention Program	37
Budget Projections and Planning	38
Fund Designation	38
New Facility Funding	39
Internal Controls	41
Public Law 93-638 Contract Funding	42
Recommendations	44
Chapter 6 – Detention Program Training	45
Recommendations	47
Chapter 7 – Other Issues	49
Juveniles Housed at Adult Facilities	49
Overcrowding	50
Policies and Procedures	51
Liability	52
Recommendations	52
Chapter 8 – Positive Findings in the Detention Program	54
Recommendation	56
Chapter 9 – Conclusion	57

Introduction

The Bureau of Indian Affairs (BIA) operates or funds detention facilities throughout Indian Country. For many years and in multiple forums, the BIA and the Department of Justice (DOJ) have found these facilities to be understaffed, overcrowded, and underfunded. During the course of other work conducted by the Office of Inspector General (OIG), we received numerous anecdotal reports that reaffirmed these findings – years later. Therefore, as part of the ongoing effort of the OIG to examine law enforcement and security programs within the Department of the Interior (DOI or the Department), BIA's detention program was selected for assessment in 2003.

The OIG, Program Integrity Division, began the assessment of Indian Country detention facilities in September 2003. The focus of our assessment was to determine if Indian Country detention facilities were safe and secure, and if BIA appropriately used the funds it received to operate the detention program. We conducted actual site visits at 27 detention facilities (also referred to as jails), scrutinized hundreds of detention and budget records, and conducted more than 150 interviews with BIA and tribal officials, as well as local and federal detention professionals throughout the United States. We conducted our assessment in accordance with the President's Council on Integrity and Efficiency Quality Standards for Inspections. Accordingly, we included such tests or reviews of records that we considered necessary.

We shared our observations with detention facility personnel during each visit. In addition, we provided regular updates to BIA Law Enforcement Services (BIA-LES) and Department management during the course of the assessment.

Early in our assessment, it became abundantly clear that some facilities we visited were egregiously unsafe, unsanitary, and a hazard to both inmates and staff alike. BIA's detention program is riddled with problems and, in our opinion, is a national disgrace with many facilities having conditions comparable to those found in third-world countries. In short, our assessment found evidence of a continuing crisis of inaction, indifference, and mismanagement throughout the BIA detention program. BIA

appears to have had a laissez-faire attitude about these horrific conditions at its detention facilities. Because many of the conditions were potentially life-threatening, the Inspector General issued an Interim Report to the Secretary in April 2004 describing our most significant findings, and to provide an opportunity for her to take immediate and appropriate action.

This report represents the general status of the detention program and facilities as we found them during our assessment. While recognizing some very recent attempts by the Department and BIA to correct deficiencies, we believe that anything short of strong leadership, rapt attention of senior management, and heroic efforts on the part of BIA personnel will fail to correct the deplorable conditions of Indian Country detention facilities.

Throughout the report, we recommend actions that we believe will improve the security, safety, and efficiency of detention facilities in Indian Country. Our anxiety over the detention program remains heightened, however, not only because of what we found during our site visits but, more importantly, because of what we fear remains undiscovered at the sites we did not visit.

Results in Brief

BIA has failed to provide safe and secure detention facilities throughout Indian Country. Our assessment revealed a long history of neglect and apathy on the part of BIA officials, which has resulted in serious safety, security, and maintenance deficiencies at the majority of the facilities. Despite audits, inspections, reports, and other warnings about the woeful conditions of the detention program, BIA has utterly failed to remedy the problems. Whether it lacks the organizational will, or infrastructure, or both, BIA cannot sustain its focus on the problems at its detention facilities long enough to resolve them. Absent relentless pressure and the unflagging support of senior BIA management, we fear it is unlikely to do so in the future.

Because we found the detention program without a credible reporting structure, or accountability, we also found that BIA was unaware of 98% of the serious incidents – including deaths and suicides – that occurred at the facilities we visited. In fact, our assessment was continuously hampered by BIA or jail officials who supplied us with incorrect, inconsistent, and often erroneous information regarding the detention program.

With very few exceptions, the detention centers we visited are operating at below minimum staffing levels. Some of the understaffing takes facilities to the point of being unsafe; none are staffed at a level that detention managers consider optimal.

The maintenance backlog at these facilities is significant. Jail administrators reported countless stories of neglect and delay on the part of BIA's Office of Facilities Management and Construction (OFMC). Our review of OFMC maintenance logs revealed numerous inaccurate, improper and erroneous entries. We found these logs to be of minimal value and were not surprised to learn that the Government Accountability Office (GAO) reached a similar conclusion when they reviewed the maintenance records in 2003.

We found that detention program funding is haphazardly managed by BIA, and once distributed to the tribes, it becomes virtually unaccounted for. BIA could produce little evidence of basic budget planning, budget execution, or

budgetary controls. Since BIA simply does not track expenditures made by tribes, our attempts to identify the total funding for the detention program proved futile. The neglect and mismanagement of detention program funding has not only exacerbated the systemic problems attendant to the detention program in Indian Country, but has also created an environment in which fraud can be perpetrated with impunity and waste can occur undetected.

Training for detention personnel is inconsistent and unpredictable. The majority of the detention officers at the sites we visited have yet to attend mandatory basic training for detention officers at the Indian Police Academy (IPA) in Artesia, NM. Many officers failed to complete the training within 1 year of being hired, as mandated in BIA policy. We even found officers who had been employed for as long as 12 years without attending the required formal certification training.

Basic jail administration procedures and standards are neither followed nor met at most facilities. Many of the management officials admitted that their detention facilities fail to even “come close” to meeting BIA standards for operation, which are derived from nationally recognized detention standards.¹ In fact, we found the majority of the jails make little or no effort to comply with even the most basic requirements.

Unfortunately, we often found that complacency and resignation were the norm — at all levels of BIA management — with no evidence of a coordinated and comprehensive strategic plan to improve and manage the detention program. Without a dramatic shift in organizational culture and professionalism, any positive change will likely be short lived and the program will remain in a dismal status quo. A comprehensive overhaul necessitates an infusion of leadership that can address issues with creativity, decisiveness, and commitment throughout all levels of the detention program.

We believe it is imperative that BIA take immediate action to alleviate potentially life-threatening situations at its detention facilities. The haphazard response to DOJ, OIG, and other

¹ BIA reported that detention standards were created using industry specific information obtained from the American Correctional Association.

reports must give way to a comprehensive and coordinated approach to address the systemic safety, security, and maintenance issues facing Indian jails. Mindful of other historical failures, however, we fear that once the attention wanes on the issues we identify here, the momentum and interest in the BIA detention program will diminish as quickly as it began. Many improvements and changes were anticipated when BIA published its detention standards in 1996 and when DOJ published its report about the Indian Country law enforcement and detention program in 1997. As this report will reiterate, once again, little has changed.

Background

Age of Indian Country Detention Facilities

- 33.0% (24) are over 30 years old
- 28.0% (20) are 20-30 years old
- 19.5% (14) are 10-20 years old
- 19.5% (14) are under 10 years old

BIA's mission is to fulfill trust responsibilities and promote self-determination on behalf of tribal governments, American Indians, and Alaska Natives. BIA provides services directly and through contracts, grants, or compacts for 1.5 million American Indians and Alaska Natives who are members of 562 federally recognized Indian tribes in the 48 contiguous United States and Alaska. The expansive scope of BIA programs covers the full range of state and local government services, including law enforcement services. BIA is required to provide law enforcement services on reservations under the Indian Law Enforcement Reform Act (ILERA) of 1990 (Public Law 101-379). BIA-LES provides direct assistance to tribes for law enforcement programs, including uniformed patrol, criminal investigations, detention, and dispatch on approximately 56 million acres of Indian Country in 35 states.

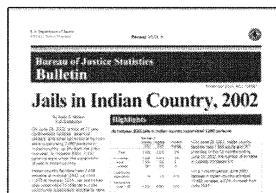
As of August 2004, the detention program consisted of 72 detention facilities² in Indian Country – 17 of which are operated by BIA-LES, 46 receive BIA funding for detention services under 638 contracts, and 9 are operated by tribes. Of the 72 facilities, 27 house adult inmates, 11 house juveniles, and 34 house a combination of both adults and juveniles.

Most of the older detention facilities were built as holding facilities to accommodate approximately 10-20 inmates for short-term periods (48 hours or less). On average, the newer facilities have been designed to accommodate 60 inmates, with four new facilities having more than 100 beds, along with additional rooms and areas, making the facilities more suitable for longer periods of incarceration (12 months or less). Individuals incarcerated in these facilities usually have committed misdemeanors, such as public intoxication or assault and battery.

² BIA-LES has been unable to provide us with an exact number of facilities under its control despite numerous requests for an accurate list. For example, the Chemawa Indian School was originally included in this total; however, it no longer is being used by BIA to detain juveniles and was subsequently removed from its inventory. Similarly, the Mescalero detention facility was closed after we began our assessment.

Individuals who have committed felonies, such as murder and burglary, are routinely incarcerated in state or federal facilities off reservations; however, there are times when felons are held in Indian jails.

The DOJ Bureau of Justice Statistics (BJS) publishes an annual report containing statistical data about Indian Country jails. These reports provide information pertaining to jail populations, crimes committed by inmates, overcrowding, jail capacity versus inmate population, and jails under court orders or consent decrees to improve conditions. These and other DOJ reports have documented overcrowding and inadequate capacity as problems in Indian Country for many years.



BJS 2002 report

A number of other reports have also documented such problems in Indian Country jails. As early as 1994, the OIG reported that Indian Country detention facilities were poorly maintained and mismanaged. As a result of the 1994 report, BIA contracted for individual safety and security inspections at each of the jails in 1995. The inspection reports overwhelmingly documented a systemic pattern of overcrowding and poorly maintained and managed jails.

In 1997, DOJ issued a report on Indian Country law enforcement that announced "a public safety crisis in Indian Country." In addition to identifying shortages of law enforcement officers and resources, the DOJ report also noted that "[detention] staffing levels fall far short of those required for adequate inmate supervision, thus creating a threat to welfare of the community, staff and inmates." DOJ recommended that BIA-LES be given line authority for law enforcement services, including the detention program, rather than leaving law enforcement services decentralized and under the supervision of the local BIA superintendent. BIA adopted this recommendation in 1999.

On June 3, 1998, former Assistant Secretary - Indian Affairs Kevin Gover testified before the Senate Committee on Indian Affairs on the Department's Indian Country law enforcement initiative. Gover testified about the lack of adequate detention facilities, their generally decrepit conditions, and the considerable problems in maintaining and staffing the

jails. Gover made note of the lack of juvenile facilities, which resulted in numerous occasions where juveniles were temporarily placed in adult detention facilities because there was no other place to house them.

Gover also testified about restructuring BIA law enforcement services to include detention services under the supervision of BIA-LES officials. The restructuring, which ultimately occurred in 1999, was designed to place these services under the control of law enforcement professionals to ensure that law enforcement services were directed by a central command structure, rather than by area managers with little or no law enforcement background.

During this time period, many proposed that Indian Country law enforcement should be transferred to DOJ. This proposal was revisited in 2001 during the International Association of Chiefs of Police (IACP) summit with tribal communities and their justice systems. In its report, *Improving Safety in Indian Country*, the IACP suggested streamlining the federal agencies involved with law enforcement in Indian Country to improve coordination and delivery of services.⁴

In addition to these outside reports and recommendations, internal BIA inspection reports went on to highlight detention program problems and deficiencies. In 2001, a presentation to senior BIA-LES officials identified specific issues in the jails and provided an action plan to address each problem. According to the author of the presentation, BIA-LES managers appeared disinterested and subsequently no action was taken.

After a thorough review of these previous reports and recommendations, we were disappointed, but not surprised, to find during our assessment that little implementation has taken place and the state of the detention program today is no better, and arguably worse, than what it was a decade ago.

⁴ International Association of Chiefs of Police, *Improving Safety in Indian Country: Recommendations From the IACP 2001 Summit*, Alexandria, VA, October 2001. p.11.

Chapter 1: Oversight and Coordination

Senior BIA-LES officials have acknowledged that the detention program is severely understaffed, that facilities are overcrowded, and that neither has received the attention or funding to adequately address the numerous deficiencies. Not once during our assessment did BIA-LES officials gloss over or deny the dire condition of the program or the profound and serious maintenance issues at the facilities. These officials readily admit that they have placed a higher priority on fighting crime on the reservations and focusing on the policing aspect of law enforcement services after line authority was granted to BIA-LES in 1999. They consistently contend that a lack of funding and staffing has made it impossible to address both law enforcement and detention programs simultaneously.

Despite this candid acknowledgement, these officials argue that the detention program has improved under their direct supervision and point out that BIA-LES is still in its infancy.

Since receiving its authority, we found that BIA-LES has attempted to provide oversight and management for the detention program with very limited success, using a two-pronged approach.

Administratively, the detention program has been coordinated through a Detention Program Manager working out of the BIA-LES Central Office. The manager, a criminal investigator by background, was appointed in 2000, and provided with limited training, virtually no staff, and minimal authority to accomplish his duties.

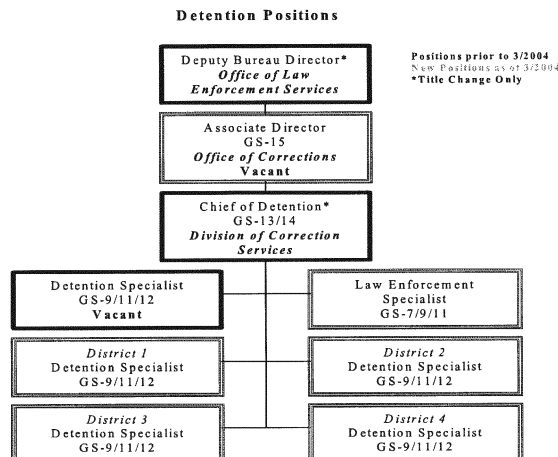
At the outset of our assessment, we discovered that the detention program manager had been assigned as the BIA-LES Acting Deputy Director of Operations. He conceded that much of his time was diverted from the detention program, effectively leaving that program without a functioning manager.

In 2001, a detention specialist was hired as the lone staff member of the program manager. This single detention specialist was expected to provide tribal and BIA jails with technical advice as well as conduct compliance checks. Since the beginning of this assessment, three additional

detention specialists have been added.

Six BIA District Commanders are responsible for managing law enforcement services in their respective districts, and they rely mainly on BIA chiefs of police to oversee these functions on the reservations. Our assessment found the oversight of the detention program by these District Commanders to be virtually non-existent. In fact, several District Commanders had never visited some jails under their command or spoken with the jail administrators. Many of the Commanders acknowledged giving little or no attention to jail issues, but they also pointed out that neither did their superiors raise detention as a priority. One District Commander reported that he could not recall a single discussion on detention issues during any staff meeting or conference call for more than a year.

The tribal 638-contract detention facilities are similarly managed and overseen by a chief of police. We found a greater number of dedicated jail administrators, however, overseeing the larger tribal detention programs. Because these jail administrators tend to be more extensively trained detention professionals, we found their jails to be more efficiently operated and managed than BIA-operated jails.



DOI's Office of Law Enforcement and Security (DOI-OLEs) is responsible for overseeing all Department law enforcement and security programs, including detention facilities in Indian Country. Since 2001, DOI-OLEs has been responsible for coordinating and establishing departmental law enforcement policies and services. We found no evidence, however, of DOI-OLEs providing any oversight of the Indian detention program.

BIA-LES has proven incapable of providing the coordination and oversight of Indian Country jails without assistance. The detention program desperately needs a level of advocacy and support well beyond what BIA-LES is presently able to provide.

In addition to the lack of DOI-OLEs involvement, we found senior BIA management outside of law enforcement to be inexplicably uninformed about detention program deficiencies – despite annual funding requests specifically to improve jail facilities. One senior political appointee remarked that the law enforcement deputy director never brought the dismal state of Indian Country jails to the attention of the Assistant Secretary's office.

BIA-LES simply does not have the administrative infrastructure to properly manage and oversee the detention program. Detention staff at many of the 638-contract jails we visited told us that BIA-LES was essentially a non-entity. BIA-LES has failed to provide 638-contract jails with technical support or an accessible point-of-contact. The contempt for BIA was readily apparent in many of the discussions we had with detention staff and tribal members. One jail administrator met our team at the door by exclaiming, "I'll tell you now I am not a fan of BIA."

The lack of a dedicated staff with the capability to develop, implement, and administer policies and procedures is a primary cause of BIA's inability to effect change in the detention program. Absent appropriate staff to monitor compliance, safety issues go unreported and the truly deplorable conditions of the jails remain shrouded in secrecy.

Having chiefs of police manage detention facilities has proven to be an operational failure. High crime rates and poor officer staffing demand the constant attention of the

chiefs. Without a dedicated detention program manager on site, the needs of the jails will always remain secondary to fighting crime.

Another significant challenge for management will be to overcome the frustration, cynicism, and apathy that infect Indian Country detention personnel. The overall mismanagement and neglect of the program has left many personnel with the attitude that management is not interested in the detention program and that nobody cares about the jails, the staff, or the inmates. We believe that BIA-LES management's abdication of responsibility for the detention program significantly contributed to the overall malaise we encountered during our visits. That escapes are not taken seriously, vandalism is tolerated, or that there is little sense of professionalism among detention officers should come as no surprise, given management's inattention to the many serious problems found in the jails.

Recommendations

1. For the purpose of providing the prominence and advocacy vital to ensuring that the focus on improving Indian Country jails does not diminish, the Deputy Assistant Secretary for Law Enforcement should become actively engaged in coordinating the oversight and management of the BIA-LES detention program.
2. The Department should create a senior-level (GS-14/15) full-time equivalent (FTE) position for a detention professional in DOI-OLEs to help provide increased coordination and advocacy for the Indian Country detention program.
3. DOI-OLEs should conduct compliance inspections at BIA and 638-contract detention facilities on a scheduled and unscheduled basis. For the immediate future, it is recommended that the Department OLES and not BIA-LES be responsible for the compliance oversight of the detention program.
4. BIA-LES should establish a senior-level (GS-15) detention program director with proper detention management credentials to manage the BIA and 638-contract detention facilities. This position should

report directly to the BIA-LES director, coordinate actions with DOI-OLEs, and be the BIA-LES liaison with OFMC for detention-related repairs. BIA should provide the appointee with adequate new staff to fulfill these responsibilities. At a minimum, the Central Detention office should be staffed with a Director, Deputy Director, secretary, and three management analysts. The six regions should be staffed with two detention specialists per region.

Chapter 2: Safety and Security

Serious Incidents

*“What happens
on the
reservation
stays on the
reservation.”*

We discovered there have been 11 fatalities, 236 attempted suicides, and 631 escapes at Indian Country jails over the last 3 years.⁵ We believe these numbers to be conservative given that 98% of these incidents have never been reported to BIA-LES. Our efforts to determine more precise numbers were hindered because local records are often inconsistent or poorly maintained by jail administrators. One jail administrator confirmed our concerns that incidents are underreported when he stated, “What happens on the reservation stays on the reservation.”

Fatalities

The number of fatalities reported includes the recent suicide at the jail in Yakama, Washington, as well as the death of Cindy Gilbert, a 16-year old student who died of alcohol poisoning while in a detention cell at the Chemawa Indian School in Oregon.⁶

On December 6, 2003, Gilbert (a.k.a. Cindy Lou Bright Star Gilbert Sohappay) was found dead in one of the school’s four cinderblock detention cells. She had been found intoxicated on school grounds and had been placed into a detention cell to sober up. Approximately 3 hours later, the school staff entered her cell, found her to be non-responsive and summoned the local emergency rescue squad. Gilbert was pronounced dead by the rescue staff.

An autopsy determined that Gilbert’s death resulted from complications of acute ethanolism. The medical examiner’s report indicated Gilbert’s blood alcohol level was .37, considerably over the .08 intoxication level for the state.

⁵ We have limited our discussion of serious incidents to deaths and suicides, attempted suicides, and escapes. The statistics cited above were obtained from BIA-LES and site visits. We note, however, that the accuracy of many statistics provided by BIA have proven unreliable when tested.

⁶ Although there is some question within BIA regarding supervisory responsibility over the Chemawa Indian School detention facility, BIA-LES included it on the “Inventory of Indian Country Detention Facilities—2003.” The school’s detention facility had four cells that were used to temporarily detain unruly or intoxicated students. These cells are no longer used.

According to the Acting Lead Detention Officer, this occurred because the two officers on duty were "more interested in cleaning up the office" than observing inmates.

Detention officers at the time were "off-line for approximately 30 minutes," handling other duties, and were not properly overseeing the cell population.

The OIG initiated an investigation into the death of Gilbert. The investigation, currently under DOJ review, revealed a history of inaction to correct a myriad of policy and safety issues at the school's detention facility. In addition, we found that the school had no policy on having intoxicated students medically screened before incarceration.

In December 2003, an inmate at the BIA-operated Haulapai Detention Center in Arizona, who had been arrested for public intoxication, was found hanging in an apparent suicide attempt in his jail cell. Although the inmate was resuscitated, he died 6 days later in the hospital. A preliminary investigation determined that the inmate had been transferred from an intoxication cell where he would have received frequent monitoring to a single cell where the attempted suicide occurred.

Another death occurred in December 2003 at the San Carlos 638-contract facility in Arizona, when an inebriated inmate was placed in the intoxication cell and subsequently died of asphyxiation.

Similarly, at the BIA-operated Hopi Adult and Juvenile Facility in Arizona, an intoxicated inmate died of asphyxiation in 2003. According to the Acting Lead Detention Officer, this occurred because the two officers on duty were "more interested in cleaning up the office" than observing inmates.

In March 2003, a 16-year-old female hanged herself at the 638-contract Zuni Adult and Juvenile Detention Facility in New Mexico. According to the facility administrator, detention officers at the time were "off-line for approximately 30 minutes," handling other duties, and were not properly overseeing the cell population.

In October 2002, a male inmate at the Rosebud jail in South Dakota was found dead in his cell. The inmate had been placed in the holding cell with other inmates the previous evening after he was arrested for public intoxication. Detention logs indicated that officers made regular observations of the cell and noted that the inmate was sleeping. An investigation by tribal investigators concluded that the inmate appeared to have died from asphyxia and/or poisoning after consuming anti-freeze or a similar substance. This death was reported to the FBI but not to BIA.

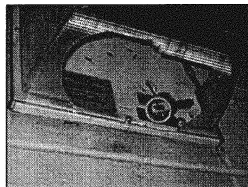
"There are no written procedures for handling inmate deaths."

In July 2002, a male inmate at the Blackfeet Adult Detention Center in Montana, who was arrested for intoxication, died approximately one hour after being placed in a cell. An autopsy ultimately attributed this inmate's death to appendicitis. This death was reported to the FBI but not to BIA.

In March 2002, an inmate was found dead in his jail cell at the Pine Ridge facility in South Dakota due to an overdose of medication ingested prior to being incarcerated. The victim, along with another man, had been booked for intoxication. During the booking process, the victim informed the detention officer that the man accompanying him had ingested multiple pills. That inmate was immediately taken to the hospital for medical care; however, the victim inmate who remained at the jail had also taken multiple pills and later died.

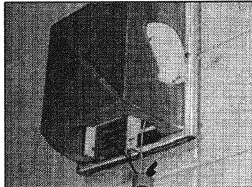
In July 2001, an inmate at the Blackfeet Adult Detention Center died as a result of a seizure. The inmate had an extensive history of seizures prior to being incarcerated.

Since 2001, one suicide has occurred at the Shiprock Adult Detention Center, a 638-contract facility, in New Mexico. An inmate was placed in the isolation cell and left unobserved for 2 hours, during which time he hanged himself. According to the facility administrator, there are no written procedures for handling inmate deaths.



Broken light fixture observed during May 2004 Yakama site visit.

A tragic example of BIA's failure to remedy poor conditions at Indian Country detention facilities, despite the attention and publicity surrounding this issue, occurred on June 25, 2004, when a 39-year old inmate at the Yakama detention facility committed suicide. The inmate, who had been incarcerated for violating a domestic violence no-contact order, was placed in isolation after attacking another inmate. He subsequently hanged himself from a broken light fixture in a corner of the cell out of view of a surveillance camera using a blanket and a bucket that had been left in the room. Only one person, a dispatcher, was on duty that night — similar circumstances occurred when another inmate committed suicide at that facility in 1997. Due to the heavy volume of calls for service that night, the dispatcher did not conduct periodic rounds of the cellblock. The inmate's body was not discovered until 8 hours later when jail staff went to check on him.



The same light fixture, used in June hanging, was again observed during August 2004 Yakama site visit.

Attempted Suicides

The inmate's death occurred 1 month after we visited the Yakama site and 2 days after the Inspector General testified before the Senate Committee on Indian Affairs about the deplorable conditions we had discovered during our site visits. The Inspector General referred to his visit to Yakama and the conditions he had personally witnessed there. The OIG's Interim Report of April 2004 specifically addressed life-threatening issues comparable to those found at Yakama, such as poor physical conditions, inadequate staffing, and inattentive management, yet BIA-LES management failed to implement sufficient safeguards to prevent such an incident. According to detention officers, BIA-LES had not visited the Yakama jail in more than 5 years and had also failed to show up for an inspection they had scheduled for June 22, 2004, just 3 days prior to the inmate's death. Detention staff also reported a second BIA inspection scheduled after the inmate's death was cancelled without explanation. BIA detention specialists did not conduct a site inspection of this troubled detention facility until September 15, 2004.

Based on our own findings and observations noted in other reports, suicide attempts appear to be a regular occurrence at many of these facilities. Data obtained from our 27 site visits indicates a total of 236 suicide attempts over a 3-year period. The BJS reported there were 282 suicide attempts in Indian Country jails during the period of June 2001-2002 alone.⁷ In addition, BJS further reported that while there had been an increase of jail admissions of 32 percent for the same period, suicide attempts had more than doubled.

On more than one occasion, we found multiple suicide attempts had been made by the same inmate. For instance, a review of the incident log at the BIA-operated Mescalero Detention Facility in New Mexico revealed that from July 2002 to January 2004, 5 of the 15 reported incidents involved the same female detainee who, on different occasions, attempted to inflict bodily harm on herself. According to the detention officer, the inmate was usually arrested for public intoxication and, after arriving at the detention facility, would attempt to slash her wrists or hang herself with articles of her clothing.

⁷ Minton, Todd D. "Jails in Indian Country, 2002," *Bureau of Justice Statistics Bulletin*, U.S. Department of Justice, Office of Justice Programs, November 2003.

In spite of the disturbingly high number of suicide attempts at this facility, there are still many occasions where a lone dispatcher is on duty and unable to properly observe inmates.



Kitchen knives are stored in unlocked drawers. Sisseton/Wahpeton, SD

Incredibly, an individual detained at the Shiprock facility in 2001 attempted to hang himself seven times using articles of clothing and towels left in the cell. According to the facility administrator, the detention officers' response to these attempts was quite elementary -- if the inmate tried to hang himself with his socks, they would take his socks away; if he tried to hang himself with his towel, they would remove the towel - until the inmate remained in his cell without any clothing or towels.

In March 2004, the Yakama detention facility reported that there had been an astounding 53 attempted suicides at the facility in the previous 3 years. In spite of the disturbingly high number of suicide attempts at this facility, there are still many occasions where a lone dispatcher is on duty and unable to properly observe inmates.

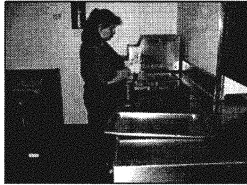
Despite the prevalence of suicide attempts, BIA-LES is wholly lacking in procedures for handling and documenting these incidents. Jail administrators at a number of facilities were often unable to determine a precise number of suicide attempts at their respective facilities due to a lack of accurate recordkeeping.

In contrast to most detention facilities in which inmate access to any materials that might be crafted into a weapon is strictly monitored, in the Indian Country detention facilities we visited, we observed a common practice of allowing inmates uncontrolled access to knives as well as other utensils that could readily be used to harm themselves or others.

We observed inmates at Tohono O'odham in Arizona and Rosebud in South Dakota using large knives to prepare food in the kitchens while only being supervised by a cook. We also noted that kitchen knives are stored in unlocked drawers at many jails. At Sisseton/Wahpeton in South Dakota, we observed a hammer and a hunting knife on desks that were readily accessible to inmate workers who roamed freely throughout the facility.

In May 2003, a male inmate at the Rosebud jail attempted suicide by slitting his wrists with a knife that he obtained from the jail kitchen. A locking knife cabinet was purchased after this suicide attempt to prevent the theft of knives when jail staff are not present. During our site visit, however, we

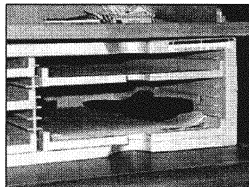
observed that the facility continues to allow inmates to use un-tethered knives while working in the kitchen.



*Inmate using knife in kitchen.
Rosebud, SD*

We could not identify any specific cause for what appears to be an unusually high rate of suicides and attempts in Indian Country jails. We note, however, that many inmates arrive at the jails intoxicated or under the influence of drugs. In the *National Study of Jail Suicides: Seven Years Later*⁸ the authors reported that 60.3% of the suicide victims studied had been under the influence of alcohol, drugs, or both at the time of their incarceration. The study also noted that jail suicides are more prevalent when staff supervision is reduced.

This study, as well as others, has shown that careful and thorough screening is necessary to identify suicidal tendencies, and the importance of having properly trained personnel on duty to conduct suicide screening both during intake and in subsequent phases of the inmate's incarceration. Intake screening is not intended to be an in-depth, time-consuming evaluation, but meant to be more of a triage to detect suicidal behavior and medical requirements. At many non-Indian jails, on-duty medical staff conduct the screening, which also serves to detect most medical and mental health problems and classification needs.



*Hunting knife on desk.
Sisseton/Wahpeton, SD*

During our site visits, we observed that there was no consistent method of screening inmates for suicide or medical purposes. Often times, the inmate was considered too intoxicated to screen at intake and inadequate staffing precluded later screening, thus the facility never was able to gauge any potential suicidal behavior. We also found that none of the 27 jails we visited had medical staff on duty during any time. In addition, we learned that the jails do not have an established threshold for blood alcohol level for detention officers to use in determining the need for medical screening of intoxicated inmates. Several deaths may have been prevented with either on-site medical staff and/or BAC threshold protocols.

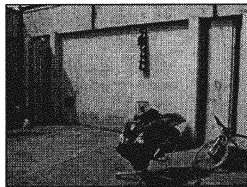
Escapes

For the most part, the detention officers at the jails we visited convey stories of inmate escapes with an air of casual inevitability. In fact, our impression is one of collective

⁸ Hayes, Lindsay M. and Joseph R. Rowan, *National Study of Jail Suicides: Seven Years Later*, National Center on Institutions and Alternatives, February 1988.



*Use of handcuffs over cipher lock in recreation yard.
Tohono O'odham, AZ*



*Recreation yard.
Yakama, WA*

"You give inmates some exercise freedom and then they take off. It was easy to get out."

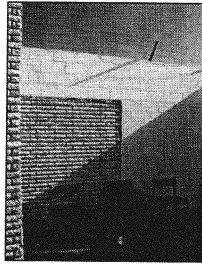
acceptance. In our interviews, detention officers who discussed escapes told us that it is just not possible to prevent inmates from escaping. Since the majority of these facilities function with only a single officer on duty, officers explained that they simply cannot "keep an eye" on everyone. In addition, we found that some facilities do not notify local law enforcement of inmate escapes. This is not only disconcerting, it is irresponsible to allow escaped inmates to freely travel in a community and surrounding areas while the local law enforcement authorities have no information regarding their escapes.

Physically rundown and deplorably maintained, many of the facilities provide ample opportunity for escape. At one facility, the chain-link fence surrounding the outdoor recreation yard was held together and locked by a set of handcuffs because inmates had learned the combination to the cipher lock on the gate. While many of the recreation yards at these facilities are fenced-in and topped with barbed wire, there seems to be a universal acceptance among the detention officers that if inmates want to climb over the fence and escape, they will.

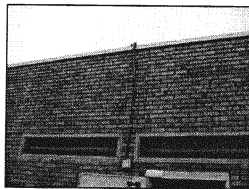
For example, male inmates at the BIA-operated Mescalero facility were allowed to exercise in an outside confinement area unobserved. Although this area is surrounded by a 12-foot cyclone fence with two additional feet of concertina barbed wire at the top, one inmate, who wanted to see his girlfriend, merely climbed up the cyclone fence, cutting himself on the concertina wire in the process, and left the premises. Only one detention officer, who was inside the facility, was on duty at the time.

At the Northern Cheyenne jail in Montana, an unguarded inmate escaped from an outdoor recreation yard by climbing a fence topped with barbed wire. The strands of barbed wire were damaged and pulled together by the inmate. No effort has been made to repair the barbed wire or to replace it with concertina wire to prevent additional escapes. A detention officer at Crow Creek in South Dakota stated, "You give inmates some exercise freedom and then they take off. It was easy to get out."

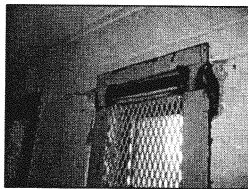
At the Sisseton/Wahpeton jail, we observed that the recreation yard wall was only topped with poorly maintained strands of barbed wire. The recreation yard contained chairs



*Chairs line recreation yard.
Sisseton/Wahpeton, SD*



*Electrical conduit used to
escape.
Medicine Root, SD*



*Loosely encased wire-meshed
windows.
White Buffalo Home, MT*

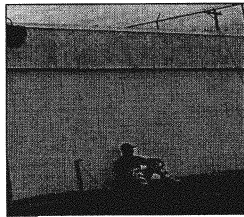
and freestanding wooden benches that could be used by inmates to escape over the wall. When we inquired about the escape potential created by these items, we were told of an inmate who had recently escaped over the wall utilizing a chair and a door handle to climb out of the yard. Detention personnel did not appear to be alarmed that additional escapes were likely to occur if the benches and chairs remained in the recreation yard.

Unsupervised inmates at the Medicine Root detention facility in South Dakota escaped from the recreation yard by climbing an electrical conduit onto the roof of the main building, which has no fence or barriers to prevent escape. Detention officers expressed frustration that they could not let inmates use the recreation yard because maintenance personnel have not taken any action to move the conduit or install effective barriers along the roof to prevent future escapes. Another inmate escaped because a door was left open when police officers brought an individual to the jail.

From weakened and deteriorating locks on cell doors to broken windows in inmate dormitories, the interiors at many of these facilities are in extremely poor condition and do not deter inmates who set out to escape. For example, the wire-meshed windows in many of the cells at the White Buffalo Youth Detention Center in Montana are loosely encased in a crumbling wall and, with the application of some pressure, can be easily removed from their housing. According to the acting administrator, these "removable windows" have, in the past, provided an avenue of escape for a number of detained youths. As recently as February 2004, three male detainees escaped through one of the windows in the day room of the male dormitory after obtaining two fire extinguishers and using them to spray the two on-duty detention officers.

Perhaps even more disturbing than the actual circumstances and frequency of inmate escapes at these facilities are the lack of response and importance placed on these incidents by both detention officers and facility administrators alike. At one detention facility, the administrator recounted an incident of a juvenile escaping by stating that they "haven't seen him since." At another facility, the administrator casually attributed several prior escapes to poor perimeter security. A third jail administrator in Arizona simply stated that there are too many escapes to count.

*One officer
chuckled in
response to our
question about
escapes and
said, "Oh yeah,
they happen."*



*Unguarded inmate outside
Yakama jail.*

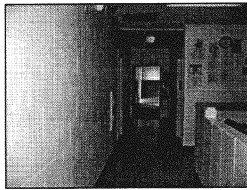
One officer at the Shiprock Adult Detention Center chuckled in response to our question about escapes and said, "Oh yeah, they happen." She then recounted a story about an inmate who had escaped from her in June 2003. The inmate escaped on foot and in ankle-shackles while she was ushering a line of inmates from the facility to the courthouse across the courtyard. Since she was the only officer on duty at the time, she could not pursue the fleeing inmate and leave the other inmates unattended. The officer told us that she believed that the inmate had not yet been apprehended. A review of facility logs indicated no record of the escape or of the inmate being returned.

A number of inmates have escaped by just by walking away, yet the jail staffs continue to allow them to work or loiter while unguarded in areas where they can easily escape. We observed unguarded inmate workers at Sisseton/Wahpeton and Medicine Root routinely exit the jails while they work in non-secure areas. At Yakama, we observed an unguarded inmate sitting against a wall outside the jail in an unfenced area adjacent to the parking lot. The inmate remained outside of the jail several hours later. We observed another unguarded inmate loitering outside the front entrance to the jail during a subsequent visit to this facility several months later. At Pine Ridge, we noticed four unguarded inmates loitering outside of the sally port in a non-secure area only a short distance from the highway. A detention officer at Pine Ridge summed the problem up by stating "inmate workers escape a lot — also from the hospital and from the courthouse."

During a visit to the BIA-operated Blackfeet Adult Detention Center, the district commander told our investigators that he had personally seen unsupervised inmates milling about in the recreation yard from which unsupervised inmates had previously escaped; however, he did not seem concerned about this and had done nothing to rectify the situation. At this same facility, in April 2002, an inmate worker, commonly known as a trustee, escaped and committed a murder before he was eventually apprehended.

Several inmates at Rosebud also escaped by climbing through the suspended ceiling in the dining area into a non-secure area and walking out the door. This escape route has not been blocked or corrected although it has been identified for some time. To our amazement, inmates continue to use

We were told that the exterior door had been propped open because the jail gets "stuffy." Incredibly, we observed the same door that the inmate used to escape was propped open during our visit.



*Door used during escape still propped open.
Pine Ridge, SD*

the dining area with little or no supervision.

Detention personnel at Pine Ridge told us that an inmate escaped the night prior to our visit. The inmate kicked a cell door when it was opened by an officer, ran around the startled officer, and escaped through an unlocked door. We were told that the exterior door had been propped open because the jail gets "stuffy." Incredibly, we observed the same door that the inmate used to escape propped open during our visit. We also learned that unsupervised inmate workers are routinely tasked to conduct work and are allowed to loiter in unfenced areas outside of the jail. The Pine Ridge jail continues to allow this practice despite their high number of escapes.

Of the escapes we were able to document during our assessment, 144 (23%) of the 631 occurred when unguarded inmates simply walked away while awaiting medical treatment at clinics or hospitals. For instance, many of the 37 reported escapes at the Rosebud detention facility occurred when inmates walked away from the hospital.

Inmates are regularly left in the care of medical staff or hospital security personnel who are not trained to handle or restrain inmates. An officer at Pine Ridge said, "We don't have enough people to escort them to the hospitals." At the Yakama detention facility, inmates who require medical care, for which the jail cannot afford to pay, are actually released from custody with the hope that they will return on their own after treatment. Not surprisingly, Yakama detention officers commented that inmates have learned to feign illness because they know that they will be released if they claim a need for medical treatment.

Serious Incidents Chart

	BIA	Alaska, WA (BIA)	Oregon, OR (BIA)	Cross Creek (Thompson), SD (BIA)	Gila River, AZ (BIA)	Hopi, AZ (BIA)	Kia Aukai (Medicine Rock), SP (BIA)	Nagasaki, WA (BIA)	Pine Ridge, SD (BIA)	Quinnell, WA (Tribal owned)	San River, AZ (BIA)	Shoshone, NM (BIA)	Totchtch, NM (BIA)	Use Mountain (the CO (BIA))	White Butte, WI (BIA)	Yaquina, WA (BIA)	Tull, NM (BIA)	Total
Deaths	2	1	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	5
Non-Suicide	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Suicide	0	0	0	0	0	1	0	0	0	1	0	0	0	0	0	0	1	6
Suicide Attempts	9	0	8	2	0	0	4	9	1	17	3	41	16	0	0	12	1	101
Escapes	64	0	6	17	8	0	2	26	3	116	1	1	11	69	2	2	37	236
Totals	75	1	14	19	8	1	21	12	17	18	4	52	95	2	2	50	12	878

* Cherokee Indian Boarding School has detention cells and reported by BIA as a Detention Facility.

☒ Incidents reported to OIG from detention facilities.
☐ No Incidents Discovered.

Out of the 878 incidents, BIA-LES's Incident Log only reflected 22 of those incidents. Therefore, BIA-LES was unaware of 98% of incidents reported to the OIG.

Revised as of August 2004

Recommendations

5. DOI-OLEs should ensure that BIA-LES establishes and implements clear reporting protocols for serious incidents occurring at all BIA and 638-contract detention facilities. At a minimum, all officer safety issues, inmate deaths, attempted suicides, assaults, and escapes should be reported promptly through an established chain of command ending with the Director of BIA with copies to the DOI-OLEs.
6. BIA and 638-contract detention administrators should ensure that any escape is immediately reported to surrounding local, tribal, and state law enforcement authorities.
7. BIA-LES criminal investigators should immediately respond and conduct a preliminary inquiry to determine if a full investigation is warranted on any reported serious incident. Their findings, in every case, should then be reported to the Director of BIA-LES with a copy to the DOI-OLEs. All death cases at BIA or 638-contract detention facilities, not investigated by the FBI, should be investigated by a BIA-LES criminal investigator.

8. BIA and tribes should explore alternatives to detention for intoxicated inmates. When it is necessary to incarcerate intoxicated inmates, additional detention officers should be on duty to assist with the additional monitoring required.
9. DOI-OLES should work with the tribes and BIA to establish a Memorandum of Understanding (MOU) with the Indian Health Service to provide on-site medical assistance at all detention facilities with more than 20 inmates incarcerated. Detention staffs should be adequately staffed and scheduled to accommodate for medical transport to hospitals when necessary.

Chapter 3: Detention Facility Staffing

Determining the appropriate detention staff ratio for a jail is extremely complex with many variables to consider. No two facilities are exactly alike. Thus, staffing requirements should be determined by considering the physical size and layout of the facility, inmate population, types of inmates, including the need for isolation, length of average stay by inmate, technology available, and the competency of the staff.

One manager remarked, "We are often down to none" when asked if they ever fell below minimum staffing levels.

When conducting our site visits, we learned that most of the facilities operated below their authorized staffing levels, and they operated below what the managers would consider optimum. We discovered that 79% of the facilities fell below minimum staffing levels on a regular basis. One manager remarked, "We are often down to none" when asked if they ever fell below minimum staffing levels.

Most managers and detention professionals we spoke with believe there generally should be a minimum of one detention officer per shift who is dedicated for the sole purpose of providing security and observation of inmates. There are other more scholarly views including an author in one prominent correction publication who writes "The ratio of staff to inmates should not be the central issue. Instead, the issue should be making sure the right number of properly trained staff, are in the right places, at the right time, doing the right things. What is important is the way the staff are trained, assigned, and managed, not just how many there are."⁹ The author goes on to remark, "that if the detention staffs are not competent or productive, simply increasing their numbers will not improve facility operations."¹⁰

In fact, we found that the majority of the detention facilities we visited operated with only one detention officer per shift and often times the officer had several collateral duties that took his/her attention away from the inmates. Even more disturbing was our discovery that a number of jails have shifts with no detention officers on duty. In these instances, dispatchers, cooks, or police officers fill in while continuing to do their primary jobs.

⁹ Krauth, Barbara. *Staff Inmate Ratios: Why It's So Hard to Get to the Bottom Line*, L.I.S.I., September 1988.

¹⁰ *Ibid.*

For example, the dispatcher at the Crow Creek detention facility is regularly called upon to watch the inmates while performing dispatch duties and must prepare meals for the inmates as well. One Crow Creek employee commented, “The dispatcher works as an officer, the dispatcher cooks. Everyone shuffles around. We’re jacks of all trades.” The Northern Cheyenne detention facility normally has only one detention officer on duty. The cook fills in for the detention officer two or three times weekly when the detention officer transports inmates for medical treatment or court appearances. At the 55-bed Blackfeet Adult Detention Center, the lone detention officer stands in for other personnel several times a week and must physically leave the jail to prepare meals, leaving the inmates unsupervised.

*“The
dispatcher
works as an
officer, the
dispatcher
cooks.
Everyone
shuffles
around.
We’re jacks of
all trades.”*

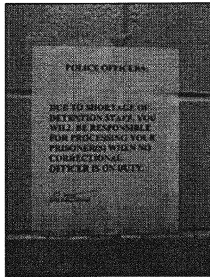
The San Carlos facility in Arizona has only four correctional officers on staff to operate what they feel is an overcrowded facility. To address this situation, the facility has placed a 24-hour, 7-day a week “lockdown” on inmates. Although lockdown is not unusual as a short-term solution for an acute problem in a detention facility, it could lead to an unsafe and dangerous environment long-term. The detention officer on duty has no one for back up if a medical emergency or conduct problem arises. When an officer is working alone, he or she must either wait for assistance or act independently, both of which place officers and inmates in a potentially life-threatening situation.

Indian Country jails currently range in size from 2 to 120 beds. While we recognize that small jails, which are often no more than temporary holding cells, may be able to operate with one detention officer/dispatcher on duty as long as they are supported by other law enforcement personnel, in most instances, the practice of operating a jail that houses inmates more than 48 hours with only one detention officer on duty is a recipe for disaster.

Detention officers must book and process new inmates brought to the jail, intercede when altercations occur, make regular rounds of the jail to keep inmates under surveillance, manage/watch suicidal or violent inmates, respond to emergencies or injuries, transport inmates for medical care, oversee visitors, log activities, and manage other operational functions of the jail. It is unreasonable to expect one detention officer to perform all of these duties under normal

conditions. During periods of increased inmate population, such as weekends and holidays or when jails are overcrowded, the challenges faced by a single detention officer become overwhelming.

Lone detention officers are also at great risk of being assaulted, injured, or even killed during the performance of their duties. Inmates may be encouraged to attack a lone detention officer since they know that many of these officers have nobody to come to their rescue. Occasionally, other inmates intervene to help a detention officer, as occurred at Mescalero where a lone female detention officer was confronted at knife-point by a former inmate who entered the facility through an unlocked door. Tragedy was averted when the officer locked herself into a detention cell while a trustee convinced the intruder to move to another part of the jail and to leave the officer alone. Another inmate then summoned the police. At the Blackfeet Adult Detention Center, a dispatcher was alerted to an assault on the lone detention officer by inmates pounding on the walls. Unfortunately, this incident does not appear to be an exceptional case; the BIA district commander told us, "Every officer here has been assaulted." Detention officers should not have to place their hopes of being rescued on inmates if they are assaulted or attacked.



*Sign indicating staffing shortage.
Crow Creek, SD*

Inadequate staffing greatly increases the potential for BIA liability when injuries, deaths, or escapes happen. We believe there is a direct correlation between insufficient staff and the number of serious incidents and escapes that occur at Indian Country jails.

In most cases, Indian Country jail staffing levels are so low that there are no detention officers available to fill in when officers are sick or otherwise unable to be on the job. Many unfilled vacancies further contribute to the inability of jails to have a sufficient number of detention officers on duty and require detention officers to work unsafe levels of overtime. A detention officer at Crow Creek claimed it is not uncommon to work up to 16 hours per day. Detention officers at other jails similarly reported that they must work double shifts when co-workers are sick or vacancies remain unfilled for long periods of time.

Several detention officials reported that it is not uncommon for vacancies to go unfilled because of a lack of qualified

applicants. Not surprisingly, we were told that many applicants are not willing to move to remote areas with poor housing, low pay, and undesirable working conditions.

The National Institute of Corrections (NIC) in Longmont, CO, notes that on average, it takes 5 FTEs to staff one post on an 8-hour shift, 7 days per week. In contrast, BIA jails have approximately one FTE per shift for each jail. BIA management's failure to fill vacancies and/or increase staffing to sufficient levels directly impacts the poor operation and management of the jails for which it has responsibility.

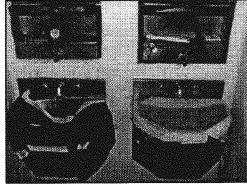
BIA management has been aware of the unsafe conditions created by insufficient staffing for more than 6 years with little evidence to indicate that there has been more than a token effort to take corrective action. In his June 3, 1998 testimony, former Assistant Secretary Gover testified about the danger of inadequate staffing. Gover stated, "Most of the facilities have limited staff on duty at any given time to adequately manage inmates. For example, during a shift, the same person may serve as jailor, dispatcher, receptionist and cook. Clearly, this frequent predicament causes an unreasonably dangerous situation for the employees as well as the inmates." Gover's testimony echoed many of the findings noted in the 1997 DOJ report.

Recommendations

10. Staffing shortages at BIA and 638-contract detention facilities that are related to officer safety should be identified by the BIA-LES and corrected immediately. DOI-OLEs should oversee this effort.
11. BIA-LES in collaboration with 638-contract programs should develop staffing models and methodologies for BIA and 638-contract detention facilities. DOI-OLEs should oversee this developmental effort.

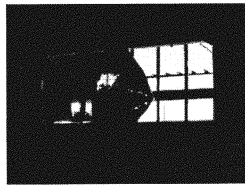
12. The DOI Law Enforcement and Security Board of Advisors should develop recruiting standards and guidelines for BIA detention officers. BIA-LES should then assist tribal detention programs in developing recruiting standards and guidelines for tribal detention officers.

Chapter 4: Detention Facility Maintenance



*Inoperable sinks in cells.
Mescalero, NM*

*Ten years
from our
earlier audit,
conditions
remain the
same.*



*Broken glass in cell window.
Hopi, AZ*

We found the condition of the majority of the jails we visited to be abysmal — the result of years of neglect and failure to perform even routine repairs in a timely manner. In contrast, local county jails we visited for benchmarking purposes are in significantly better condition than the Indian Country jails of the same age.¹² In general, the county jails, which received sufficient upkeep, clearly had many more years of service remaining while many of the Indian Country jails are dilapidated to the point of condemnation.

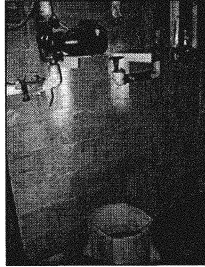
Records reflect that BIA and the tribes have consistently failed to maintain their detention facilities. In the OIG Audit Report, *Maintenance of Detention Facilities, Bureau of Indian Affairs*, issued in August 1994, the findings reflected, in part:

“The Bureau of Indian Affairs and Indian tribes have not adequately maintained detention facilities or corrected hazardous health and safety conditions at these detention facilities. Most of the facilities we visited were in unsanitary conditions and/or disrepair.”

The 1994 audit determined the lack of maintenance and repairs at the facilities were attributed to BIA and the tribes not (1) having established and implemented preventive maintenance programs, (2) specifically assigning and holding personnel accountable for correcting deficiencies at BIA-operated facilities, or (3) adequately monitoring tribal contractors to ensure proper maintenance of tribally operated facilities. The audit also reported that the conditions and lack of attention had been on-going for several years prior to the audit.

BIA OFMC is responsible for the maintenance and repair of BIA-owned detention facilities. OFMC is tasked to manage maintenance funding and to coordinate repairs for all structures owned by BIA. OFMC operates independently of BIA-LES; consequently, jail administrators have no direct authority over local maintenance personnel and do not have the authority to prioritize maintenance and repair work at

¹² We visited seven jails in nearby communities off the reservation.



*Missing pump/leaking water.
Medicine Root Jail, SD*

We noted that many of the maintenance shortcomings have a direct impact upon officer and inmate safety; yet there is little indication that OFMC or detention personnel place any emphasis on expediting repairs affecting safety.

their facilities. OFMC personnel determine repair scheduling and prioritization for all BIA buildings with little thought of the unique needs of detention facilities. This diminishes any sense of ownership that jail administrators and detention officers have for the maintenance and upkeep of their facility.

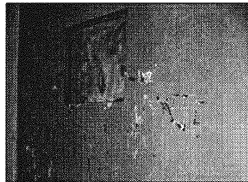
The prevailing attitude of the detention personnel we encountered is that problems reported to OFMC, once made, are no longer their concern. This results in little, if any, follow-up to determine prioritization or repair status. Additionally, few jail administrators conduct formal weekly or even monthly inspections of their facilities as required under current BIA standards for operation. These are the very standards that were implemented to address and respond to the findings of the 1994 OIG Audit.

Unless this trend is reversed, many of the newer jails in Indian Country will prematurely deteriorate due to a similar lack of upkeep and maintenance. Relatively new jails we visited are already showing signs of accelerated aging and wear due to delay of necessary repairs. For instance, the main control panel for monitoring access at the 4-year-old Ute Mountain detention facility has not worked for more than 2 years. Although this problem was reported to OFMC 2 years ago, it is still broken.

An egregious example of a deteriorating newer jail was found at the juvenile detention facility at the Kiyuska O'Tipi Reintegration Center, which was constructed in 1995. Door lock indicator lights do not function properly, failed hot water heaters have not been replaced, trim pulled from the roof by a storm has gone unrepaired for several years leaving parts of the structure exposed to the elements, the entry gate to the jail compound is non-functional, a leaking water recirculation pump leaves puddles of water in a utility room, external security light fixtures remain broken, and showers and fire sprinkler heads damaged by inmates are in disrepair.

We noted that many of the maintenance shortcomings have a direct impact upon officer and inmate safety; yet there is little indication that OFMC or detention personnel place any emphasis on expediting such repairs. For example, virtually all of the Plexiglas in the jails at Rosebud and at Zuni in New Mexico, as well as other locations, has been scratched, burned, and damaged to the point that it is extremely difficult for detention officers to see into cells to check on inmates

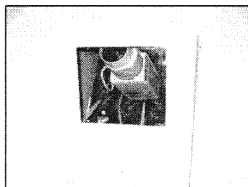
prior to entry. According to Rosebud personnel, this condition has been reported to OFMC for years, but nothing has been done to repair the Plexiglas.



*Scratched and burned
Plexiglas.
Rosebud Sioux, SD*

Fire sprinkler heads at a number of facilities were inoperable. Even more disturbing, detention officers at Yakama reported the entire fire suppression system had not functioned for years. We observed that some fire extinguishers at Yakama had not been inspected since 2001. We also discovered that many cameras and inmate monitoring systems did not work or worked poorly. At Tohono O'odham, the camera monitoring a cell for high risk inmates is pointed to the ceiling while at the Crow jail, several cameras cease functioning on an intermittent basis. In addition, the keys to the cells at Tohono O'odham are so worn that they do not reliably unlock or lock the cell doors. This could easily result in a tragedy in the event of a fire.

We also found that many maintenance shortcomings impacted sanitation. In all too many instances we observed toilets that do not flush, showers and sinks that do not work, and inoperative hot water heaters that have not been replaced. At Pine Ridge, the toilet in the "drunk tank" has been inoperable for months. This situation causes sanitation concerns because intoxicated inmates in the "drunk tank" frequently need to urinate and may not be able to wait until officers can move them to other cells. This also places detention officers at risk because they must frequently move inmates to other occupied cells. According to detention personnel at both Pine Ridge and Crow detention facilities, they experience instances in which waste flushed down one toilet surfaces in another toilet. The plumbing issues at Shiprock are so severe that health inspectors closed the jail for several months in 2003. We learned that the Shiprock jail was again closed for sanitation reasons in June 2004. Health inspectors have since allowed a small portion of the jail to be reopened.



*Camera in high-risk cell
faces ceiling.
Tohono O'odham, AZ*

We encountered numerous instances in which even routine maintenance was not being accomplished. It was not uncommon for us to observe broken light fixtures, peeling paint, broken door locks, inoperable or malfunctioning kitchen equipment, and ventilation problems at many of the detention centers. We noted that several air vents at Northern Cheyenne and Crow Creek were so clogged with dust and debris that little air could flow through them.

Detention personnel at the Kiyuska O'Tipi Reintegration Center reported that a replacement water recirculation pump sat uninstalled for almost 6 months while a malfunctioning pump continued to leak water into a utility room. We were also told that a commercial grade toaster and fryer have remained unused since the jail was constructed in 1995 because OFMC personnel have not installed a 220-volt circuit.

Maintenance Funding

...BIA had the means to accomplish additional repairs, but not the will.

There is an enormous backlog of items that require repair, but little to no effort has been made to correct the majority of these problems. BIA officials originally reported that they had approximately \$1.4 million available in FY2004 for facility upkeep but had identified approximately \$30 million in necessary repairs. BIA subsequently reprogrammed funds to increase the money available for detention facility maintenance to approximately \$4 million to address maintenance issues and deficiencies publicized as a result of media attention from our interim assessment.¹³ This not only demonstrates that BIA failed to take a proactive approach in managing the detention program prior to OIG interest, it also confirms that BIA had the means to accomplish additional repairs, but not the will.

Our examination of the Facility Management Information System (FMIS) found that there are many duplicate and inaccurate entries. We found that the data provided to us, which OFMC personnel claimed represented jail repair and maintenance needs, included new construction data. For example, we discovered one entry in FMIS in the amount of \$979,802 was for the construction of a new jail. We further found there were monetary values attributed to facility maintenance, such as a jail's failure to have a written evacuation plan, inadequate staffing, no fire drills, fire extinguisher training for staff, security study, and overcrowding that are clearly more operational than maintenance issues.

Our review of the FMIS data that was initially provided to us disclosed outstanding maintenance requirements totaling \$30.4 million. Subsequent to our request for this data, BIA OFMC personnel began to analyze its information and provided revised FMIS data showing outstanding

¹³ Anderson, David W., Hearing on Indian Tribal Detention Facilities, Statement to U.S. Senate Committee on Indian Affairs, June 23, 2004.

maintenance backlog costs of \$27.8 million and eventually \$26.6 million. This \$3.8 million discrepancy represents, yet again, BIA's neglect and mismanagement of the detention program.

We discussed our concerns about these inaccuracies with senior OFMC personnel and provided them with examples of questionable entries attributed to maintenance or repair. In response, OFMC provided revised data approximately 1 week later showing maintenance and repair backlog costs of \$23.2 million reducing the total yet another \$3.4 million. We believe that additional analysis of FMIS would result in a further reduction of the estimated maintenance costs by another \$1 or \$2 million. Regardless, the many inconsistent and questionable entries significantly diminish the value of FMIS as a management tool for OFMC and for BIA-LES.

In July 2003, GAO expressed concerns about the quality of data being entered into FMIS. In its report on Indian School Maintenance, GAO observed that "most measures for controlling the quality of new data BIA employees are entering into the system for individual schools are not working well" and that "nearly half of the proposed data entries coming through the system are inaccurate and incomplete."¹⁴ Given that our own examination of FMIS identified so many inaccuracies, we must conclude that BIA management simply does not have an accurate accounting of the maintenance needs or estimated repair costs. Our findings also indicate that BIA is clearly not effectively addressing GAO's recommendations that "BIA establish better guidance and performance expectations for employees who are responsible for entering and reviewing the accuracy and completeness of FMIS data" and "periodically analyze the extent and type of data errors being found during review in order to identify training needs and other strategies for addressing any continuing problems."¹⁵

It remains clear that BIA does not have sufficient funds to correct known maintenance deficiencies. With appropriate management and oversight, however, many of the identified problems might have been prevented and the severity of many others could have been reduced if repairs were made in

¹⁴ Government Accountability Office, *Bureau of Indian Affairs Schools, New Facilities Management Information System Promising, but Improved Data Accuracy Needed*, GAO-03-692, Washington, DC, July 2003.

¹⁵ *Ibid.*

a timely manner.

Maintenance Accountability

One jail administrator commented that “the staff sets the atmosphere” at the jail.

The poor coordination and communication between BIA-LES and OFMC personnel at all levels leaves maintenance at detention facilities an orphan. Clearly, the unique maintenance needs at the jails has not been recognized. For example, jail administrators at Pine Ridge purchased gun lockers months ago for police to secure their firearms before entering the jail. Detention personnel advised that the gun lockers still remain uninstalled, and police officers who bring prisoners to the jail have nowhere to secure their weapons.

Vandalism by inmates has caused a significant amount of the maintenance issues reported by jail staff. This destruction of property is costly, adversely impacts the safety of inmates and staff, and diminishes the comfort and cleanliness of the facility. Rarely are inmates who cause damages held accountable. With no consequences for their actions, inmates are not deterred from causing further damage. There is no incentive for inmates to change their behavior. In contrast, we observed that local county jails we visited had virtually no graffiti or noticeable damage because inmates knew there were consequences for damaging the facility. The sheer volume of damage caused by inmates at Indian Country jails indicates that vandalism is accepted and cannot be prevented. We found no indication that BIA management held jail administrators or detention staff accountable for preventing vandalism damage.

We noted a few facilities, such as Ute Mountain, Gila River, and Salt River, where little or no vandalism was observed. The management at these facilities required detention staff and prisoners to keep the facility clean and to properly dispose of trash. One administrator commented that “the staff sets the atmosphere” at the jail.

Recommendations

13. BIA OFMC and BIA-LES should immediately establish an effective system for prioritizing repairs that have any impact on inmate or detention officer safety. They should also review FMIS to identify and remedy inaccurate and redundant entries and implement quality control measures to reduce the risk and occurrence of improper entries.

Chapter 5: Funding of the Detention Program

Detention Program Supplemental Funding	
<i>Presidential Initiative:</i>	
o FY 1999 - \$1.8 million	
o FY 2000 - \$4.0 million	
o FY 2001 - <u>\$4.2 million</u>	
	\$10 million
<i>New Facilities Funding:</i>	
o FY 2002 - \$ 5.0 million	
o FY 2003 - \$ 5.1 million	
o FY 2004 - <u>\$11.4 million</u>	
	\$21.5 million
TOTAL	\$31.5 million

Bureau of Indian Affairs Law Enforcement Services Annual Funds	
o FY 2001 - \$149 million	
o FY 2002 - \$158 million	
o FY 2003 - \$160 million	
o FY 2004 - \$170 million	

BIA is required to provide law enforcement services on reservations under the Indian Law Enforcement Reform Act of 1990 (Public Law 101-379). Detention facilities are operated and funded by the BIA, tribes, or a combination of both. BIA and 638-contract programs are funded under the law enforcement budget through the Department's annual appropriation.

In the last 4 years, BIA received \$637 million for law enforcement services. In addition, since 1999, BIA-LES has also received supplemental funding totaling \$31.5 million specifically designated for hiring detention officers and preparing new facilities for operation. This supplemental funding includes \$10 million allocated from FY1999 to FY2001 to hire an additional 305 detention officers as a result of the Presidential Initiative for Law Enforcement in Indian Country; \$5 million in FY2002, to hire detention staff needed for new facilities; \$5.1 million in FY2003 was reprogrammed by BIA-LES; and an additional \$11.4 million in FY2004 to prepare new facilities for operation.

We discovered that BIA-operated facilities actually only received \$3 million of the \$10 million allocated to hire 94 additional detention officers. They had only hired 58 officers as of the end of FY2001. BIA was unable to determine if the remaining \$7 million, which was specifically designated for hiring additional detention officers for the 638-contract and self-governed facilities, was in fact used for that purpose.

Since 2002, BIA has only filled a mere 13 positions at BIA-operated facilities. Furthermore, BIA-LES told us funds remaining from budgeted but unfilled positions are ultimately absorbed into the law enforcement program for non-detention activities.

BIA-LES failed to provide us with their budget submissions for the last 3 years when we requested them. BIA-LES officials indicated that they were unable to locate documents or documentation pertaining to their budget requests. An inquiry with BIA budget personnel revealed that they also

could not locate any budget requests or projections for BIA-LES. A BIA budget official advised BIA-LES may not have submitted budget proposals if they were not requesting an increase in their budget. We later learned that BIA-LES managers use historical funding levels with little or no increases for their budget requests. BIA-LES managers indicated that there has been no change in the level of their operating funds for the last 3 years with the exception of increases associated with new facilities.

Budget Projections and Planning

“The funds stay the same each year -- there are no increases.”

BIA-LES does not seek to obtain accurate or realistic budget projections or plans from responsible local officials, such as police chiefs or detention administrators. We found that most jail administrators and police chiefs we interviewed make no effort to conduct an accurate budget analysis or construct a realistic budget projection. They simply expect to receive the same level of funding that was received in prior years with little or no variation. For instance, an official at one BIA-operated facility stated that they look at the previous years’ funding to figure out the current budget because “the funds stay the same each year — there are no increases.” Another official stated, “They give us what they want to give us.”

BIA’s failure to make any effort to assess the true cost of operations or to create an accurate budget projection becomes a self-fulfilling prophecy. This failure not only impacts the detention program but also impacts the other three components that fall under BIA’s law enforcement budget. We believe that the true operational cost of the BIA detention and law enforcement programs is much greater than their current appropriations. BIA cannot address any of its funding difficulties without advocacy. Successful advocacy requires accurate cost assessments and budget projections.

Fund Designation

Our efforts to determine the percentage or amount of BIA-LES funding used for detention were unsuccessful because BIA-LES does not designate separate budget line items for detention. We found that funding is allocated to local officials by BIA-LES, usually to police chiefs, who determine the amount of funding to provide to each of the programs under their responsibility. Typically, no methodology is applied to the percentage allocated to each program nor is there an accurate recording of how the money is used. In most instances, the largest percentage of the funds are used for uniformed police and criminal investigation

"We wind up on the short end of the allocation table."

leaving inadequate funds for detention operations.

An official at the 638-contract Rosebud detention facility reported that only 16% of the local law enforcement budget is allocated for detention services. Most of that funding supports personnel costs, leaving very little money for other needs such as food for inmates and training for detention officers. One chief of police, who is also responsible for detention services, told us that 90% of the funds his department receives support salaries, with the remaining funds used for major needs such as equipment. This same chief also noted that if he had to choose between his police department or detention needs, he would most likely fulfill the police department's needs first. A detention officer at San Carlos in Arizona summed his plight up well by stating, "We wind up on the short end of the allocation table."

We find it troubling that BIA-LES management exercises so little oversight of these budgeted monies and simply distributes funds without any guidelines to ensure that all the programs for which they are responsible receive sufficient and balanced funding. Although we recognize the difficulty of balancing the funding needs of a police department with the needs of a detention program, the gross inequities that we observed at many locations incapacitates detention managers to adequately staff, operate, and maintain their facilities. We believe that the designation of specific funds for detention is imperative for the efficient and effective operation of detention facilities.

New Facility Funding

New Facility Funding FY 1997-2003

1997 - 2
1998 - 2
1999 - 13
2001 - 2
2002 - 3
2003 - 2

Beds in New Facilities

30% 1-35 beds
40% 35- 70 beds
15% 70-105 beds
5% 105-130 beds
10% 130-160 beds

Since 1997, DOJ has provided over \$150 million in construction grants to tribes for building new detention facilities. These grants cover facility construction only. BIA is then responsible for funding a facility's operational requirements. As noted earlier, BIA-LES has received \$21.5 million since 2002 for staffing and operating new facilities. Given the poor coordination and planning of new jails between BIA and DOJ, however, facilities have been built that cannot be opened.

According to an April 2004 status report, DOJ was scheduled to have completed 13 jails; yet today only 2 of those completed jails are actually opened and occupied. Nine completed jails are not occupied because of staffing shortfalls. For example, a new jail at San Carlos was completed in May 2004, but remains unoccupied. BIA-LES

managers reported that it will be another 6 to 10 months before this jail can be utilized even though San Carlos received \$2.7 million in FY2004 to fund facility operations.

The Ute Mountain detention facility, which is less than 5 years old, was constructed with 54 beds for adult inmates and 22 beds for juvenile inmates. We found the juvenile section of this facility vacant and unused due to lack of staffing. When we inquired about this idle facility, BIA-LES management reported that they plan to open the juvenile section in the next few months.

The Eastern Nevada detention center in Owyhee, Idaho, which was built under a \$4.2 million DOJ grant, remains vacant because it failed, unexplainably, to be built to Federal standards. An additional \$250,000 was awarded by DOJ in September 2003 to correct deficiencies related to fire walls, sprinkler systems, and alarm systems. BIA detention staff that had been hired for this facility are being utilized at other jails until the facility can be opened. We believe that BIA-LES management's lack of a comprehensive plan to recruit, hire, and train staff for these new facilities, along with failing to properly supervise construction of new facilities, further illustrates their overall indifference to the detention program.

BIA-LES could not provide us with expenditure data for \$9.8 million of the \$11.4 million received in 2004 for opening new facilities.

BIA-LES officials complained that once DOJ became involved in constructing new facilities, BIA priorities for these jails were not considered. According to them, new jails went to the best grant writers, not those with the most need. In addition, BIA officials also noted the lack of coordination between DOJ, BIA, and the tribes. The lack of cooperation and communication between DOJ and DOI was further emphasized in the IACP Indian Country summit comment and recommendation that both Departments should improve and strengthen their interagency cooperation and communication to provide more effective services in Indian Country.¹⁶

In August 2003, BIA reprogrammed \$5.1 million to tribes that were currently constructing detention facilities using DOJ grants. These funds were distributed so that the tribes could prepare the facilities for occupation. BIA specifically noted that the funds would be tracked to ensure that they were used exclusively for hiring detention staff and

¹⁶ *Improving Safety in Indian Country*, p. 11.

One BIA-LES official noted, "It would probably be a good idea to track those funds, wouldn't it?"

purchasing the necessary equipment to open facilities in a timely manner. When asked, BIA-LES was unable to provide data showing how the reprogrammed funds were spent because they had not actually tracked the funds. Additionally, BIA-LES could not provide us with expenditure data for \$9.8 million of the \$11.4 million received in 2004 allocated for opening new facilities.

BIA-LES management officials stated that tribes under 638-contracts and self-governance tribes have never been required to provide BIA with reports on how any law enforcement funds are spent. As a result, BIA does not know whether funding designated for pre-occupancy needs for new jails was actually used for the detention program. One BIA-LES official noted, "It would probably be a good idea to track those funds, wouldn't it?" in response to our inquiries. We are gravely concerned that this failure to provide oversight has or will result in the actual misuse of the funds.

Internal Controls

We are also concerned about internal controls in this area. We noted several inconsistencies in reported amounts of expenses between BIA-LES and the detention facilities when reviewing BIA-operated facility records. Moreover, when comparing expense data obtained from individual facilities with BIA-LES information, we found that none of the facility amounts were consistent with the BIA-LES figures for 2002 and only one amount matched 2003 data.

We further found that BIA was unable to accurately determine if \$7 million of the \$10 million of supplemental monies it received from FY1999 to FY2001 to hire additional detention officers was actually used for its intended purpose. BIA-LES managers indicated that, once again, they had not required contract or self-governed detention facilities to document or report how these funds were used. Even more disturbing, BIA-LES managers also told us that if any of the funded positions are not filled, the money is automatically absorbed into the law enforcement program for other uses, which is, of course, contrary to the designated appropriation specified by the Congress.

Theft and misuse of funds historically occur when there are no internal controls and the threat of discovery is minimal. From an accounting standpoint, BIA-LES does not use sound business practices for planning, accounting for, and

monitoring the use of detention funds, nor is anyone held accountable for the proper management of detention program funds. This overall neglect of detention program funding oversight has created an environment in which fraud can be perpetrated with impunity and waste can continue undiscovered, because nobody at BIA is paying attention. Without the implementation of an internal control system where detention funding and expenditures can be accurately tracked and reported on a regular basis, misuse or theft of designated funds will likely, or may already have, occurred. We find no excuse for BIA-LES' inattention to funding issues and yet another unfortunate example of inattention and neglect of the detention program.

Public Law 93-638 **Contract Funding**

Of the 72 detention facilities in Indian Country, 46 receive funding for law enforcement services under Public Law 93-638. During our assessment, we reviewed 16 detention facilities that are operated under 638-contracts. We found that funds for the detention program are not specified and contract terms and conditions are not always enforced. Tribal agencies are often not held accountable for failing to comply with contract terms and conditions. For example, a FY2001 Single Audit Report for the Rosebud Sioux Tribe identified \$2.5 million in questionable costs regarding federal funds used for tribal programs that were not in compliance with the contract agreement and related laws and regulations. The report recommended that specific terms or controls and procedures be implemented to ensure that these funds were safeguarded from unauthorized use.

In another similar situation, a BIA contracting officer reported that she was unable to enforce the terms of a contract because the tribe refused to allow her access to their juvenile facility for 7 years. Only after the contracting officer threatened to withhold funding was she allowed to conduct this review. We find it remarkable that no action was taken for 7 years and that BIA-LES took no action to intervene on her behalf.

We are equally concerned that BIA's failure to enforce the terms of the contracts or to provide adequate oversight over 638-contract funds has created an environment in which fraud can thrive and exacerbates the potential liability for BIA and the Department. During our visit to the White Buffalo Home, a detention officer reported that the Tribal Council Chairman authorized the use of 638-contract money

in November 2003 to fund a horse trip for students who were not detainees or affiliated with the detention facility in any way. We subsequently found support for the officer's allegation when we discovered a check written on the White Buffalo Home account for the event.

We also found that a male detention officer at the White Buffalo Home raped a 17-year old female inmate in October 2002 when he was tasked to transport her for medical treatment. The detention officer was convicted after confessing to the crime. According to the report of investigation, the perpetrator had a prior criminal record but an "appropriate background investigation" had not been conducted according to the requirements of the contract. We learned that the perpetrator was related to a tribal council member. BIA's ineffective oversight of this particular contract is especially disturbing since BIA had to take over control of the nearby adult jail and police department due to serious problems associated with the tribe's operation of the law enforcement and detention programs.

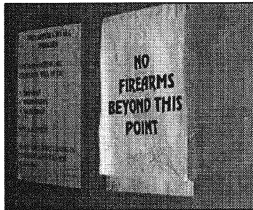
Funding for detention services is generally not specified in the terms and conditions of 638-contracts. A review of the sixteen 638-contracts determined that the BIA had allocated at least \$61 million for law enforcement program management from FY2001 through FY2003. However, we were only able to trace funds totaling about \$7 million (11%), which had been budgeted for contract-managed detention facilities.

In our opinion, language used in the majority of 638-contracts directly contributes to the inadequate funding and operation of detention programs. BIA cannot ensure that necessary detention services are provided for without establishing and implementing specific funding, expenditure, and operational requirements. Specific contract requirements would not only improve the ability of BIA to monitor these programs and to verify that designated funds were actually used for detention services but would also prevent tribes from reallocating much needed detention program funds or exerting undue influence on the operation of the program.

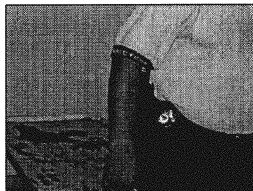
Recommendations

- 14. BIA should establish and implement a single line item budget for all BIA-LES detention facilities and expenses. BIA-LES should require 638-contract detention facilities to implement similar cost tracking practices.*
- 15. BIA should utilize accurate budget projections that incorporate future funding requirements when preparing funding requests rather than just using historical data. As part of future funding requirements, BIA-LES senior officials and local detention administrators should identify any existing needs and/or deficiencies so that these issues can be properly addressed.*
- 16. DOI-OLES should work with BIA, tribes, and DOJ to develop strategic plans for jail replacement and renovation. DOI-OLES should assist BIA-LES with developing a comprehensive needs assessment to ensure that jails are built and sized appropriately.*
- 17. BIA should implement internal control procedures and proper management oversight to ensure that BIA funding and expenditures are accurately tracked and reported on a regular basis.*
- 18. A standard law enforcement and detention service clause should be developed and used in each and every Public Law 93-638 contract for BIA law enforcement and detention services. The clause should require at a minimum that: (1) law enforcement and detention funding be accounted for and used for its intended purpose and (2) serious incidents be promptly reported to BIA-LES as a condition of the contract.*

Chapter 6: Detention Program Training



Sign restricting firearms into the Yakama cell area.



Yakama jail supervisor carrying firearm into the cell area.

Providing detention officers with certified training is also a critical element in ensuring that detention facilities are able to operate safely and securely, in addition to reducing potential liability for acts of untrained personnel. Specifically, we found that 52% of all the detention officers at the sites we visited had not received detention officer training. We also discovered numerous situations where detention officers were working for long periods of time without having attended the required IPA detention officer training. Examples of BIA-LES management's disregard for timely training include instances where one detention officer at Haulapai and one detention officer at the Kiyuska O'Tipi Reintegration Center (juvenile) in Kyle, SD, who were employed for 12 years and 7 years respectively before either attended detention officer training, and a detention officer at Shiprock, who was hired in 1999 and still has not attended detention officer training.

With few exceptions, there seems to be an overall lack of emphasis on formal certification training of detention officers. We found that many jail administrators place little importance on sending newly hired personnel to training at the IPA. We also found there is hardly any emphasis on refresher training or skills enhancement training for detention officers. The prevailing attitude in most instances is that no additional training is necessary after an officer attends basic detention officer training. One exception to this attitude was found at the Tohono O'odham detention facility where they have a Field Training Officer (FTO) program, along with a FTO manual.

Utilization of untrained or poorly trained personnel places inmates and officers at great risk and obviously raises concern about the overall safety and security of many of the detention facilities. For example, detention personnel at Yakama and Pine Ridge allow police officers to enter the jail cellblocks with their firearms contrary to nationally accepted standards and common sense. Furthermore, we observed the detention supervisor at Yakama carry his firearm into the main cellblock despite posted signs prohibiting them. This practice, which we believe is attributable to lack of training

and lackadaisical attitude, places everyone within the jail at significant risk.

“We’ve never received any training on how to operate a detention facility.”

We received conflicting information regarding the availability of basic training at the IPA. Several jail administrators claimed that they are unable to send new personnel to the IPA for training because classes are infrequent and are often full; however, IPA personnel indicated that they routinely have vacancies for these classes and hold regional or local training sessions when asked to provide them. According to IPA officials, the IPA attempts to hold three detention program courses per year although only two were held last year due to budgetary constraints.

We learned there are two detention programs offered at the IPA - one for officers working in an adult facility and another for officers working in juvenile facilities. We noted that much of the curriculum is the same; however, IPA requires that a detention officer who has completed one course attend the other entire course in order to be certified in that program. This is often seen as an increased burden for officers who work at facilities that provide both adult and juvenile detention services. We also find it wasteful to require a detention officer to attend a second course that repeats most of the information taught in the original course when a shorter, supplemental course that covers the differences between adult and juvenile detention could easily be developed. Another option would be to combine both courses and develop one certification program.

“Most BIA standards can’t be met, so why even try?”

We also noticed consistent problems with proper documentation and adherence to standards at detention facilities. Some administrators have attributed this to a lack of training. One District Commander stated, “We’ve never received any training on how to operate a detention facility.” When asked if their facility followed BIA standards, that same individual quipped, “Most BIA standards can’t be met, so why even try?”

Our assessment determined that the poor management of many of the Indian Country jails can be directly attributed to the failure of BIA-LES to provide and require that jail administrators receive supervisory and financial management training. Most jail administrators we interviewed had received little or no training beyond basic detention officer training; however, there were some notable exceptions. We

found that the jail administrators at the more proficiently run facilities, such as Salt River, Gila River, and Tohono O'odham in Arizona and Ute Mountain in Colorado, had experience and formal training obtained from working in other detention programs.

At Salt River, for example we interviewed the jail administrator who has an extensive detention management background with numerous professional certifications. The manager, who is a non-Indian, explained that he viewed his responsibilities to include training and preparing his Native American staff to eventually take his place.

NIC holds one or two training conferences per year for Indian Country jail administrators to attend at no cost other than transportation and lodging. We found that only 25 jails were represented at the most recent conference in May 2004. NIC personnel and attendees indicated that it is usually the same one third of the Indian Country jail administrator population that participates in these conferences.

NIC also maintains a comprehensive library of reference and training material, which includes workbooks for budget planning, jail staffing analysis, and many other pertinent issues. NIC has published a bibliography of all library holdings about or referencing Indian Country jails. We were surprised to learn that many of the BIA detention specialists we spoke to did not know about the bibliography and few jail administrators had taken advantage of this learning opportunity.

Recommendations

19. BIA-LES and the IPA should take immediate action to identify and train all current detention officers who have not received the basic IPA detention officer training.
20. Appropriate measures to track and ensure compliance/certification of training by detention officers should be developed by DOI-OLEES, BIA-LES, and tribes.

21. DOI-OLEs should work with BIA-LES and the IPA to develop training standards and modules for BIA and tribal detention officers that would, at a minimum, eliminate the need for separate adult and juvenile detention courses.

Chapter 7: Other Issues

Juveniles Housed at Adult Facilities

*“One inmate
raped another
inmate in 1997.
It was due to
understaffing and
the guard was not
certified. The boy
was 13... The boy
should not have
been there.”*

The placement of juveniles in adult detention facilities is limited by the Juvenile Justice and Delinquency Prevention Act of 1974.¹⁷ The Act states in part, “...juveniles alleged to be or found to be delinquent...shall not be detained or confined in any institution in which they have contact with adult[s] incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges...”

The Act allows for combined adult/juvenile jails if the juvenile and adult inmates cannot see each other and no conversation between them is possible.¹⁸ This requirement is commonly referred to as “sight and sound separation.”

During our site visits, we were troubled to learn of instances where juveniles were being housed with adults or held in adult facilities. This unlawful practice not only creates significant potential liability concerns, it significantly increases the likelihood that juveniles will be harmed by others or themselves. No matter what the reason or the duration of confinement, this practice would make major media headlines were it happening elsewhere in America.

A detention officer at one facility stated, “One inmate raped another inmate in 1997. It was due to understaffing and the guard was not certified. The boy was 13....The boy should not have been there.” The officer added that the 13-year-old victim was being held in the jail for social services because there was no other place to hold him.¹⁹

According to officials at the Rosebud adult detention facility, juveniles are routinely held in violation of the sight and sound separation mandate because there is no juvenile facility on the reservation and staffing shortages prohibit detention staff or police from transporting juveniles off the reservation.

¹⁷ The Act exempts juveniles held in secure adult facilities if being tried as an adult.

¹⁸ Modification to the Act, effective December 1996, clarified the sight and sound separation requirement and provided that brief and inadvertent or accidental contact in non-residential areas is not a reportable violation.

¹⁹ BIA records indicate the settlement in the case was for \$150,000.



*Hallway and bench used to
hold juveniles.
Sisseton/Wahpeton, SD*

*"We're not supposed
to hold juveniles...
but sometimes we
have to."*

In addition, we were told that while the juveniles are physically separated from the adult population, they are still able to hear and communicate with adults in other parts of the jail. Detention officials attempt to comply with the spirit of the law by holding and feeding the juveniles in their individual cells because they cannot be taken to the central dining area without passing through the adult cellblock. Rosebud personnel also attempt to work with the tribal courts to keep the duration of juvenile stays to a minimum amount of time, usually a few days. We note that the Rosebud Sioux tribe is constructing a new juvenile facility at another location on the reservation under a DOJ grant. The new juvenile facility is expected to open later this year.

At the Sisseton/Wahpeton detention facility, juveniles are held in a locked hallway between the police department and the jail's outdoor recreation area. This hallway was not intended to house inmates, has no toilet facilities, and has glass doors that could easily be broken with one of the many chairs in the hallway. Recently a juvenile detainee attempted to escape from this hallway by climbing into the jail attic through an access panel in the ceiling. Detention personnel were able to apprehend her before she could manage to escape from the jail. As a result, however, juveniles are now shackled to a bench in the hallway to prevent future escapes. One officer stated "We're not supposed to hold juveniles... but sometimes we have to." Detention personnel indicated that they have no choice but to hold arrested juveniles since there is no juvenile facility on the reservation and they do not have enough personnel to transport juveniles to other locations without advance planning. One officer advised that juveniles are usually only held for a few hours until they can be released to relatives or social services personnel. There are occasions, however, when a juvenile is held overnight because relatives cannot be contacted.

Overcrowding

Frequently, many of the jails in Indian Country operate at, or over, their intended capacity. Of the facilities visited, 53% of jail personnel remarked they were habitually overcrowded, whereas the others only became overcrowded on holiday weekends or during tribal events. At some of the facilities, overcrowding has become a health and sanitary issue. Many inmates sleep on mats on the floor because the jails hold two or three times their rated capacity on a regular, recurring basis. For example, the Tohono O'odham jail has a rated capacity of 34 but routinely holds more than 110 inmates. Consequently, more than half the inmates at this jail sleep on

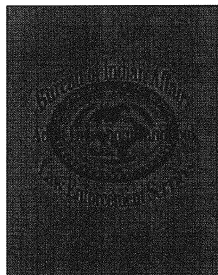


*Overcrowded cells.
Tohono O'odham, AZ.*

mats on the cell floors, increasing the potential for altercations and injuries because inmates cannot move without stepping over and around one another. Only a handful of jails transport inmate to other facilities to alleviate overcrowding. Most simply pack more and more inmates into the cells and hope that the overcrowding does not last too long. Some jail administrators we interviewed discussed the potential benefits of having a regional jail or jails within Indian Country as one option to alleviate overcrowding. For example, we learned that the Ute Mountain detention facility, which often has more beds than inmates, has been accepting inmates from the Mescalero Apache Tribe in order to gain the most use of the facility. Additionally, BIA-LES officials indicated that they have been researching the concept of constructing regional detention facilities to house long-term inmates which would have the added benefit of reducing the inmate populations at local jails.

During our site visits, we discussed the benefit of building regional jails. We found that there was varying support for the concept; however, the most common impediment to a regional concept noted was the resulting loss of tribal identity. Others expressed no concern for mixing members of different tribes together in a regional facility.

Policies and Procedures



By their own admission, BIA managers have failed to follow their own guidelines for the detention program. In October 1996, BIA published detention facility handbooks, which established policies and procedures for Indian Country jails. The policies and procedures were derived from national corrections industry standards. The handbooks initially established 48 mandatory standards for adult facilities and 47 mandatory standards for juvenile facilities. Detention facilities were required to comply with mandatory standards by the end of 1998. The remaining 201 adult standards and 219 juvenile standards were designed to be phased-in over an 8-year period after publication so that by the end of 2005, detention facilities would be 90 percent compliant with all of the published standards. Alarming, we found that none of the jails we visited were compliant with the original mandatory standards, let alone the remaining ones. We also found BIA managers made little effort to adhere to the compliance schedule or ensure that jails even worked toward compliance with the original mandatory standards.

BIA's approach to development and implementation of its

detention standards held all BIA-operated and 638-contract jails accountable for each of the standards without regard for the size and operation of individual facilities. This flawed plan required that a jail with ten beds be held to the same standards as a jail ten times its size, unnecessarily overloading smaller facilities with needless and inappropriate requirements in a situation where simple, basic detention procedures should be sufficient.

Under the compliance schedule published in the detention handbooks, these jails were held to the same implementation timetable regardless of operational considerations, staff size, or inmate population. It appears that BIA simply adopted American Correctional Association (ACA) jail standards without giving any consideration to the variety of detention facilities under its jurisdiction.

Liability

BIA's neglect and mismanagement of the detention program increases the liability potential to BIA and to the Department. BIA has paid out \$855,000 to settle several lawsuits in the last 3 years alone and there is another \$11 million claim pending. We believe that federal, state, or county jails operating under the same conditions we discovered at Indian Country detention facilities would be inundated with legal actions and most would likely have been shut down by court order long ago.

We also found that detention officers at the majority of the jails we visited are dispensing prescription medications to inmates with little, if any, training, inadequate safeguards, and no formal process to ensure legal and medical requirements are met.

BIA is sitting on a liability time bomb and must act to diffuse it now so that modest funds available can be used for their intended purpose, instead of potentially being consumed by legal fees, fines, and judgments.

Recommendations

22. DOI-OLEs should conduct routine scheduled and unscheduled inspections to determine compliance with the juvenile sight and sound restriction wherever adult and juvenile offenders are co-located.

23. DOI-OLEs should assist BIA-LES with the development and implementation of appropriate standards for Indian Country detention facilities. Consideration for size, capacity, and type of facility should be taken into account. Standards should, at a minimum, identify core health and safety requirements that would be applicable to all jails regardless of size and capacity.
24. DOI-OLEs and BIA-LES should consult with the tribes and continue to explore using regional detention facilities to accommodate longer-term inmates and to reduce overcrowding at smaller facilities.

Chapter 8: Positive Findings in the Detention Program

As a result of our Interim report, the Secretary immediately charged a senior Department official with overseeing BIA actions to remedy the conditions at Indian Country jails. The Secretary also promptly requested assistance from the DOJ, Bureau of Prisons (BOP), which resulted in a senior-level detention professional being detailed to the Department to assist BIA-LES senior management with the identification and implementation of actions to correct the deficiencies we discovered during our assessment.

BIA-LES senior officials readily acknowledged the deplorable conditions at the detention facilities and expressed grave concern over our findings. They have already made management and staffing changes at various levels of the detention program.

In early September 2004, BIA-LES conducted a strategic planning conference to deal with the significant deficiencies noted in our April 2004 Interim report. BIA-LES subsequently published the Indian Country Detention Strategic Planning Summary, which contained a task management plan when, if implemented as designed, may address some of the safety, security, and health-related concerns we observed during our site visits.

BIA-LES has assigned a number of its own personnel to accomplish these tasks and has either requested outside resources to assist them in addressing these issues or has developed a plan to obtain outside assistance from professional corrections organizations, such as the Bureau of Prisons, American Correctional Association, American Jail Association (AJA), and Nation Institute of Corrections. In addition, BIA-LES is in the process of developing plans to ensure that health, safety and maintenance issues are promptly communicated and addressed by OFMC as well as an inspection process to confirm that these issues are being dealt with promptly.

In response to our concerns about overall non-compliance with standards that were voiced in our Interim Report, BIA-LES began to review its current standards as they applied to

each type of facility. BIA-LES reported that they are working with ACA and AJA to develop new standards that will apply to detention facilities based upon their size, staff, and inmate population and which will be implemented through a gradual compliance schedule.

It should also be noted that during our assessment we did discover some instances in which detention personnel were being proactive and had implemented procedures with a goal of managing jails more effectively and where positive results have truly been achieved.

As previously noted, the Tohono O'odham detention facility has established a Field Training Officer program to ensure that new detention officers are mentored and veteran detention officers are provided with refresher and skills enhancement training.

The Gila River juvenile detention facility has established a program in which juveniles receive counseling and education as they progress through a program of self-improvement. Additionally, inmates are held accountable for their behavior with established consequences for vandalism and for upkeep of uniforms, furniture, and other equipment issued to them.

The White Buffalo Home juvenile detention facility obtained a grant to establish a home detention program to reduce the detainee population while encouraging rehabilitation of first-time offenders. The program has been so successful that they hope to extend the program by obtaining another grant.

We also found that the detention facility at the Nisqually reservation in Washington was constructed as a minimum security jail utilizing modular buildings, resulting in significant cost savings over traditional construction methods.

We were also surprised to discover that all of the positive innovations noted above occurred at detention facilities operated by the tribes under the 638-contract programs. We found that the Tohono O'odham and White Buffalo facilities share many of the maintenance problems and staff shortages found at other jails, yet they still managed to make program improvements and achieve meaningful results.

Another positive effort was noted in Arizona where detention

personnel from the Hualapai Indian Nation, San Carlos Apache Tribe, Gila River Indian Community, Salt River Pima-Maricopa Indian Community, and the Tohono O'odham Nation created the Arizona Tribal Justice and Rehabilitation Coalition (ATJRC). ATJRC was formed to benefit member tribes through cooperative initiatives involving resource development, education, and coordination of detention and related services. Presently, 12 of the 22 Arizona tribes are members of ATJRC.²⁰ The coalition holds regular meetings where detention issues are discussed and members share experiences and best practices.

Recommendation

25. BIA-LES should facilitate regular regional meetings for all BIA and tribal detention administrators to encourage collaborative efforts and discussions on detention best practices.

²⁰ Only two of the four BIA-operated jails in Arizona are members of this organization.

Conclusion

BIA has failed their responsibility for providing safe and secure detention facilities. The detention program has essentially been ignored by BIA-LES managers and allowed to languish while attention and funds have been focused on other more traditional law enforcement operations.

At the beginning of this assessment, BIA indicated that the majority of their problems could be attributed to a lack of funding. While we believe that more funding is needed, we also believe that BIA is not effectively utilizing the funds it is being given now. BIA must get its fiscal house in order through establishment of sound budget and accounting practices as well as oversight processes before any additional funds are sought or given.

We firmly believe that BIA must overcome the self-imposed paralysis that results from the often-used excuse that BIA simply needs more money. Much can be accomplished when managers and staff apply a sensible attitude to overcome challenges. Oversight has minimal costs and, if practiced, would correct many of the deficiencies that were found. Simply put, a little attention goes a long way.

The responsibility for the conditions and failings we have found at Indian Country detention facilities cannot be attributed to any particular individual or administration. Some of these problems are decades old. Thus, the solutions will not be easy to achieve and may take considerable time, effort and funding. However, nothing less than Herculean effort to turn these conditions around would be morally acceptable.

REPORT RECOMMENDATIONS

Recommendations		
No		Page
1.	For the purpose of providing the prominence and advocacy vital to ensuring that the focus on improving Indian Country jails does not diminish, the Deputy Assistant Secretary for Law Enforcement should become actively engaged in coordinating the oversight and management of the BIA-LES detention program.	12
2.	The Department should create a senior-level (GS-14/15) full-time equivalent (FTE) position for a detention professional in DOI-OLES to help provide increased coordination and advocacy for the Indian Country detention program.	12
3.	DOI-OLES should conduct compliance inspections at BIA and 638-contract detention facilities on a scheduled and unscheduled basis. For the immediate future, it is recommended that the Department OLES and not BIA-LES be responsible for the compliance oversight of the detention program.	12
4.	BIA-LES should establish a senior-level (GS-15) detention program director with proper detention management credentials to manage the BIA and 638- contract detention facilities. This position should report directly to the BIA-LES director, coordinate actions with DOI-OLES, and be the BIA-LES liaison with OFMC for detention-related repairs. BIA should provide the appointee with adequate new staff to fulfill these responsibilities. At a minimum, the Central Detention office should be staffed with a Director, Deputy Director, secretary, and three management analysts. The six regions should be staffed with two detention specialists per region.	12
5.	DOI-OLES should ensure that BIA-LES establishes and implements clear reporting protocols for serious incidents occurring at all BIA and 638-contract detention facilities. At a minimum, all officer safety issues, inmate deaths, attempted suicides, assaults, and escapes should be reported promptly through an established chain of command ending with the Director of BIA with copies to the DOI-OLES.	24

Recommendations		
No		Page
6.	BIA and 638-contract detention administrators should ensure that any escape is immediately reported to surrounding local, tribal and state law enforcement authorities.	24
7.	BIA-LES criminal investigators should immediately respond and conduct a preliminary inquiry to determine if a full investigation is warranted on any reported serious incident. Their findings, in every case, should then be reported to the Director of BIA-LES with a copy to the DOI-OLES. All death cases at BIA or 638-contract detention facilities, not investigated by the FBI, should be investigated by a BIA-LES criminal investigator.	24
8.	BIA and tribes should explore alternatives to detention for intoxicated inmates. When it is necessary to incarcerate intoxicated inmates, additional detention officers should be on-duty to assist with the additional monitoring required.	25
9.	DOI-OLES should work with the tribes and BIA to establish a Memorandum of Understanding (MOU) with the Indian Health Service to provide on-site medical assistance at all detention facilities with more than 20 inmates incarcerated. Detention staffs should be adequately staffed and scheduled to accommodate for medical transport to hospitals when necessary.	25
10.	Staffing shortages at BIA and 638-contract detention facilities that are related to officer safety should be identified by the BIA-LES and corrected immediately. DOI-OLES should oversee this effort.	29
11.	BIA-LES in collaboration with 638-contract programs should develop staffing models and methodologies for BIA and 638-contract detention facilities. DOI-OLES should oversee this developmental effort.	29
12.	The DOI Law Enforcement and Security Board of Advisors should develop recruiting standards and guidelines for BIA detention officers. BIA-LES should then assist tribal detention programs in developing standards and guidelines for tribal detention officers.	30

Recommendations		
No		Page
13.	BIA OFMC and BIA-LES should immediately establish an effective system for prioritizing repairs that have any impact on inmate or detention officer safety. They should also review FMIS to identify and remedy inaccurate and redundant entries and implement quality control measures to reduce the risk and occurrence of improper entries.	36
14.	BIA should establish and implement a single line item budget for all BIA-LES detention facilities and expenses. BIA-LES should require 638-contract detention facilities to implement similar cost tracking practices.	44
15.	BIA should utilize accurate budget projections that incorporate future funding requirements when preparing funding requests rather than just using historical data. As part of future funding requirements, BIA-LES senior officials and local detention administrators should identify any existing needs and/or deficiencies so that these issues can be properly addressed.	44
16.	DOI-OLES should work with BIA, tribes and DOJ to develop strategic plans for jail replacement and renovation. DOI-OLES should assist BIA-LES with developing a comprehensive needs assessment to ensure that jails are built and sized appropriately.	44
17.	BIA should implement internal control procedures and proper management oversight to ensure that BIA funding and expenditures are accurately tracked and reported on a regular basis.	44
18.	A standard law enforcement and detention service clause should be developed and used in each and every Public Law 93-638 contract for BIA law enforcement and detention services. The clause should require at a minimum that: (1) law enforcement and detention funding be accounted for and used for its intended purpose and (2) serious incidents be promptly reported to BIA-LES as a condition of the contract.	44
19.	BIA-LES and the IPA should take immediate action to identify and train all current detention officers who have not received the basic IPA detention officer training.	47

Recommendations		
No		Page
20.	Appropriate measures to track and ensure compliance/certification of training by detention officers should be developed by DOI-OLEs, BIA-LES and tribes.	47
21.	DOI-OLEs should work with BIA-LES and the IPA to develop training standards and modules for BIA and tribal detention officers that would, at a minimum, eliminate the need for separate adult and juvenile detention courses.	48
22.	DOI-OLEs should conduct routine scheduled and unscheduled inspections to determine compliance with the juvenile sight and sound restriction wherever adult and juvenile offenders are co-located.	52
23.	DOI-OLEs should assist BIA-LES with the development and implementation of appropriate standards for Indian Country detention facilities. Consideration for size, capacity, and type of facility should be taken into account. Standards should, at a minimum, identify core health and safety requirements that would be applicable to all jails regardless of size and capacity.	53
24.	DOI-OLEs and BIA-LES should consult with the tribes and continue to explore using regional detention facilities to accommodate longer-term inmates and to reduce overcrowding at smaller facilities.	53
25.	BIA-LES should facilitate regular regional meetings for all BIA and tribal detention administrators to encourage collaborative efforts and discussions on detention best practices.	56

PREPARED STATEMENT OF TRACY A. HENKE

Mr. Chairman, and members of the Committee, my name is Tracy Henke and I serve as the Deputy Associate Attorney General for the Department of Justice. Thank you for the opportunity to discuss the Department's limited role with tribal detention facilities.

Today, thirty-three states contain approximately 300 Indian land areas or reservations. Jurisdiction over crimes in Indian country depends on several factors, including the identity of the victim and the offender, the severity of the crime, and where the crime was committed.

There are two groups of Indian offenders who may be in federal custody. First, there are prisoners who have committed an offense under federal law. Often, these offenses fall under 18 U.S.C. § 1152 and § 1153. Section 1153, known as the Major Crimes Act, gives the federal government jurisdiction to prosecute certain enumerated serious offenses, such as murder, manslaughter, rape, aggravated assault, and child sexual abuse, when they are committed by Indians in Indian country (Tribes also have concurrent jurisdiction to prosecute Major Crimes, although tribes are limited by statute to imposing one-year prison sentences and \$5,000 fines). Section 1152, known as the Indian Country Crimes Act, gives the federal government exclusive jurisdiction to prosecute all crimes committed by non-Indians against Indian victims. Section 1152 also grants the Federal Government jurisdiction to prosecute

minor crimes by Indians against non-Indians, although that jurisdiction is shared with tribes. Offenders in this category are under the jurisdiction of the Bureau of Prisons (BOP), and not in Indian tribal facilities.

The second group are prisoners who have committed offenses under tribal law. Indian prisoners in this group are under the jurisdiction of the tribe whose law has been violated. As part of their inherent sovereignty, Indian tribes have jurisdiction to prosecute all crimes committed under tribal law by Indians in Indian country. These prisoners are generally in facilities operated by the Bureau of Indian Affairs (BIA) or the tribal government. Currently, of the 74 facilities in Indian country, 39 are owned by the BIA. Of the thirty-nine BIA facilities, 19 are operated by BIA and the operations of the remaining 20 are contracted out. The remaining 35 facilities are owned and operated by tribal governments under PL 93-638 contracts.

The Department of Justice's involvement with Indian country detention facilities is generally limited to our Correctional Facilities on Tribal Lands Program. This program, authorized by Section 20109, Subtitle A of Title II of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. Section 13701 et seq.) provides funds to American Indian and Alaska Native tribes to construct correctional facilities on tribal lands for the incarceration of offenders subject to tribal jurisdiction. Corrections facility is defined as a residential facility that houses adult or juvenile offenders accused or adjudicated of a crime.

Specifically, the Department of Justice has administered tribal correctional facility grants totaling \$19,453,000 in FY 2001; \$35,191,000 in FY 2002; \$4,967,000 in FY 2003; and \$1,895,000 in FY 2004. It is important to understand that these grants are statutorily limited to "brick and mortar" construction costs only. Grantees are responsible for fully supporting, operating, and maintaining these correctional facilities.

Since the inception and funding of the program, the Department of Justice has provided funding to 23 tribes for jail construction. Of these 23 facilities, 8 facilities are exclusively juvenile, 12 are combined adult/juvenile, and 3 are exclusively adult. All 23 tribes are actively implementing design or construction initiatives. Some have added beds to existing facilities, but most involve new construction. Proposed facilities range in size from 8 to 68 beds.

In addition to the Correctional Facilities on Tribal Lands Program, the Department's Bureau of Justice Statistics (BJS) compiles statistics relating to detention facilities in Indian country. In November 2003, the BJS published "Jails in Indian Country, 2002," the most recent survey of adult and juvenile detention centers in Indian country. Data for the BJS bulletin was obtained by mailed questionnaires accompanied by follow-up phone calls and facsimiles. In total, 68 of the facilities in Indian country responded. For the Committee's review, copies of the BJS bulletin, "Jails in Indian Country, 2002," as well as the BJS questionnaire sent to the detention facilities have been provided. It is important to note that while the BJS bulletin contains statistical information about Indian detention facilities, it does not gather information regarding conditions in the jails.

As the Administration, through BIA, works to improve Indian detention facilities, the Department of Justice will continue to assist as we are able. Most recently, an experienced administrator from the Department's Bureau of Prisons was detailed to the BIA to assist in the development of strategies to improve the delivery of detention services in Indian country. The Department of Justice looks forward to this opportunity to work with the Department of Interior to address this issue.

Mr. Chairman, Attorney General Ashcroft has pledged to honor our Federal trust responsibility and to work with sovereign Indian Nations on a government-to-government basis. The Attorney General and the entire Justice Department will honor this commitment and continue to assist tribal justice systems in their effort to promote safe communities. We also recognize that the most effective solutions to the problems facing tribes come from the tribes themselves, and that our role is to help them develop and implement their own law enforcement, detention, and criminal justice strategies.

I welcome the opportunity to answer any questions you or members of the committee may have.

PREPARED STATEMENT OF CORINNA SOHAPPY

Mr. Chairman, members of the Committee, my name is Corinna Sohapp. I am here this morning to talk about the death of my niece, Cindy Gilbert Sohapp, in a jail operated by the Bureau of Indian Affairs.

First, I would like to tell you about Cindy. Cindy was 16 years old when she passed away. She was a tall, beautiful, popular, and smart young lady. She was not afraid to go off on her own and take a chance.

Unfortunately, she was born into a very chaotic family environment. Cindy's mother was plagued with a variety of personal issues. I was given legal custody of Cindy by the court in August 2003 after her mother was placed in an alcohol treatment program in California.

Cindy attended the Chemawa Indian School in Salem, Oregon. Although it was more than a three-hour drive from our home in Warm Springs, Chemawa offered her many more educational opportunities than our local high school.

Cindy was doing very well at Chemawa and had many big dreams about what she wanted to do with her life. At the time of her death, she was only two credits short of becoming the first person in her family to graduate from high school.

She planned to go to college after graduation. She was learning to drum and sing; she also jingle-dress danced, a tradition in our tribe that you may know of as a "pow-wow." She dreamed of traveling, and she hoped that by joining the Army or the Marines someday, she would have that opportunity.

Given the unstable environment in which Cindy grew up, and the many challenges that she faced, our family took great pride in Cindy's success.

In the evening of December 6, 2003, after attending our local Christmas lights parade, I received a message that changed my family forever. I was told to call Chemawa because Cindy was not breathing.

When I called them, I was told that they "lost her." I asked them what they meant; did she get up and walk away? They told me that she had passed away.

I asked if they were sure it was Cindy. The man on the phone told me that he knew Cindy, and that he knew this was her. I was so devastated that I dropped the phone on the floor.

My cousin picked up the phone and was told that the FBI and the Oregon State Police wanted to know what to do with Cindy's body. We told them to leave it where it was. We left immediately and arrived at Chemawa around 6:00 in the morning. A security guard escorted us to what looked like a facilities or maintenance shack located well away from the school building.

As we entered the building, we walked through a small office that looked like a booking room. As the daughter of a patrolman and a police dispatcher, I had grown up around a jail and I knew what a booking room looked like.

As we continued, we entered the jail. There were four cells, all made of cement blocks with heavy steel doors on each of them. We continued walking to the last cell, where Cindy was lying on the floor. The cell was about 4 or 5 feet wide and about 10 feet long. There was a mattress lying near the door, with blood splattered on the mattress.

Cindy was lying with her right hand extended upward. She had blood around her mouth and nose, and on her shirt.

The staff could not explain to me why she was bleeding. I tried to move her arm to rest it across her chest, but she was already cold and her arm very stiff.

Throughout her life, Cindy had rarely gotten herself into trouble. We were told that on this evening, however, Cindy had been provided with alcohol by an older friend and was caught drinking near the school.

She was placed in the cell to sober up at about 8:15 pm. When the staff next checked on her nearly three hours later, she was not breathing. We were told that she had stopped breathing because of the amount of alcohol in her body.

My nephew, who also attended Chemawa at the time, had followed Cindy to the jail that evening to make sure that the staff gave her the supervision she needed. He had seen how intoxicated she was, and warned the jail staff that it was not safe to leave her alone.

My nephew told me that while Cindy was being carried into the cell—since she was too drunk to walk on her own—the jail staff made jokes about her.

Until that morning, I did not know that this dreadful jail even existed at Chemawa. I have since learned about many prior incidences in which high school students had been locked up with poor supervision.

My youngest brother, who also attended Chemawa for a time, told me that he was once locked in this jail without supervision after drinking—nearly 20 years ago.

Other relatives of Chemawa students told me about the annual homecoming celebration at the school, when as many as 92 students have been locked into these 4 small cells at one time.

This is a dreadful tragedy that simply did not have to happen. If the staff at Chemawa had provided even the least amount of supervision in the jail, Cindy would be with us today.

The loss of Cindy has left my family in a fragile state. I worry about the effects of her death on my parents and on Cindy's two younger siblings, who I also care for.

I would like to thank the Committee for considering this important issue. It is my sincere hope that by coming to Washington this morning, and by sharing Cindy's story with you, that no one else will have to die unnecessarily.

PREPARED STATEMENT OF HON. WILLIAM TALKS ABOUT, JR.

Oki ("Greetings" in the Blackfeet Language), Chairman Grassley, Senator Baucus, and members of the Senate Finance Committee.

My name is William A. Talks About, a full-blooded member of the Blackfeet Tribe of Indians of the State of Montana.

I am pleased to have been invited to present testimony on behalf of my tribe before this honorable committee.

I am the Chairman of our Tribal Council, which consists of nine councilmen, who are the representative Government of the members of the Blackfeet Tribe.

Our council and I are in full agreement about the relevance of this issue, and they have empowered me to speak on their behalf and that of our membership.

The Blackfeet Indian Reservation borders Canada and Glacier National Park. This reservation consists of 1.5 million acres. The enrolled population is approximately 15,500 members, of which over 8,000+ reside on the Blackfeet reservation. The reservation makes up most of Glacier County and a small portion of Ponderay County.

As public safety becomes a greater issue everywhere, detention and correctional facilities have become a greater concern for the Blackfeet Tribe. The Blackfeet Tribe has seen a dramatic inmate population growth, operational and management changes, and an increase in special needs population.

With your permission, if I can use the distinction of non-Indian Jails (meaning other jails in America) versus Indian Jails (those jails on Indian reservations), then through studied perception we will see that there is a distinct contrast between Indian and non-Indian Jails. That is, the non-Indian jails are built properly, have adequate staff and funding from tax monies. The need for new correction/detention facilities is preeminent on the Blackfeet reservation.

The conditions relative to the Blackfeet Community jail are negatively immense and intense. The conditions are typical and are a good example of Indian jails across the Nation.

It is a simple analogy that if one jail in Indian Country is the only jail that needs to be corrected, then the answer would be to fix that one jail, but if there is a continuous pattern of deplorable conditions that exist across the Nation in Indian jails then reform needs to take place.

Just as much that there is a sense of urgency to reform the system of incarceration on Indian reservations by the Federal Government, then the same sense of urgency is felt by those actively involved in the law and order on Indian reservations and the people that are affected.

Across the board and throughout the hallmarks of justice, this committee will hear of the nature of those conditions in Indian jails. That will add credence that reform is needed.

In 1970, the Blackfeet tribal jail was constructed and was condemned shortly thereafter because of a bad sewer system. It is approximately 9,197 square feet and has 12 cells, and to date is still a condemned facility. Renovation took place, but was a Band-Aid effect and gradually moved back to the current situation of being bad and a blight. The jail has a very small recreation area that is only accessible in the summer months. The building is constructed out of brick, so in the summer months it is up to 20 degrees hotter inside the facility. Further, the plumbing in the cells only works sometimes. Many inmates have sentences longer than 30 days.

Our current juvenile detention facility was originally built for the youth as a safe haven. Eventually it was turned into a correctional facility and has been eroding because of the material it was built out of. To date we have many inspections by the BIA, Federal government, State, and Tribal agencies that require renovations.

What can we do, together, to address the issue of jail reform?

My suggestions would be to:

1. Build a larger adult detention facility to accommodate more prisoners in a safe and sanitary environment. The capacity for the 34-year old jail is 45 total—men and women. Currently the overcrowding prisoners present a threat to the health and welfare of the incarcerated individuals. At times there have been as many as 110 total men and women incarcerated at the Blackfeet jail.

2. Build a larger juvenile detention facility to accommodate more prisoners in a safe and sanitary environment. The current capacity for the juveniles is 5 females, 9 males, and two safety cells which adds an additional 2 incarcerated juveniles—for a total of 16 maximum. Upon certain celebrations and occasions our detention facility has had as many as 35 incarcerated at one time, which is twice the building capacity.

3. Promote that the tribal court and Northern Police Training Center be built with our adult and juvenile detention facility to create stability and integrity to the Blackfeet Nation. Without the tribal court and law enforcement collaborating closely together, our law and order will not be and is currently not balanced.

4. Within the new structure we will have the added floor space for the rehabilitation that is currently lacking in both the adult and juvenile facilities. Which is the counseling offices, and outdoor recreation.

5. The Police Training Center would not only be for our Blackfeet members but for all the Northern Tribes that do not have the financial ability to continue to send their members to Albuquerque, NM.

I would like to thank you for your time, Senators, and I and our people are eager and anxious to work toward this great effort.

COMMUNICATIONS

The Legislative Branch
The Navajo Nation



Lawrence T. Morgan
Speaker of the Navajo Nation Council

October 04, 2004

Hon. Chuck Grassley, Chairman
U.S. Senate Committee on Finance
135 Hart Senate Office Building
Washington, D.C. 20510

Hon. Max Baucus, Vice-Chairman
U.S. Senate Committee on Finance
511 Hart Senate Office Building
Washington, D.C. 20510

Dear Honorable Chairman Grassley and Honorable Vice-Chairman Baucus:

I am pleased to forward a copy of the Navajo Nation's position statement regarding "Indian Jails: A Clarion Call for Reform". We seek your support in these matters and I am hopeful the enclosed document will help you and your staff understand the crisis of our people who are experiencing from the lack of adequate detention facilities. Ultimately, we are unable to separate victims from perpetrators. Violent crime on the Navajo Nation is nine (09) times higher than that of the national average, according to the U.S. Attorney's Office for the District of Arizona.

If you have any questions I urge you to contact me at (928) 871-7253, or Lawrence John, Legislative Advisor at (928) 871-7253. Thank you for your time.

Sincerely,

A handwritten signature in black ink, reading "Hope MacDonald-LoneTree".

Hope MacDonald-LoneTree, Chairperson
Public Safety Committee
20th Navajo Nation Council

Attachment



**Navajo Nation Statement
To the
U.S. Senate Committee on Finance 108th Congress
Committee Hearing
“Indian Jails: A Clarion Call for Reform”
September 21, 2004**

Mr. Chairman, Mr. Baucus and members of the Committee, thank you for the opportunity to provide the Navajo Nation's statement on Indian Tribal Detention Facilities. The Navajo Nation Public Safety Committee thanks the Committee for conducting today's hearing of the crisis Indian Tribes have long expressed and the Bureau of Indian Affairs has long ignored – Indian detention facility conditions and its contribution to the failure of curbing crime rates on Indian reservations and the ability to separate victim from perpetrator.

For the record, my name is Hope MacDonald-LoneTree. I am an elected Navajo leader and serve as the Chairperson to the Public Safety Committee of the Navajo Nation Council. In addition, I've been appointed by the Speaker of the Navajo Nation Council to serve as the Navajo Nation tribal leader representative to the joint Bureau of Indian Affairs/Tribal Budget Advisory Council's Workgroup on Indian Law Enforcement, a national workgroup assembled to advocating Indian law enforcement budgetary needs.

Today's hearing is important to include participation of Indian leader's input and recommendations on federal-Indian policy on Indian detention facilities will result in implements the recommendation of tribal leaders.

As we will present and have historically been a participant to, through federal-Indian policy statements to Congress and the Administration, the funding of Indian detention facilities construction success reaches as far as the willingness of the federal government to promote funding for detention facility parity in Indian country. And as the Nation with the largest population on the largest Indian reservation, we bring various unique sets of geographical, demographical and intergovernmental features that require significant Congressional and Administration awareness, leadership and initiative.

For the Navajo Nation, new facility construction, facility maintenance and operational funding is a paramount issue. This is because of several factors and trends that have been longstanding, unresolved and now to a significant degree, ongoing.

First, the Navajo Nation rests in between three separate state jurisdictions and is a major commercial transportation corridor to the southwestern portion of the United States. In addition, major homeland security efforts underway by the Bureau of Indian Affairs' Office of Law Enforcement Services (OLES) and the Navajo Nation criminal data sharing between the three state jurisdictions, numerous surrounding counties and a host of surrounding federal and Indian law enforcement agencies point toward increased incarceration trends in our immediate future. These agreements with other law enforcement agencies, while it pursues to confront and subdue criminal activity through the use of technology and cooperation, adds a whole new set of criminal population into our already over-populated capacity and dilapidated facilities much of which were built in late 1950's and early 1960's.

Most certainly, we welcome homeland security efforts and the application of technology to curb criminal activity on the Navajo Nation. We, like the Committee, understand that there is a strong relationship between the rate of criminal activity and the budgetary resources applied. We've seen the outcome of this relationship, when Congress appropriated funding for the Community Oriented Policing (COPS) grants program. Prior unreported criminal incidences became reported incidences due to additional funding for law enforcement personnel. Yet, increased criminal incidence reporting and correspondingly their arrests and convictions, did not naturally convert to their incarcerations. Our dilemma was that we did not have the facility capacity or the funding for detention center personnel to incarcerate convicted individuals over the course of their sentences.

Further, since 1992, our courts recognizing the conditions of our facilities mandated our detention facilities to comply with the provisions set forth pursuant within the *Silver v. Pahe* Consent Decree. The consent decree's goal is to ensure that incarcerated inmates are free from any structural, physical safety and health hazards while incarcerated within Navajo Nation operated detention facilities. Unfortunately, continual findings of non-compliance incidences continue to plague any attempts to meet the court-ordered standards over a sustained period of time. And failure to comply with court-ordered mandates has resulted in facility closures and allowing convicted criminals to return back to their communities. Recently, the Tohatchi, New Mexico youth detention facility was closed in October 2003, to repair the fire alarm system and to date is still closed due to insufficient funding to pay for repairs.

Because convicted criminals are allowed back into their communities, criminal incident recidivism rates are continuously rising. As a result, we have a criminal population who have total disregard for our criminal justice system, because their government cannot incarcerate them without putting them at significant physical and health risk. It is a frequent occurrence in our criminal justice system that upon a conviction being rendered, almost immediately the convicted criminal is let go moments, not days or weeks later, minutes rather. And it would be within a month, even a week, the same released criminal is processed through for conviction and only to be let go without serving the conviction.

These unresolved and longstanding issues have put our communities and our officers at immense risk. Efforts to make our communities safe are battles we cannot win if criminals cannot serve their sentences at detention facilities deemed unsafe and unhealthy.

On March 16, 2003, the U.S. Attorney's Office in Flagstaff, Arizona stated that violent crime on the Navajo Nation was six times higher than the national average. Imagine that in mainstream America, where neighborhood children and families do not feel safe in their communities, where businesses would not want to invest and where criminal activity festers new generations of criminal individuals. It is our opinion, that the U.S. Attorney's statement validates our understanding that crime if unpunished, only promotes higher levels of criminal activity, similar to what the Navajo Nation has been experiencing. And due to our rising on-reservation population, insufficient economic opportunities and inadequate federal policy on criminal abatement on Indian lands, our crime rate will continue to rise.

How else is America's largest populated Indian reservation ever to turn around its rate of crime? How else is our criminal justice system ever to adequately partner with other jurisdictions, when all we do is release our criminals back into our and their communities? These are question leaders on the Navajo Nation have been asking itself, the Congress and the Administration.

For the Navajo Nation, we are certain we can make significant contributions not only to our jurisdiction, but to those of surrounding jurisdictions and homeland security efforts as well. To accomplish this feat it requires diminishing the strain out of our over-capacity jails and of off-reservation transferred criminal who occupy off-reservation jails simply because the Navajo Nation is unable to incarcerate convicted criminals within our jurisdiction. We only ask that the Navajo Nation be provided the opportunity to administer a criminal justice system the way it was meant to be carried out and as it is carried-out in a lot of places in America.

Unfortunately, the Navajo Nation does not see any distinct resolution to our unique problem. We have witnessed that in the Fiscal Year 2005 President's budget that it is now the third consecutive year where no new detention facility construction funding is requested. We have also noted that within the FY2003 President's budget request, eleven (11) detention center facilities (as approved by Congress) were scheduled to be funded. The following table reported in the FY2003 President's BIA budget request lists the eleven remaining facilities, by ranked order:

Table 1. Unfunded Detention Facility Priority List

Rank	Tribe/Reservation
7.	Salt River Pima
8.	Colville Confederated Tribes
9.	Navajo—Crownpoint, NM
10.	Navajo-Kayenta, AZ
11.	Navajo-Shiprock, NM
12.	Mississippi Band of Choctaw Indians
13.	Tohono O'odham
14.	Confederated Tribes of the Umatilla Indians
15.	Eight Northern Pueblo
16.	San Carlos Apache Tribe
17.	Three Affiliated Tribes of Ft. Berthold

As the Committee can see, the Navajo Nation would have been scheduled for three detention facility construction projects after FY2003, according to the priority listing approved by Congress. In contrast, OLES' "Draft Strategic Plan," dated April 1, 2004, while it does not recommend a facility construction priority listing, the plan does categorize BIA and Tribal detention facilities into three categories: poor, fair and good. Only the Kayenta, Arizona project was reported.

Inconsistencies between the Congressional approved priority listing and OLES' draft plans draw concerns for the Navajo Nation. Another citation noteworthy to the Committee is the Department of Interior's (DOI) Office of Inspector General and an Independent Auditor report on "Top Management Challenges" The report consistently states that the BIA has not corrected its facilities maintenance backlog reporting. This finding is again cited in the recent Independent Audit Report, dated November 28, 2003.

In February 2002, DOI estimated that the deferred maintenance backlog was between \$8.1 billion and \$11.4 billion. The maintenance needs for the National Park Service (NPS) and the Bureau of Indian Affairs (BIA) facilities alone account for over 85 percent of the DOI-wide deferred maintenance backlog. DOI's February 2002 report stated that the repair and maintenance on these assets have been postponed for years due to budgetary constraints and that the deterioration of facilities adversely impact public health and safety, reduce employee morale and productivity, and increases the need for costly repairs or early replacement of structures and equipment.

Mr. Chairman and members of the Committee, the Navajo Nation does not agree with the OLES' draft strategic plans of addressing the Indian detention facilities construction funding estimates, because they were not considered as a part of or referenced to the 2003 Audit Report. If there are any corrective action plans, tribes like the Navajo Nation have not been informed, particularly when it proposes to differ with the Congressionally approved priority listing.

In a December 2001 report (No. 2002-I-0008), OIG outlined a comprehensive approach to maintenance management within DOI. The report stated that DOI needs to implement a comprehensive maintenance management system to effectively plan, prioritize, conduct, and track the condition and maintenance of facilities within all bureaus. Also, DOI needs to provide long-term leadership to keep money available to address the long-standing issues of deferred maintenance.

In FY2003, the DOI reported it lacked consistent, reliable, and complete information to plan, budget, and account for resources dedicated to maintenance and construction activities. DOI planned to identify and implement a comprehensive maintenance management system with an appropriate linkage to the accounting system; conduct comprehensive condition assessments; make determinations to repair, replace, or relocate facilities; develop a five-year Deferred Maintenance Plan and Capital Improvement Plan; repair and/or replace facilities to good condition, and reduce deferred maintenance to established goals by FY2005.

While the DOI plan has made demonstrable strides in developing a framework to address Indian detention facilities management issues, Indian detention facility maintenance and construction in DOI remains an enormous challenge.

For the Navajo Nation as we have stated earlier we have provided statements, testimonies and addressed the federal government at every level over the course of a decade. It is hardly imaginable that hundreds of millions of dollars of reprogramming Indian funding within the BIA since FY1995 will have been used to address a federal fiduciary trust issue of the *Cobell* litigation and much to the expense of direct Indian program funding.

And yet, another federal-Indian trust matter, for the Navajo Nation a matter of the federal government's treaty obligation to our Treaty of 1868 maybe subject of reprogramming funds by Congress and/or the Administration. We are opposed to any practices of reprogramming direct Indian funding to subsidize neglected federal responsibilities or in this matter – the construction, maintenance and operation of Indian detention facilities.

Our detention facility statistics and stories are similar as those presented by other Indian tribes. We have injuries, suicides, deaths and an unabatement of rising crime rates all caused by inhumane conditions.

As leaders to our constituents and our government, we should not be satisfied with offering the same mix of numerous different approaches most of which the federal government has already experimented with. The problem persists despite Tribes building temporary detention facilities, underfunding, reprogramming of direct Indian program funding, federal loans, tax credits, tax free bonding and government-backed bonds. Congress must remember that not all tribes will benefit from any of the above proposals. Our chronic jail conditions, strained federal funding and lack of internal revenue sources make it impossible for us to support any of the above mentioned federal programs.

America's first people ceded insurmountable amounts of real estate property containing vast riches of renewable and non-renewable natural resources with the hopes that such patriotic acts would provide to the birth of the new country; that treaty negotiations would bring perpetual returns. America, since then has become a world leader in promoting democracy, developing a strong military defense and building a sustainable economy. Yet, its government fails to institute long-standing governmental and diplomatic prominence to its first Americans.

Simply, addressing the epidemic and chronic conditions of Indian jails requires the federal government to carry out its treaty obligations to Indian tribes. Investing in tribal detention facilities should not be weighed against how much the federal government can spend to minimally live up to its federal trust obligations. Instead, the federal should invest in tribal detention facilities so tribal communities can be safe and secure.

Right now, today there's an inmate or an Indian law enforcement officer in harms way. There exist families of an inmate or an officer who fear for their safety. Overall, there exist whether Indian tribes can enforce their laws or federal laws on Indian lands and reduce crime without having to place inmates, Indian law enforcement officers and tribal communities at immense risks.

The Navajo Nation believes that it must be provided an opportunity to debate. We want the Congress and Administration to judge us not by the subsistence funding it has provided, but how our crime-rate abatement performance improves upon achieving a level of funding parity in Indian detention facilities.

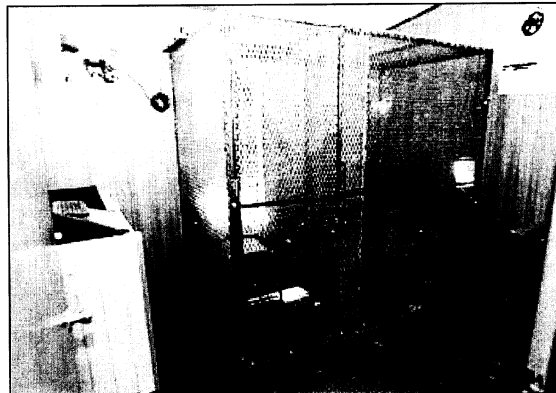
Thank you for the opportunity to testify of our concerns and we respectfully request an opportunity work with the Committee regarding this issue.

THE TRUTH WELL TOLD

Independent

WEB EDITION

Book 'em: Dilkon puts suspects in 'cage'



The holding cell at the Dilkon Police Department keeps suspects contained until they can be transferred to larger Navajo Nation jails. (Photo by Nick Short/Independent)

By Kathy Helms
Diné Bureau

DILKON — Here's a scenario: You're a police officer at the end of your shift. You're headed back to the station, 15 minutes away from clocking out. But just your luck, up ahead there's a guy staggering down the middle of the road. Do you slap a public intoxication charge on him? Or do you pick him up, give him a stern warning and a lift home?

Here's the catch: If you're a Navajo Nation officer from Dilkon Police District and you arrest him, more than likely you're also going to have to transport him. Either way you look at it, it means you're going to spend at least four hours on the road to and from Window Rock. That, or make a trip to Tuba City. And you were just about to go home.

Of course, there's always the "cage"...

Sgt. Calvin Begay of Dilkon Police District, at a joint meeting of the Judiciary and Public Safety committees Sept. 27, gave the committees a report on the headaches not having a jail facility is creating for his district.

"This morning, you heard in the Public Safety Committee (meeting) about the little 'cage' we have at the police department. Mr. (Lorenzo) Curley said it probably is cruel

and unusual punishment to be put in there, and I gave him my excuse why we have it."

Begay said that due to the lack of a detention facility, "We had to go to that little cage or cause a liability issue of having the prisoner be left in the unit where he could easily hurt himself or damage the police unit. So we came up with that small cage," he said.

It's actually more inviting-looking than the concrete and metal found in most jails. Though built along the lines of an oversize dog run, the cage is large enough to hold two comfortable-looking blue-cushioned chairs. Of course, it might not look or smell so pleasant if the person occupying the chair next to you is "talking to Ralph" on the great white phone.

But out in the rural areas where federal dollars seldom trickle down, desperate times call for desperate measures. And if there are only two police officers per shift, you've just made an arrest and then suddenly get emergency traffic, the drunk is going to have to sleep it off in the cage until you get time to make the transport.

While the cage serves its purpose, according to Sgt. Begay, it doesn't solve the problem. "When we do these (jail) relays, it means that we take an officer off the road from doing his duty. When a relay is not available from either district, that means our officer has to go all the way to Tuba City or all the way to Window Rock, which means that for one arrest for public intoxication, it takes an officer away for approximately four hours that's half his shift just to handle one incident.

"That's why people complain," Begay said. "They say, 'Where are any officers at? How come you don't respond right away?' They don't see the problem that we have: that when we make an arrest, we have to go to Window Rock or Tuba City, or we ask for assistance from the districts."

For whatever reason, some districts are helpful, some are not. Sometimes the response is, "We only have one personnel working," he said. "I think they just don't want to come out and help us. And that would cause us to take an officer away. We only have two officers per shift, and especially if we have one shift that only has two officers and one has to go to Tuba City or Window Rock, that leaves one officer available to cover the whole police district."

Moneywise, from Dilkon to Window Rock, Begay said, it is about 95 miles one way, or nearly 200 miles round-trip. "At 27 cents a mile that we have to pay, it's \$44 just for that one round-trip. And because of the long distances that we have to travel, it causes the mileage on our police units to go high. Right now, we have 2004 police units. We just got them. They're just a year old. We already have some police units that are going over 80,000 miles because of traveling to

Tuba City or traveling to Window Rock."

Not only does it put Dilkon Police District in a bind, Begay said, "it's causing us to become an inefficient police department because of that."

Begay said it had been his understanding that Dilkon and Kayenta Police districts were supposed to get new buildings built for them. "That was what I was told back at the beginning of the year; that Dilkon was going to be getting a new building that possibly has a holding facility or jail facility to help correct this problem.

"But then just last month I heard that the building was taken away from Dilkon, taken away from us and Kayenta and given to Crownpoint. And we needed that building out here. Our buildings right now that we have, some of the office space is being used as storage because we have no place to put our stuff. Our evidence building is a shack that's built outside, that we have to watch with security cameras to make sure nobody breaks into it. Already we've had like three attempts. We have our storage building that's so packed now that we have to climb over things to get to stuff that we need."

Begay said the police district would really like to have its new building. "I don't know why it was taken away from us. It not only hurts the police department down here in Dilkon, it's also hurting the community because it takes an officer away. ... It is something that people around here have learned to live with. I don't mean it as an excuse for us, but that's the way the reality is here."

Fort Belknap Indian Community



R.R. 1, Box 66
Fort Belknap Agency
Harlem, Montana 59526
PH: (406) 353-2205
FAX: Council - (406) 353-4541
FAX: Departments - (406) 353-2797

Fort Belknap Indian Community
(Tribal Govt.)
Fort Belknap Indian Community
(Elected to administer the affairs of the community and
to represent the Assiniboine and the Gros Ventre
Tribes of the Fort Belknap Indian Reservation)

Sept, 17, 2004

Honorable Senator Max Baucus
SH-511 Hart Senate Office Building
Washington, D.C. 20510-2602

Dear Senator Baucus:

On behalf of the Fort Belknap Community Council and the tribal members at large, we would like to thank you for your past efforts in supporting the various efforts of the Fort Belknap Community Council. More specifically, the Fort Belknap Community Council is requesting your support in attaining funding in the amount of \$150,000 to conduct a feasibility study to construct a local detention facility. Secondly, we are requesting another \$250,000 to conduct a second feasibility study to construct a regional detention center.

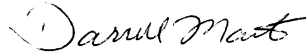
Similar to other detention facilities located on remote Indian reservations in the northern plains region, the Fort Belknap detention facility is outdated and has been condemned for further use. The non-existence of the detention facility on the reservation will force the Fort Belknap Law and Order department to transport local prisoners to distant off-reservation sites. This will increase in added costs to house prisoners and will take time away from community policing to transport these prisoners.

Secondly, the Fort Belknap Community Council is proposing the construction of a regional detention facility to house prisoners from throughout the Billings Area Office. Plans are being developed to enter co-operative agreements with local state and federal entities to house their prisoners for short time frames.

Once again, on behalf of the Fort Belknap Community Council, I would like sincerely thank you for supporting the efforts of the Fort Belknap Community

Council. If you should have any questions or comments, please feel free to contact me at your convenience.

Sincerely,


Darrell Martin, President

CC

Julia Doney, Vice Chairman

Julie Kulbeck, Secretary-Treasurer

Doreen Bell, Assiniboine At Large Representative

Velva Doore, Gros Ventre River District Representative

Raymond Chandler, Gros Ventre At Large Representative

Selena Ditmar, Assiniboine River District Representative

Craig Chandler, Gros Ventre Mountain District Representative

Ken Lewis, Assiniboine Mountain District Representative

Tracy King, Assiniboine At Large Representative

Harold "Jiggs" Main, Gros Ventre At Large Representative

Fort Belknap Indian Community



R.R. 1, Box 66
Fort Belknap Agency
Harlem, Montana 59526
PH: (406) 353-2205
FAX: Council - (406) 353-4541
FAX: Departments - (406) 353-2797

Fort Belknap Indian Community
(Tribal Govt.)
Fort Belknap Indian Community
(Elected to administer the affairs of the community and
to represent the Assiniboiné and the Gros Ventre
Tribes of the Fort Belknap Indian Reservation)

TESTIMONY OF DARRELL MARTIN
PRESIDENT OF THE FORT BELKNAP INDIAN COMMUNITY COUNCIL

BEFORE THE
FINANCE COMMITTEE
OF THE
UNITED STATES SENATE

September 21, 2004

Good Morning! My name is Darrell Martin. I am the elected Tribal President of the Fort Belknap Indian Community Council of Montana. I represent both the Gros Ventre and Assiniboiné Nations of Fort Belknap. I am here today to submit this written testimony to address long-standing concerns our Reservation has experienced because *of no juvenile or adult detention facilities to serve our six (6) thousand members.*

I know that each and every one of you is familiar with the reports and studies that have recently been released to major newspaper across the nation concerning the horrid conditions of the detention facilities located on Tribal lands. The Bureau of Indian Affairs study included the Fort Belknap Indian Reservation. We have never had a juvenile detention facility. Our current adult facility was condemned by B.I.A. staff.

Our adult facility was originally built in the 1970's as a rehabilitation center. Later converted to house prisoners, it now houses a condemned adult detention center, our emergency

dispatch center, Tribal Courtroom and an evidence room. Because it was never designed for the uses it now houses, it has a history of serious deficiencies.

This facility, maintained by the Bureau of Indian Affairs, had an annual safety and health evaluation conducted by a representative of the B.I.A. Safety and Occupational Health Specialist on March 9, 2004. The evaluation found serious problems and resulted in the B.I.A. issuing a letter condemning its use as a detention center. We have scrambled since to find alternatives to house prisoners.

The deficiencies observed place inmates at risk. Safety and health concerns have not been met, as the building is too small, too old and simply insufficient. For example, the sewer is continually backing up, with raw sewage spilling into inmate cells. Our eight (8) cells were consistently overcrowded, with no provisions available for long term inmates.

Prisoners now must be transported to Wolf Point, Montana, 200 miles east of Fort Belknap Agency. The cost of housing an inmate out of the area averages \$45.00 per day, before the extensive costs of transportation are figured in. These costs are substantially higher than our local costs, effecting a severe drain on our operating budgets.

The difficulty of housing prisoners on routine matters normally requiring incarceration, such as family member assault, DUI and sexual assaults, compromises prosecutions. Judges are aware that few alternatives are available. The lack of detention facilities affects what happens to defendants. Offenders have a sense of security that very little will happen to them. ***THE LACK OF DETENTION FACILITIES HAS ADVERSELY AFFECTED THE SAFETY OF OUR COMMUNITIES!!***

The building previously housing our detention facility lacked an adequate security system. There are no security cameras on the premises. Our staff is at risk because of this, and monitoring inmates is much more labor-intensive. In the recent past, a woman jailer was knocked unconscious, unbeknownst to other staff. While discovered in periodic checks, standard video monitoring utilized throughout jail facilities in this country, but unavailable at Fort Belknap, would have minimized her risks. These dangerous circumstances contributed to the condemnation of our facility.

On many occasions, we have housed prisoners suffering from delirium tremens (DTs), and there have been no medical detoxification staff or facilities available. This constantly placed

these inmates at risk.

Inmates shared a single shower. To feed inmates, frozen food was micro waved and served twice daily, as the facility had no kitchen facilities.

Similarly, the trailer house that houses our Chief of Police, law enforcement secretary and Senior criminal investigator was never designed to meet the security needs of a police department. While marginally meeting needs, this trailer was only intended as a stop-gap measure. The gap it was intended to fill has turned into a permanent situation.

The Fort Belknap Indian Community Council supports tax-exempt financing solutions to finance these kind of facilities, as is being explored by Senator Baucus and others. We realize that money is short in the current budget process, and creative solutions are needed.

At the same time, the Fort Belknap Indian Community Council views this issue as within the promises of treaties signed with our people, and believe it is justifiable to ask Congress for federal appropriations to conduct feasibility studies on alternatives.

We are seeking funding for two (2) separate studies. The first would be for approximately \$150,000 to evaluate and plan the construction of an on-reservation detention facility. Secondly, we are asking for approximately \$250,000 to evaluate and plan the construction of a regional, long-term facility, which could serve Tribes, state and federal needs in this region. Because of our central location, such a regional facility could meet needs, while providing a much-needed economic development boon to a very economically depressed area. We believe each proposal needs substantial study to develop plans which will meet needs for the next 1/2 century.

Again, we thank you for providing us with the opportunity to describe these needs. On behalf of the people of the Gros Ventre and Assiniboiné people of Fort Belknap, your careful deliberation on these matters is greatly needed.

Darrell Mast

Resolution No. 168-2004

Fort Belknap Indian Community

WHEREAS, the Fort Belknap Indian Community Council is the governing body of the Gros Ventre and Assiniboiné Tribes of the Fort Belknap Indian Community, Fort Belknap Indian Reservation, Montana, by the authority of the Constitution and By-Laws of the Fort Belknap Tribes approved on the 13 day of December 1935, and

WHEREAS, under the Constitution and By-Laws of the Fort Belknap Indian Community, the Community Council is charged with the duty of protecting the health, security and general welfare of the Fort Belknap Indian Community, and

WHEREAS, the Fort Belknap Indian Community Council is responsible for the governmental affairs of the Fort Belknap Reservation, and

WHEREAS, the Fort Belknap Detention Center is outdated and has been condemned from further use, and further, the Fort Belknap Indian Reservation has never had a juvenile detention center to serve its 6000+ members, and

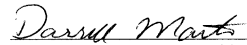
WHEREAS, the lack of a detention facility on the Reservation has and will force the Fort Belknap Law and Order Department to transport local prisoners to distant, off-reservation sites creating added costs and taking time away from community policing, and

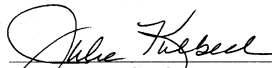
WHEREAS, the Fort Belknap Indian Community Council has evaluated two alternatives to meet juvenile and adult detention needs: 1. A local, on-reservation facility designed to meet adult and juvenile detention needs on the Fort Belknap Indian Reservation; the study and planning for which is estimated to cost \$150,000; 2. A regional, on-reservation facility designed to meet adult and juvenile detention needs on the Fort Belknap Indian Reservation, as well as other Tribal, state and federal detention needs in this region; the study and planning for which is estimated to cost \$250,000;

NOW, THEREFORE BE IT RESOLVED, that the Fort Belknap Indian Community Council does hereby affirm its conclusion that the two studies identified above are immediately necessary and does hereby formally request the Bureau of Indian Affairs and the Montana Congressional delegation to identify funds to complete these studies, and

BE IT FINALLY RESOLVED, that the Council Officers are hereby delegated the authority and responsibility to sign all documents necessary to effect this action.

ATTEST:


DARRELL MARTIN, President
Fort Belknap Community Council


JULIE KULBECK, Secretary-Treasurer
Fort Belknap Community Council

CERTIFICATION

I, the undersigned, as Secretary of the Fort Belknap Indian Community Council of the Fort Belknap Indian Reservation, Montana, do hereby certify that the Fort Belknap Indian Community Council is composed of ten (10) members, of whom 7 members constituting a quorum were present at a meeting duly noticed, convened and held this 17 day of September, 2004; and that the foregoing Resolution was duly adopted and approved by the affirmative vote of 7 for; 0 opposed; 0 not voting; 0 temporary absent; 3 excused absence and that the said Resolution has not been rescinded in any way.

DATE: September 17 2004


Julie King Kulbeck, Secretary/Treasurer

Fort Belknap Indian Community
Tribal Government

RR 1 Box 66, Harlem, MT 59526
Address

