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LAW AND ORDER IN INDIAN COUNTRY

FIELD HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

MARCH 17, 2008

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CONTENTS

	Page
Hearing held on March 17, 2008	1
Statement of Senator Dorgan	1
Statement of Senator Kyl	5
Prepared statement	6

WITNESSES

Cowboy, Samson, Public Safety Director, Navajo Nation	15
Enas, Eldred, Vice Chairman, Colorado River Indian Tribes	18
Enos, Hon. Diane, President, Salt River Pima-Maricopa Indian Community	8
Prepared statement	10
Gordon, Hon. Phil, Mayor, City of Phoenix	31
Prepared statement	33
Humetewa, Hon. Diane, U.S. Attorney, District of Arizona	25
Prepared statement	28
Mendoza, Rod, Chief of Police, Town of Parker, Arizona	35
Prepared statement	37

APPENDIX

Artman, Carl J., Assistant Secretary, Indian Affairs, Department of the Interior, prepared statement with attachments	59
Eddy, Jr., Hon. Daniel, Tribal Chairman, Colorado River Indian Tribes, prepared statement	57
Response to written questions submitted by Hon. Byron L. Dorgan to Hon. Diane Humetewa	70
Rhodes, William R., Governor, Gila River Indian Community, prepared statement	67
Shirley, Jr., Hon. Joe, President, Navajo Nation, prepared statement	49

LAW AND ORDER IN INDIAN COUNTRY

MONDAY, MARCH 17, 2008

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Scottsdale, AZ

The Committee met, pursuant to notice, at 1:30 p.m. at the Salt River Pima-Maricopa Indian Community Center, Scottsdale, Arizona, Hon. Byron L. Dorgan, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

The CHAIRMAN. Good afternoon. I'm Senator Byron Dorgan. I'm Chairman of the Indian Affairs Committee of the United States Senate.

I'm joined by Senator Jon Kyl, the Senator from the State of Arizona, and I'm very pleased to be here on this Reservation and with my friend, Senator Kyl.

This is a hearing of the Indian Affairs Committee, and this hearing is on the subject of law enforcement.

And it's a very complicated, controversial issue but one that I think is absolutely necessary that we deal with and attempt to understand and attempt to solve some of the problems that exist with respect to law enforcement on Indian Reservations.

Before we begin the hearing, I'd like to call on the Chief Judge of our host tribe, Delbert Ray, to offer a traditional prayer. Mr. Ray?

[Prayer held.]

The CHAIRMAN. Let me say, first of all, I'm honored to be here on the Salt River Pima-Maricopa Indian Reservation, to be a part of your community today, and convene this hearing.

I want to make a couple of comments, then give an opening statement, then call on my colleague, Senator Kyl, for an opening statement, after which we will hear from witnesses and ask questions.

First, I want you to know that when I became Chairman of the Indian Affairs Committee, I made it the highest priority of my work to try to move the Indian Healthcare Improvement Act.

It has been 18 years since that was dealt with on the floor of the United States Senate and approved, and I'm proud to tell you that at long last, at long, long last, the United States Senate has passed the Indian Healthcare Improvement Act within the last three weeks, and that is I think a significant victory.

The Committee considers it its top priority. We will now work to go to Congress with the U.S. House when they have completed their bill, which we expect in the next several weeks, and we are going to get this done.

Law enforcement is a serious issue. So, too, is the issue of Indian healthcare, and I tell you about that progress because, No. 1, I'm very proud of it and, No. 2, Senator Kyl played a significant role in it.

Senator Kyl and I met last November and then talked again in December and developed a strategy and a plan.

And Senator Reed, to his credit, allowed us to get to the floor of the United States Senate and stay there until we got it done.

Senator Kyl played a pivotal role in helping me limit amendments and getting the votes, and so I'm proud to be here in his state to be able to come and thank you for making some very significant progress. So Senator Kyl, thank you very much.

I do want to make an opening statement and then call on Senator Kyl for his opening statement. Perhaps before opening statements, let me do one other thing.

We have some staff with us today, and I want to identify them for you because they do a lot of work on all of these issues. They were also instrumental in allowing us to get the Indian Healthcare Improvement Act completed.

The Staff Director of the Indian Affairs Committee is Allison Binney. Allison, would you identify yourself? Stand up.

The Policy Director is John Harte. John is behind us. They are both really skilled attorneys and terrific staff members of this Committee.

Senator Murkowski's staff director on the Indian Affairs Committee is David Mullon, and David has done a great job and served in that position with Senator McCain as well when he was Chairman of this Committee, and Ryan Smith is here with Senator Kyl.

Senator Kyl, before you make a statement, did you have any comments?

Senator KYL. That's okay.

The CHAIRMAN. Let me make an opening statement that describes why we're here, and it's a couple pages in length. But I think we need to set the stage, so I want to tell you what we are trying to do.

This is the fourth hearing that we have held to examine the issue of law and order in Indian Country. We have in our previous three hearings I think discovered that there is a very severe public safety crisis in Indian Country.

Today's hearing is going to focus on what are the proposed reforms and changes; but before we discuss the reforms, I want to talk about what we have been learning.

There is a long-standing, and I think in some cases, life-threatening crisis with respect to the issue of law enforcement on Indian Reservations.

One cause and the most obvious cause for me to understand is just the lack of law enforcement officials. I mean, we have about 40 percent fewer law enforcement officials than we ought to have to deal with the sheer size of the territory.

I mean, I know of circumstances where someone calls in a crime being committed and urgent need for a response, and the law enforcement person on duty responds as fast as they can immediately, and it takes them an hour and a quarter to get there.

Now that's on one of my Reservations. I mean, you could understand when you have got a million acres or more and one or two people on duty, you can understand the circumstances.

Tribal detention facilities and jails are in shambles. I have a couple of photos you will see of things dripping from the ceiling. If you have toured any of these facilities, you know exactly what I'm talking about.

The lack of detention space means that in many cases it's a catch and release system for those who commit crimes, with only the most violent offenders ultimately being incarcerated and other offenders released to offend again.

Domestic violence and sexual assaults have reached epidemic proportions on some Reservations. Two out of every five Native women will be victims of domestic violence, we are told, in their lifetimes; and one in three will be a victim of a sexual assault in their lifetime. Now those are stark, difficult numbers just to comprehend.

We have heard testimony that some tribal police are forced to prioritize their rape cases and take only those that will come with a confession. In other cases, they are just not dealt with.

Teen suicide on Reservations is twice the national average in the Northern Great Plains. In some areas, teen suicide is ten times the national average.

Methamphetamine has plagued a lot of tribes and communities, and the addiction rate is astronomical. We have evidence that we have meth dealers moving from reservation to reservation trying to addict Native Americans and making certain that Native Americans are not in possession of the meth, if there is an arrest, because they feel that if they are non-Indian on the Reservation and are holding meth, they cannot be arrested.

We had a tribal chair last year testify that of 25 pregnant women on her Reservation—she is the tribal chair. Twenty-four of 25 pregnant women tested positive for methamphetamine. That is a crisis.

Now, I could go on and on about the bad news. The question is: What kind of good news can we create. How do we address this.

On November 7, 2007, we released a concept paper. I asked John Harte, a very skilled attorney, has a lot of experience on all of these issues, he comes from a tribe in New Mexico. I asked John Harte to go around the country and consult with tribes, and he did.

One of the things on this Committee that's very important to me is that we don't do anything without consultation with tribes.

So we released a concept paper on law enforcement. This isn't a paper we are trying to say, "Here it is, take it or leave it, here's what I believe."

It's a paper that addresses a whole series of concepts that might or might not work, but things that we think would be helpful, some very controversial because this gets into areas of sovereignty and jurisdiction and so on.

We need to find a way to weld together the combined efforts of state government, local government, the Federal Government, and tribal government to try to deal with law enforcement.

Tribes have limited authority at the local level to deal with violent crimes. They can sentence offenders to no more than one year incarceration. That's limited authority.

As a result, victims in Indian Country, they rely on the Federal Government, specifically the FBI and the United States Attorney's Office, to investigate and prosecute and, often, the cases there are declined.

We don't have the declination rate, but we understand it's—very often it is not the top of the agenda for the U.S. Attorney's Office.

I'm not tarnishing the U.S. Attorney's offices here. Many of them do a remarkable job; some not. But in any event, the tribal government is certainly not in control of this because they don't have the capability.

The issue of tribal/state cooperative agreements is an important issue, the issue of local tribal authority.

Tribal police, for example, often don't have the authority and the tools to effectively secure tribal communities and so federal laws make it difficult for officers to access federal criminal history databases.

Now think of that. A tribal police officer making an arrest has difficulty accessing the national criminal history databases.

They don't know who they are dealing with. They can't access that as a law enforcement official. So these are just some of the things we need to fix.

The jurisdictional questions are real and serious. We are talking about tribal jurisdictions. Those are always controversial issues.

Current law fails to provide the local tribal government control over crimes in their community because, you know, the fact is many misdemeanor crimes, domestic violence, simple assault, and so on simply go unpunished because the resources don't exist to handle it.

Or a non-Indian coming on the Reservation—by the way, 70 percent of the crimes against Indian women on Reservations are committed by non-Indians, and the law enforcement on Reservations has no jurisdiction to make that arrest and prosecute.

And so those are the issues. There are a lot of them. They are controversial and difficult, but the fact is I'm here because we need to fix it. We need to find a way to fix it.

I'm interested in your ideas. What are the nuggets of ideas that you think could advance the interest of improving law enforcement on Indian Reservations?

Who should do it? What's the Federal Government's responsibilities? What's the State Government's responsibilities, local government?

And what can we do to consider things like cross-deputization and other things that some feel are controversial issues, but I feel in many ways are going to be necessary to really put this together.

So that's why I'm here, and that's a short speech. I won't give another speech today because I'm here to listen.

But as I said, I'm very pleased that our colleague, Senator Kyl, from your home state of Arizona is here, and I'm pleased with the

role that he has played on Indian healthcare especially and his interests because Senator Kyl came to me and asked if we could hold a hearing on law enforcement here in Arizona.

I'm pleased at his interest in this issue as well because it's hard to find good help in the United States Senate, and Jon Kyl is good help. So maybe together he and I can effect some changes that will save lives and make life much, much better on Indian Reservations.

Senator Kyl.

STATEMENT OF HON. JON KYL,
U.S. SENATOR FROM ARIZONA

Senator KYL. Thank you, Mr. Chairman. Welcome to Arizona, and thank you for all that you have done for the people in Indian Country throughout your chairmanship, especially holding this hearing on this important issue.

It was ten years ago almost to the week that I held a hearing—actually it was in Phoenix—and some of you in this room I think were at that hearing on the same subject, and it's sad to say we have not made much progress in the meantime.

I also want to commend you again for the Indian health legislation. Without Senator Dorgan's long, hard work on the issue, that would not be reality.

And he's right, that several times he had to go to a majority leader and say: Don't think we can't get this done. Please schedule it for the hearing. Believe me, we can make it happen.

And through his hard work and cooperation with a lot of people on both sides of the political aisle, it was possible to get it done. So I really appreciate his leadership and his interest in this important subject.

I also want to thank President Enos and the Salt River Pima-Maricopa Indian Community for hosting this event and to congratulate Diane Humetewa, our United States Attorney for the District of Arizona, the first Hopi woman ever to be, and in fact I believe the first Native American woman ever to be a United States Attorney, and we are very proud of that fact here in the state of Arizona and we look forward to hearing from her later.

Arizona is the home to more than twenty Indian tribes, and they all face unique enforcement issues.

One challenge common to all of them is the lack of federal funding to meet their basic needs, stemming primarily from the fact that they are stretched so thin because of the large land area involved.

The United States Government has a trust responsibility to provide public safety in Indian Country, and that means helping provide the resources that are necessary, and yet the Federal Government has consistently fallen short in meeting that obligation.

The picture that Senator Dorgan had on the screen a little while ago of leaks in the roof of the Tuba City jail right there, I was there.

In fact, I was invited to come—I'm sure they arranged this, Byron. But I arrived on a Saturday night and it was raining, so I saw firsthand that, yep, it leaks.

But more than that, the facilities are not adequate either in the sense of their quality or in numbers to take care of the people involved.

In fact, I'm told in one case, and there are many such cases, last year where a woman from Chinle on the Navajo Indian Reservation was beaten severely.

Her assailant had twice been arrested for similar violations, but there simply wasn't any space to hold him. He was released and he beat her again so badly that she had to be hospitalized.

And this happens over and over and over again, and it's that failure to meet our responsibility that causes us to be here today.

Of course this is true throughout the country, this lack of resources to prosecute or to arrest and prosecute and detain criminals, but as a result a public safety crisis exists in Indian Country. And it's exacerbated, as Senator Dorgan said, by the complex Indian criminal jurisdiction maze.

The proposals being discussed today are the first step in addressing conditions that threaten law and order in Indian Country.

While some of the proposals need to be considered more carefully, it's important that we at least begin a dialogue, and that starts with getting the ideas from all the folks who live on the Reservations here and are impacted firsthand.

One area that I hope is highlighted during the hearing are the detention facilities because that's clearly an area where the need has been established and we should be able to get resources for it fairly quickly.

Mr. Chairman, I have got a much more lengthy statement I'd like to put in the record, but I think it's important for us to hear from the witnesses now so, again, I thank all of you who are present, and I thank you again for conducting this important hearing.

[The prepared statement of Senator Kyl follows:]

PREPARED STATEMENT OF HON. JON KYL, U.S. SENATOR FROM ARIZONA

Mr. Chairman and members of the Committee, thank you for holding this hearing on this important issue. I also want to thank President Enos and the Salt River Pima-Maricopa Indian Community for hosting this hearing.

Arizona is home to more than 20 tribes, all of which face their own unique set of law enforcement issues. One challenge common to nearly every tribe in Arizona is a lack of federal funding to meet basic law enforcement needs. The United States has a trust responsibility to provide public safety for Indian country. The Federal Government, however, consistently falls short of meeting this obligation. Indeed, tribes throughout the United States lack staff and resources to arrest, prosecute, and detain criminals. As a result, a public safety crisis exists in Indian country. This crisis is often exacerbated by the complex Indian criminal jurisdiction maze.

The proposals being discussed today are the first step in addressing the conditions that threaten law and order in Indian Country. While some of the proposals need to be considered more carefully, it is important that we, at least, begin a serious dialogue on these issues.

One area that I hope is highlighted during this hearing is Indian detention facilities. According to a Justice Department study, American Indians experience violent crime at a rate more than twice the national average, yet tribal detention facilities have been grossly under-funded and are in an appalling state of disrepair. A 2004 report by the Inspector General confirms that Indian detention facilitates are "Neither Safe Nor Secure." The report states that "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 is a national disgrace."

I have visited Indian detention facilities in Arizona and have witnessed firsthand their deplorable and unsafe conditions. The state of these facilities has negatively affected many of the Indian tribes in Arizona. Take, for example, the Navajo Nation. Itis approximately the size of West Virginia and has a population of more than 170,000. Because a number of the Nation's detention facilities have been closed for health and safety reasons, it only has bed space for 103 inmates. This incredibly low number, which represents only a fraction of its needs, leads to severe overcrowding.

The Navajo Nation has stated that overcrowded jails cause the majority of tribal court judges to defer or reduce sentences. In many cases, the Nation has no choice but to release and return serious offenders to their community in a matter of hours.

Unfortunately, this sometimes leads to tragic results.

For instance, according to the Chinle Police Department, in early 2007, a Navajo man was arrested for the third time for domestic violence and aggravated assault of his wife. Due to a lack of jail space, the offender was released to make room for new arrestees. The offender immediately returned home and beat his wife so brutally she had to be hospitalized.

These problems are not unique to the Navajo Nation. Indeed, many other tribes in Arizona are facing similar problems and are forced to release offenders prematurely.

When offenders are released, it is nearly impossible for tribes to protect their communities and enforce the rule of law. As the Nation has pointed out, the current system creates a revolving door for offenders, which leads to a complete lack of respect and disregard for the tribal criminal justice system. More important, it results in unsafe communities in and around Indian country.

The Bureau of Indian Affairs and Justice Department can take a number of actions to improve the conditions of tribal detention facilities, though whether these conditions improve largely depends on the level of federal funding for tribal jails.

Consequently, I have advocated increased funding for tribal detention facilities in Arizona. Thankfully, the appropriations committees have recently recognized the deplorable conditions of Indian detention facilities and recommended increased funding for Indian jails. The Administration, however, must also make this issue a priority and include sufficient funding in its budget to address this crisis in Indian country. If immediate action is not taken, crime rates on the reservation will continue to remain high and the communities in and around the reservations will be neither safe nor secure.

Once again, I commend the Chairman and members of the Committee for focusing their attention on Indian law enforcement. I hope that the hearing today will help underscore the issues that I have discussed and will bring about thoughtful change to address this public safety crisis in Indian country.

The CHAIRMAN. Senator Kyl, thank you very much. We are going to hear from two panels of witnesses today, and we will include the formal statements in their entirety offered by the witnesses, and we will ask each of the witnesses to simply summarize their testimony.

The first panel is going to be the Honorable Diane Enos, the President of the Salt River Pima-Maricopa Indian Community and, again, we appreciate her hosting us today, Madam Chair.

Second would be the Honorable Vice-Chairman Eldred Enas, the President of the Navajo Nation of Window Rock, Arizona, who may come forward.

And third, the Honorable Samson Cowboy. And Mr. Cowboy, I don't have your title. Mr. Cowboy, you are with the Navajo Nation, the Navajo Public Safety Director.

Let me say that the second panel will be the new U.S. Attorney of Arizona, the Mayor of the City of Phoenix, and then the Chief of Police of the Town of Parker.

So we are trying to get perspectives from a lot of different areas and levels here, and I think this will be an interesting opportunity to learn.

Madam Chairwoman, thank you very much for hosting us. Why don't you proceed. And if you want to pull those microphones down just a bit, I think they are probably already on.

STATEMENT OF HON. DIANE ENOS, PRESIDENT, SALT RIVER PIMA–MARICOPA INDIAN COMMUNITY

Ms. ENOS. Good afternoon. My name is Diane Enos. I am the President of the Salt River Pima-Maricopa Indian Community.

I would like to welcome you to the community on behalf of the people of the community, and I want to thank you also, Mr. Chairman, Senator Dorgan; the Senate Committee on Indian Affairs; and members of the Committee for scheduling this meeting here at Salt River.

I would also like to thank Senator Jon Kyl for his presence here today. Both of your presence speaks highly of your commitment to law enforcement issues in Indian Country.

For the record, I have submitted a copy of my testimony which describes in detail our issues and recommendations regarding law enforcement in Indian Country.

I would like to thank the Committee for your exemplary work on the law enforcement concept paper, and today I will focus my comments on the jurisdictional component of your paper.

We strongly urge Congress to restore criminal jurisdiction on a government-to-government basis, and the criminal jurisdiction over non-Indians should be tribal government.

The viciousness and frequency of crimes committed today by both non-Indians and Indians has increased greatly since the Oliphant, Wheeler and Duro Era.

Weapons have become more prevalent and easily accessible, and society has become more mobile. If you recall, Salt River was the site of the Duro versus Reina case which called for a Congressional act to fill a jurisdictional void over nonmember Indians. The void exists with regard to non-Indians.

An example of this is the increasing frequency of drive-by shootings. In January of 2008 alone, there were 12 drive-by shootings of residences, and in February there were 5 drive-by shootings which included that on a church. Legislation to make drive-by shootings a federal crime should be introduced with commensurate punishment.

The Salt River Pima-Maricopa Indian Community is located within the Phoenix metropolitan area that has a population of approximately three million people with three major freeways.

Two of those freeways are within the Salt River Pima-Maricopa Indian Community. The freeways bring traffic levels in excess of 175,000 vehicles and 100,000 people and more, each day throughout our community.

A dialogue has begun regarding the need for tribes to have criminal jurisdiction over non-Indians. It is not a matter of solely wanting to exercise sovereign authority over our own territory, although that should be understood and appreciated. Rather, to me, it is the most basic matter of maintaining the peace, protecting people and their futures.

An example of some of the issues that we face here at Salt River can be borne out in some of the statistics. These are included in my record—in my testimony record.

For example, in the first quarter year, October of 2007 to December 2007, there were 18,220 calls for the Salt River Police Department.

There were 5,041 reports. There were 105 DUI arrests, 2,222 citations, and 18 narcotics arrests. Keep in mind, this is only from October to December. Two months.

During that period of time, Salt River detectives seized—there were on call 65 times and they seized 1,728 items of evidence.

There was 20 firearms seized of all types—rifles, AK–47s, SKSs, shotguns, pistols, etc. There were 28,423 telephone calls to the Salt River Police Department in that short two month period.

Now as far as the Indian and non-Indian arrests, I have some statistics. I presented these statistics to the National Congress of American Indians when the hearing was held about two to three weeks ago in D.C.

And just to pull out some of the significant numbers in those, for the calendar year of 2007, in February of 2007, there were 142 Native arrests and there were 215 non-Native arrests in Salt River.

Another example. More times than not, the number of Native arrests surpassed the number of non-Native arrests.

For instance, in May of 2007, there were 228 Native arrests and 152 non-Natives. Now take that to October of last year. There were 165 Native arrests, but for that same month there were 245 non-Native arrests by the police department.

In November, there were 160 Native arrests in Salt River. That same month, there were 242 non-Native arrests. In December, 183 Native arrests as opposed to 301 non-Native arrests in Salt River.

Our statistics also bear out that every 19 hours, there is a crime of domestic violence. Every 71 hours, there is a crime against a child for abuse, neglect, or molestation.

There is an accident, traffic, that occurs every 7 hours. Last calendar year in 2006, there was 1,281; in 2007, I believe there was 1,090. I give you these statistics as an indication of the law enforcement issues facing the police officers daily.

We have 117 sworn officers. Our population is approximately on the Reservation 5,000 members—total membership is 8,500. A lot of those live off the Reservation.

Compounding the issue is the imposition of legislation such as the almost unfunded mandates of the Adam Walsh Act and the Violence Against Women mandate. Tribes must create a sex offender registry, yet tribes do not have the authority to arrest or detain non-Indians.

In addition, not all tribes have access to the National Crime Information Center which provides law enforcement agencies with access to nationwide criminal data.

We propose that a pilot project be considered and funded for a certain number of tribes to exercise criminal jurisdiction over non-Indians.

In my testimony we outline the purpose, need, scope, duration, criteria, evaluation, retrocession, and termination of such a pilot project. I would like to highlight the criteria.

The first point is that a tribe must demonstrate capability to provide adequate law enforcement services. I mentioned that our community has a 117 sworn law officers, peace officers.

Another criteria is that they must enter into intergovernmental agreements.

Third criteria, have existing Special Law Enforcement Commission Cards; and the fourth criteria is that they have an above average record for past seven years in providing police services.

The evaluation tools and schedules will be developed and implemented on a regularly scheduled basis. At the very least, in one-year intervals a process would be established to allow a tribe to retrocede jurisdiction to the Federal Government.

A criteria for termination would be established to determine when a tribe is no longer able to consistently do the project.

As a side note here, we also recommend that legislation be introduced making drive-bys a federal crime with punishment commensurate with attempted homicide. In Salt River alone, we have had 12 drive-by shootings in 2008 in January.

Thank you again for the opportunity to testify on such a critical matter that involves the health, safety, and peace not only of our community members but the lives of all those guests, customers, visitors, through our community. I look forward to answering any questions that you may have regarding my testimony.

[The prepared statement of Ms. Enos follows:]

PREPARED STATEMENT OF HON. DIANE ENOS, PRESIDENT, SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

Good afternoon! My name is President Diane Enos of the Salt River Pima-Maricopa Indian Community (SRPMIC). I would like to thank Chairman Byron Dorgan of the Senate Committee on Indian Affairs and members of the Committee for scheduling this hearing and I would also like to thank Senator Jon Kyl for his presence here today. What you've proposed through your Indian Country Law Enforcement Concept Paper is the first step and we look forward to its introduction, approval by the United States Congress and becoming law upon the President signature for this critical piece of legislation.

Background

The Salt River Pima-Maricopa Indian Community was established by Executive Order on June 14, 1879 by President Rutherford B. Hayes and is located in Maricopa County, aside the boundaries of the City of Mesa, Tempe, Scottsdale, Fountain Hills, and our neighbors to the east is the Fort McDowell Yavapai Nation. The population of the SRPMIC is approximately 8,000 with a land base of 53,600 acres and we maintain 19,000 acres as a natural preserve.

Snapshot of SRPMIC Law Enforcement Personnel

The SRPMIC is currently staffed by one hundred and seventeen (117) Police Officers with eleven more in the State Police Academy. In addition, we have thirty-nine (39) Civilian positions that provide staff support to our Police Officers. Due to the surrounding municipal governments of Scottsdale, Mesa, Tempe and Fountain Hills we have approximately one hundred thousand (100,000) persons and one hundred seventy-five thousand (175,000) vehicles that travel daily throughout the SRPMIC.

Law Enforcement Concept Paper

I would like to address several components of your Concept Paper and I will also address our unique situation.

1. Jurisdiction

- *Restore criminal jurisdiction on a government-to-government basis.*

  Criminal jurisdiction over non-Indians should be restored to Indian Tribal governments. The intent in the passage of the Adam Walsh Act and the Violence Against Women Act both recognize tribal involvement and mandate tribes to

comply with certain requirements, such as maintaining a sex offender registry of all offenders, yet tribes do not have the authority arrest/detain non-Indians. Major freeway systems and traffic congestion bring non-tribal members through our Community in large volumes. We need to equip our Police Officers with the necessary laws, tools, and protection to do their job in protecting our Community members.

Recommendation—Jurisdiction

1. To create a law making drive-by shoots a federal crime with commensurate sentencing.
2. To share Indian Crime Data Reporting with states and other tribes.
3. To establish and fund a Law Enforcement Pilot Project.

Indian Country Law Enforcement Pilot Project

The viciousness and frequency of crimes committed today, by both non-Indians and Indians has increased greatly since the *Oliphant, Wheeler* and *Duro* Era. Weapons have become more sophisticated and available; drug and alcohol use has become more prevalent and easily accessible; and society has become more mobile.

The intensity and repetition of crime and its after affects has hit hard in Indian Country and the Salt River Pima-Maricopa Indian Community (SRPMIC) is no exception. In fact, because the SRPMIC, is located within the Phoenix Metropolitan area that has a population of over three (3) million persons with three major freeways within the SRPMIC that bring traffic levels in excess of one hundred seventy-five thousand (175,000) vehicles and one hundred-fifty thousand (150,000) persons a day, we experience even more crime committed by non-Indians. Tribes are scrambling to provide adequate law enforcement services to the community as a whole. The glaring gap in those protections is the lack of criminal jurisdiction over non-Indians who are free to enter the SRPMIC and who have become aware of the lack of criminal jurisdiction.

In earlier times, the common thought was that "Indian Country is no-man's land; Indian people seek haven on the reservation." Now, the tables have turned: Indian Country is perceived as a safe haven by non-Indian criminals.

Compounding the issue is the imposition of legislation such as the (almost-unfunded) Mandates of the Violence Against Women Act (VAWA) and the Adam Walsh Act (AWA). Tribes are placed in a position of having to police non-Indian activity without having enforcement authority. There are still the "less serious" crimes that pose safety, health and peace concerns.

A lack of criminal jurisdiction over the non-Indian criminal segment of the population places the lives and property of the SRPMIC and its members in jeopardy as well as the non-Indian population who are here as visitors, employees, residents, students and customers. The Scottsdale Community College is located within the boundary of the (SRPMIC). It also sends a clear message to the non-Indian criminal element: the morass of jurisdictional lines complicates, and frequently obstructs, adequate enforcement of law.

A dialogue has begun regarding the need for Indian tribes to have criminal jurisdiction over non-Indians. It is not a matter of wanting to take a political stance and exercise sovereignty. Rather, it is the most basic matter of maintaining the peace, protecting people and their future.

While many tribes may not want, or are in no position to exercise such jurisdiction, there are some tribes that feel the *need* more than the *desire* to exercise criminal jurisdiction over non-Indians.

Towards that end, the Salt River Pima-Maricopa Indian Community proposes that a pilot project be considered for a certain number of tribes to exercise criminal jurisdiction over non-Indians. Criteria would be established on a government-to-government basis similar to self-governance statutes and regulations.

Pilot Project Purpose

The Purpose of the Pilot Project is:

- To enhance the safety of SRPMIC members, visitors, employees, non-SRPMIC member residents and law enforcement staff; and
- To keep the peace within the boundaries of the SRPMIC.
- To protect the lives and property of SRPMIC and its members.
- To provide a continuum of law enforcement services with adjacent jurisdictions.

Pilot Project Need

The following examples provide for you a snapshot of gaps in Law Enforcement Authority over non-Indians:

- *Domestic Violence*—Non-Indian (suspect) assaults American Indian victim who are or were in a relationship (standard domestic violence), the suspect cannot be charged with State crime of domestic violence since the victim is American Indian; even though all Salt River Police Officers are State Certified Police Officers. The suspect may be charged with a Federal Crime since all Salt River Police Officers now have the Special Law Enforcement Commission Cards (SLEC), but only if the injuries are very substantial. The suspect may now only charged with only disorderly conduct.
- *Assault*—A non-Indian suspect assaults an American Indian victim and the suspect cannot be charged with State crime of assault because the victim is American Indian; even though all Salt River Police Officers. The suspect may be charged with a Federal Crime since all Salt River Police Officers now have the Special Law Enforcement Commission Cards (SLEC), but only if the injuries are very substantial in nature. If not, the suspect may be charged with only disorderly conduct.
- *Burglary*—A non-Indian suspect burglarized an American Indian residence and the suspect cannot be charged with a State crime of burglary because the victim is American Indian; even though all Salt River Police Officers are State Certified Police Officers and the all of our Officers are federally certified with the SLEC cards, the Federal charges would not apply. The suspect may only be charged with trespass.
- *Stolen Vehicles*—A non-Indian suspect steals an American Indian's vehicle, the suspect cannot be charged with a State Crime of Vehicle Theft (if apprehended within the SRPMIC) because the victim is an American Indian, even though all Salt River Police Officers are State Certified Police Officers and all of our Police Officers are federally certified with the SLEC cards. In the SRPMIC experience, federal charges would not apply. The suspect may not be charged with any crime.

All of the examples are compounded by the Salt River Police Department statistics and data, which include the following:

SRPMIC Police Department Reports

In 2007 a total of one hundred two thousand and six hundred seven (102,607) police reports have been filed. Based upon our 2007 Salt River Uniform Crime Reports (UCR), we know that domestic violence occurs every nineteen hours (19) for a total of four hundred fifty-one (451) crimes, Criminal damage occurs every nineteen (19) hours with four hundred fifty-two 452 crimes, a crime against a child occurs every seventy-one (71) hours for one hundred-twenty four (124) crimes and one accident occurs every seven hours (7) hours for one thousand two hundred eighty-one (1,281) accidents/crashes.

SRPMIC Domestic Violence

2008: Thirty-two (32) crimes for January
2007: Four hundred fifty-one (451) crimes
2006: Four hundred ninety-six crimes

Once case of interstate domestic violence VAWA was successfully prosecuted by the United States U.S. Attorney's Office (USAO) The Salt River Police obtained a Federal arrest warrant and located the suspect within seventy-two (72) hours and made an arrest. Subsequently, the defendant in the case was sentenced to thirty (30) months in the Federal Bureau of Prisons (BOP). The Salt River Police Department also provides Arizona Law Enforcement Academy (ALEA) Police Academy Instructors on domestic violence for full faith and credit. Part of our internal process is to send an Officer to the victim to Notify Upon Release of the perpetrator. We also require twenty-four (24) hour incarceration in our Salt River Department of Corrections (SRDOC).

Violent Crimes 2006–2007

In calendar year 2006 we had fifty-five (55) drive-by shootings and in 2007 we had a total of twenty-nine (29) drive by shootings of which eight (8) arrests were made and two (2) of these cases involved serious injuries.

SRPMIC Violent Crimes 2008

So far this year we've had twelve (12) drive-by shootings and one (1) walk up shooting occurred where the suspect was apprehended. In February 2008 a total of six (6) drive-by shootings occurred within one (1) hour on a Sunday morning. Fortunately, there were no fatal injuries. On this same day two (2) shots were fired at

our Police Officers. Some of the firearms confiscated from the drive-by shootings include high powered rifles, AK–47, SKS, shotguns and pistols.

Statistics for FY 2007–2008 Fiscal Year (October 2007–December 2007)

- Eighteen thousand two hundred-twenty (18,220) calls for service.
- Five thousand forty-one (5,041) Police reports.
- Average response time for life threatening calls is three minutes (3) and fifty (50) seconds.
- Average response time for priority two, which is in progress, is four (4) minutes and ten (10) seconds.
- Eight thousand nine hundred-ninety (8,990) hours of training.
- Two hundred ninety-four (294) Accidents/Crashes.
- Two thousand two hundred-twenty-two (2,222) Citations were issues.
- One hundred-five (105) DUI arrests.
- Eighteen (18) Narcotic arrests.
- Detectives and Crime Scene Specialists were called out sixty-five (65) times.
- One thousand seven hundred twenty-eight (1,728) items of evidence were impounded for the quarter.
- Twenty (20) fire arms seized.
- Twenty eight thousand four hundred twenty-three (28,423) calls were received by the Salt River Police Department Communications Center. Three Thousand two hundred ninety eight (3,298) were 911 calls for service.
- One hundred fifty-one (1510 alarm signals received by the Salt River Police Department Communications Center.

Pilot Project Scope

Jurisdiction would be over non-Indians who commit an offense within the exterior boundaries of the SRPMIC and for whom, had they been a Community member or non-Community member Indian, the SRPMIC would have criminal jurisdiction.

Pilot Project Duration

The Pilot Project would be in place for a three-year period, after which time it would be evaluated and determined whether it should continue.A report, including the outcomes of such evaluations shall be reported to the United States Congress annually.

Pilot Project Criteria

Criteria would be established on a government-to-government basis.

a. Demonstrate Capability to Provide Adequate Law Enforcement Services.

b. Enter into Intergovernmental Agreements.

c. Have existing Special Law Enforcement Commission Cards (SLEC).

d. Have above average record for past seven (7) years in providing police services.

Pilot Project Evaluation

Evaluation tools and schedules will be developed and implemented on a regularly scheduled basis, at the least, in one-year intervals.

Pilot Project Retrocession

A process would be established to allow a tribe to retrocede jurisdiction to the federal government, it may do so.

Pilot Project Termination

Criteria would be established to determine when a tribe is no longer able to participate in the Project.

2. Financial

- *Restore Funding for Crime Labs.*

  FBI discontinued $450,000 funding to Arizona Dept. of Public Safety for processing tribal and state case evidence. This decision created an inability for Arizona Tribal Police Departments to effectively process and prosecute cases due to the absence of funding. Arguably, this federal trust responsibility was previously met for years and for reasons unknown, has since been abandoned. SRPMIC had to enter into a costly Intergovernmental Agreement one hundred fifty thousand dollar ($153,000) Agreement with the City Scottsdale in order to

ensure that law enforcement services would continue. We recognize that not all tribes have that close proximity, or the finances available. We would request funding be made available to assume cost for lab cost(s). The Federal Bureau of Investigation's response is "It's a budgetary matter."

- *Increase and make permanent adequate funding for law enforcement services.*

  The SRPMIC is fortunate to have the necessary resources and partnerships to support our law enforcement personnel and programs. However, other tribes are in desperate need of revenue.

- *Increase funding for Detention Centers, but more importantly, for Operations and Maintenance for both adult and juvenile facilities.*

  The SRPMIC is fortunate to have our own newly built adult and juvenile Correctional facility, however, maintenance costs is still needed to Ensure we provide upkeep to our facility.

- *Clarify and strengthen review of declinations from the US Attorney's Office.*

  Working hand in hand with the U.S. Attorney for the District of Arizona, Funding for training of Officers and ways to secure and maintain evidence is critical for victims who often times have no voice.

3. Education

- Federal staff should be educated on the trust responsibility and the various levels of jurisdiction throughout Indian Country. In negotiating agreements with federal agencies, it can take extra time to try to get federal representatives to understand that the relationship of the tribe to the federal government differs. For example, the BIA Manual does not apply to tribes that have entered into a self-governance compact.

4. Intergovernmental Relations

- Special Law Enforcement Commissions cards.

  For years, some tribes have held such commissions without need for an IGA. The Agreements developed were imposed on tribes who have taken on a federal responsibility, and have successfully fulfilled the responsibility. Yet, the Agreements did not totally meet the needs, nor were they "negotiated". SRPMIC began "negotiating" in Fall 2003 and finalized our negotiations in Winter 2007 with the Bureau of Indian Affairs to enter into an Agreement that meets the needs of our community and follows the terms of the Compact. Six years is much too long a timeframe to wait for Special Law Enforcement Cards (SLEC) when our people and law enforcement personnel are being violated.

- Since 1994, the SRPMIC currently has Intergovernmental Agreements and Contracts with the Arizona Department of Public Safety (AZDPS) Highway patrol. AZDPS is the primary law enforcement investigator of motor vehicle collisions involving non-Indians that occur on the freeways within the SRPMIC. These include SR Loop 101, SR 202 and SR 287 Beeline. If SRPMIC members or Indians are involved, the SRPMIC Police department will investigate the incident. We also contract with the City of Scottsdale Police Department Crime Lab to process our evidence. This after the Federal Bureau of Investigation (FBI) refused to continue this service for Arizona tribes. Indian Country evidence is now processed in Quanitco, Virginia.

- Since 1995 we've had a contract with the City of Mesa Police Department, Center Against Family Violence (sexual assault and domestic violence assaults).

- *Consultation—Not done in Adam Walsh Act*

  The Act, specifically the sections which affect Indian Country, were done without consultation with Indian Tribes. Tribes were also given a unilateral choice to comply by opting in to develop and coordinate a registry, or have state law imposed. Tribes under PL 280 jurisdiction were not even given an option.

- Lack of Communication of Matters

  From time to time changes in personnel and programming require notification to the tribal government leaders and Police personnel.

5. Homeland Security

- An overarching principle is that Indian tribes have throughout the years, practiced "Homeland Security" both amongst the tribes and currently through development of governments, legislation and the judicial system.

- The United States political borders are not always the same as tribal cultural borders, yet we are bound and current practices are now being thwarted, by such legislation as the Patriots Act and the REAL ID Act.

- Tribes should be exempted, or at least allowed to opt-out of legislation aimed
- at advancing national security and fighting terrorism against the Untied States.

6. Passage of the Indian Health Care Improvement Act

The physical and mental health of individuals is a crucial component to reducing recidivism. We are grateful for the Senate Committee On Indian Affairs and your efforts to ensure the passage of the IHCIA. We look forward to its passage on the House side and being signed into law by the President.

Thank You for the opportunity to testify on such a critical matter that involves the health, safety and peace of not only our Community members but the lives all those who are not members of the SRPMIC. We look forward to success passage and implementation of this legislation and I commend the Senate Committee on Indian Affairs for your exemplary work and commitment towards restoring the federal responsibility in Indian Country.

The CHAIRMAN. President Enos, thank you very much for your testimony. We appreciate you being here and we appreciate your hosting us.

Ms. Enos. You're welcome.

The CHAIRMAN. Next we will hear from Mr. Samson Cowboy, a Navajo Public Safety Director of the Navajo Nation of Window Rock, Arizona.

Mr. Cowboy, you may proceed.

STATEMENT OF SAMSON COWBOY, PUBLIC SAFETY DIRECTOR, NAVAJO NATION

Mr. COWBOY. Thank you, sir. Good afternoon. Chairman Dorgan and Senator Kyl and your staff, thank you for being here.

This is an honor. I come from a detention law enforcement and police service and correction—or detention background.

I have walked many miles on those concrete surfaces that you have shown there in the detention facility way back when in 1983.

Then I became a police officer, and I drove many miles on dirt roads, and I made many arrests and some that had ended on the dirt, and I have been shot at and I have requested for backup which was two hours away.

I have experienced all that, and I have worn many hats being a criminal investigator. One day I would be a social worker. The next day I would be a fire marshal. There are weeks I would be a coroner. Then finally a month later, I would be back in my old job as a criminal investigator.

I have experience, and I have been in the shoes of our people that are in law enforcement. My people that I oversee as a Division Director of Public Safety, I have great respect for them, and that's the reason why it's a great honor to be here.

Again, my name is Samson Cowboy. I am Division Director, and I'm representing President Joe Shirley, Jr. Unfortunately, he couldn't be here today for other emergency issues that he had to tend to. Nonetheless, I will summarize some of his remarks.

The Navajo Nation is 21,000 square miles, and we cover three states. And you all have different needs, different jurisdictional issues, different types of statutes that we have to deal with when it comes to State.

We have to deal with the different type of way the management is and the different United States Attorney's Office. However, as partners with the States and with the Federal Government, I think we are in good standing. We have been working diligently side by

side on a lot of meth issues, bootlegging issues, and prosecuting some of the crimes on the Navajo Nation.

However, there are some still discrepancy that still exists within the three states. I think with this hearing, that might be one of the issues that need to be looked at at how we can uniform one jurisdiction on the Navajo Nation with regard to Federal.

And the State we have cross-jurisdiction that we have implemented. We have MOUs that we have put in place with the sheriffs, and that's working.

The other issue that we deal with is the non-Indians. As you know, when you look at the map, Navajo Nation is like a big hole there when you see the Nation out in the boundary outlines.

We have a haven for criminals that are coming on to the Nation, particularly those that are trafficking drugs.

We have a high crime of drug trafficking, and we also or have encountered domestic violence by non-Navajos which is also an issue when it comes to jurisdiction.

Our law enforcement responds to over a quarter of a million calls a year, and those calls are for all types of services, and the law enforcement are our first responder on the Navajo Nation.

We had 174 police officers in 2003, and we had increased it to 350 or 73 and now we are back to 347 because of the surrounding agency are recruiting our people. These are some of the areas that we are competing with over manpower because of salary and that funding issue.

The criminal investigators that we have are very capable of providing the service. However, when we had the Safe Show Task Force that was in place with the FBI, it was very effective.

That's another area of our concern, if we can with assistance from your Committee, maybe that can be recommended and we can get back together on that and work with the Safe Show Task Force as it was before.

The detention facility. You have shown that picture with the ceiling that's cracking. That facility has since been closed, and we also closed another facility which is Chinle.

The only facility that is open is Tuba City, Crown Point—not Tuba City—Shiprock, Crown Point, and Window Rock. Those are the only three facilities.

And we have 20 bed space with the BIA in McKinley County, so we have a total of 83 bed space a year ago, but now we have 53 bed space. So that's a dire need for us, a facility.

In order for us to satisfy some of these sentencing, some of the prosecutor's work that need to be recognized, the courts, a facility is the only thing that's going to resolve our issue.

We can have all the manpower. We are just going to increase the arrests, we are going to respond to high numbers of calls, but we will not solve the problem.

The problem that we have, the basic problem that we have is facility. If we can get a facility, even at least one regional facility, I think that would be sufficient for us as we move along for a long-term solution in building more facilities.

I think one area that I personally would like to see is better coordination between BIA and Navajo Nation in order to build at least one facility.

I know Senator Domenici has been working on some proposal, but that hasn't come to a reality. And we are looking forward to that. I think there needs to be some support on Domenici's initiative on the New Mexico side.

The other concern that we have is the cross-deputization, as it was brought up. We have submitted our documents, and it's not being approved by BIA.

We need to get that deputization so we can protect our people. Our police officers respond to calls, and they get assaulted or they get shot at and the offenders are only charged as—the officers are not considered within the—under the color of law. They are considered as civilian victims so they are not—the individuals are not prosecuted to the fullest. That's the reason why we need the deputization put back in place.

The other area that we are concerned about is with high numbers of calls. I have 46 dispatchers that work throughout the Navajo Nation, and these dispatchers have been with us for a number of years.

However, we are losing them because of retirement. In the Navajo Nation, it was unheard of, retirement for dispatchers, but we are at that stage now and I'm ready to see at least five more dispatchers retire.

I already had four of them retire, and their salary is just a little bit above minimum wage. These are some of the concerns that we have. In order to have an effective law enforcement, I think the support needs to be there.

The other lacking issues that we have is in 911. We don't have the 911. We don't have a telephone service.

The vastness of the land is another issue, and the prosecutor can do their job but without facility, again, that's where we come back to.

And then with the facility, there is no treatment. There is no treatment that comes with it. I think there's got to be some type of treatment that needs to be incorporated when we build these facilities.

All in all, I think this comes down to funding. We can talk about solution, but I think funding is a big issue.

We have a budget of 19 million, but that's shared between three law enforcement programs which is corrections, criminal investigation, and law enforcement. And when the pie is broken down, it's very minimal for our people to realize how much is missing when it comes to budget.

The other thing about the budget is that we had never had an increase in the last four years. So these are other areas of our concern.

With that, sir, I think it's an honor, again, for you to come out here and for us to be here in Arizona, and it was a short trip for me, and thank you very much.

The CHAIRMAN. Mr. Cowboy, thank you very much for your testimony. We appreciate your being here. We appreciate your long service in law enforcement.

The Honorable Eldred Enas is the Vice Chairman of the Colorado River Indian Tribes.

Mr. Enas, you may proceed.

STATEMENT OF ELDRED ENAS, VICE CHAIRMAN, COLORADO RIVER INDIAN TRIBES

Mr. ENAS. Good afternoon, Chairman Dorgan and Senator Kyl, honorable tribal leaders, and guests. I want to thank you this afternoon for the opportunity here to appear before you and to discuss law enforcement issues in Indian Country.

I will highlight some of the law enforcement problems that we face in our Reservation. I can assure you that our problems are not unlike those faced by others in Indian Country.

Law enforcement issues are of increasing importance to all tribes, and we are grateful for the Committee that has dedicated its time and resources to invest in discussions of our concerns and needs.

The Colorado River Indian Tribes, CRIT, is facing the same dilemma as many Indian tribes across the nation.

Its tribal justice system is severely underfunded by the Federal Government. Through P.L. 93–638 contracts, the Bureau of Indian Affairs funds a mere 30 percent of the cost needed to operate the CRIT's law enforcement and detention programs, leaving CRIT to absorb the remaining 70 percent. CRIT has repeatedly objected to this shortfall.

Further, even though CRIT did not renew its P.L. 93–638 contract for juvenile detention, the BIA has not fulfilled its obligation to transport and detain juvenile offenders.

Despite the fact that the program is now the responsibility of the BIA, CRIT continues to incur substantial costs related to the detention and transport of all juvenile offenders.

The issues facing CRIT's three law enforcement programs—juvenile detention, adult detention, and uniformed police—will be discussed in detail.

No. 1, juvenile detention. In May of 2004, the BIA removed all CRIT juveniles from the CRIT juvenile detention facility on the Reservation.

The juveniles were removed because CRIT's juvenile detention facility was connected to the adult detention facility and did not meet the Department of Justice requirements for sight and sound separation between adult and juvenile detainees.

CRIT's juveniles are currently housed at the Gila County Juvenile Detention Center in Globe, Arizona, 5 hours and 250 miles away from the Reservation.

This is a violation of the National Institute of Correction regulations which mandate that no individual subject to incarceration under the Federal system and Federal guidelines can be incarcerated in a facility of no more than 250 miles from his or her home.

Unfortunately, the families of these juveniles are unable to physically visit their detained children.

Even a trip to Globe is unattainable for those families with little or no income and no means of transportation. This means it makes it even more difficult for juvenile detainees to reintegrate themselves into their families and their community.

It is very difficult for CRIT to deliver mental health and substance abuse services to the juvenile detainees who are housed 250 miles away from their Reservation. Therefore, CRIT juveniles are not receiving these much needed services.

If these services were on or closer to their Reservation, CRIT's behavioral health services and alcohol and abuse programs as well as the juvenile detention—probation department would be able to adequately serve these children. Having the BIA assume these transportation duties has led to another grave problem. CRIT juveniles are not being transported back to the Reservation in a timely manner.

For example, in December a juvenile detainee was not transported back to the Reservation until 13 days after her tribal court release date. The transportation of this juvenile detainee occurred only after a formal letter from the CRIT chairman was sent to the BIA supervisory corrections officer in Phoenix.

Further, until they are transported to Globe, juvenile detainees are held in a CRIT juvenile temporary holding facility.

CRIT receives no funding, BIA funding, for this operation and maintenance of this facility or for the temporary holding of juveniles who are awaiting adjudication or transportation to Globe. The juvenile temporary holding facility is only for holding juveniles for this purpose and a short period of time.

However, since the BIA is unable to fulfill its obligation to transport juvenile detainees, children remain in the CRIT temporary housing facility up to several months.

To date, CRIT is holding five juveniles that are awaiting transport from the BIA. The longest stay period has been over three months for one of these juvenile offenders.

Initially the BIA picked up these children within 48 hours of the transport order. Due to overcrowding and safety concerns, CRIT has repeatedly been forced to release juvenile detainees before the end of their sentence because the temporary holding facility is not appropriate for holding long-term detention. This has resulted in an increase in juvenile recidivism on the Reservation.

To make things worse, CRIT expended approximately $680,000 of its own funds from 2005 to 2007 to house and transport juvenile detainees.

CRIT was forced to pay these costs after the BIA failed to uphold its obligations after closing the juvenile—tribal juvenile detention facility in 2004.

After a long, exhaustive fight with the BIA, which went way up to the Assistant Secretary for Indian Affairs and Director of Law Enforcement, CRIT has only been reimbursed only 250,000 out of the 680,000 owed.

Currently CRIT bears the entire cost of the juvenile facility. This cost the tribes approximately 240,000 annually.

The second portion is the adult detention. The BIA's proposed base funding for the P.L. 93–638 contract for adult detention is 270,000 for Fiscal Year 2008. The program costs approximately 760,000 each fiscal year.

CRIT has repeatedly objected to this shortfall in funding. The proposed BIA funding covers approximately 36 percent of the cost to operate this program, while CRIT absorbs the remaining 64 percent.

In 2007, as a result of the shortfall, CRIT Tribal Council took action not to recontract the adult detention program.

In late April, in reliance on a promise of additional funding from the BIA, the Tribal Council took action to extend the adult detention P.L. 638 contract through September 30, 2007.

This extension was agreed to in reliance of the following additional funds available to CRIT: An increase of funding by 180,000 and the restoration of approximately 30,000 in 10 percent holdback funds. These funds were to carry the program to the end of the fiscal year on September 30, 2007.

The BIA later asked the tribe to extend the 2006 adult detention 638 contract to December 31, 2007. CRIT reluctantly agreed, although the tribe received no additional funding.

Law enforcement. The BIA proposed base funding for the P.L. 638 contract for uniformed police for the 2008 fiscal year is $673,000.

The total projected program cost is approximately $2,115,000 annually. Thus, the BIA funding only covers approximately 32 percent of the total cost and CRIT absorbed 68 percent.

CRIT has been very conservative with the uniformed police budget due to the extreme shortfall in funding.

Unfortunately, our conservative spending puts our police department at a disadvantage because our neighboring jurisdictions pay their officers at a more competitive rate and provide a more competitive benefits package.

As a result, CRIT's turnover rate for uniformed police is alarmingly high, around 50 percent for 2006 and 2007. As a consequence of the high turnover rate, CRIT police officers work exceedingly long hours to ensure adequate police coverage on the Reservation.

And in conclusion, it is evident that the BIA is failing in its fiduciary and other obligations to CRIT.

The shortfall in law enforcement and detention funding exposes CRIT to a very serious problem such as a diminished public safety presence on the Reservation.

Moreover, even when the BIA assumes responsibility for programs such as juvenile detention, it fails to follow through.

Congress should work to ensure adequate funding for Indian Country law enforcement and improved responsiveness of the BIA to the needs of tribal programs.

I just want to add that, myself, I'm an ex-officer, had about twelve years with the Tribal Police and eight years with the County as a County Deputy.

And they say once it gets in your blood, it's always there. Even though I'm the Vice Chairman for the tribe, this is one of my interests and I would like to follow this through and see what turns up at the end of day. Thank you.

The CHAIRMAN. Mr. Enas, thank you very much for your testimony. I'm going to ask just a couple of questions before I will call on Senator Kyl.

I think all of you have given some extensive analysis of what you consider to be the shortcomings on Reservation law enforcement and lack of resources, the jurisdictional issues, and so on.

President Enos, in your testimony you describe, for example, domestic violence, quoting your testimony: A non-Indian suspect assaults an American Indian victim, who perhaps was in a relationship, is standard domestic violence. A suspect cannot be charged

with a State crime of domestic violence since the victim is American Indian. The suspect may be charged with a Federal crime since all Salt River police officers now have a Special Law Enforcement Commission Card, but only if the injuries are very substantial.

You see a burglary. A non-Indian suspect burglarizes an American Indian residence, and the suspect cannot be charged with a State crime of burglary because the victim is an American Indian. You say in that case Federal charges would not apply.

Stolen vehicles. A non-Indian suspect steals an American Indian's vehicle. The suspect cannot be charged with a State crime of vehicle theft if apprehended within the boundaries of the Reservation because the victim is an American Indian. Federal charges would not apply.

I guess that's news to me. You are saying a non-Indian suspect comes on the Reservation, steals an American Indian's vehicle, and the suspect can't be charged with a State crime of vehicle theft because it happens on the Reservation and it's the theft of the vehicle of an American Indian; is that correct?

Ms. Enos. Let me respond to that. My analysis is of a practical nature, for instance, if you have a situation where a non-Indian is presumed to be the suspect. Suppose you catch them in the act, so to speak.

What has to be done is our officers can detain such an individual once they go through the determination that it's a non-Indian. They can detain, they can call the State Police, and they can refer the case.

The difference in practicality if we had jurisdiction over that individual would be that our officers could take that individual into custody, take him before the Court, prosecute, file charges—the prosecutor would file charges.

The case could go before a tribal jury, and we understand that there are considerations for non-Indian possibilities of them serving in the jury. If given a sentence, they would serve that sentence in the jail. That's the practical analysis of that.

Sure, if a non-Indian comes out here and is caught red-handed, they are going to call the State Police.

And if the State Police are available, if the crime is of a serious enough nature, more likely than not charges could be filed. But, again, that's an intrusion of State laws into the Reservation.

The CHAIRMAN. All right. Let me ask the three of you. Let's assume that there is a domestic violence on your Reservation today. A non-Indian commits an act of serious violence against a spouse who is an American Indian.

What is likely to happen this afternoon in Federal prison on your Reservation?

Ms. Enos. In Salt River, the police would call and notify the FBI, for one thing, if it's a serious enough injury because it would fall under a Federal statute presumably.

They would also contact the State Police officers, probably the Department of Public Safety or Sheriff's Office and, again, if they are available and if they are willing to come out, our officers would have to investigate and process all evidence.

The CHAIRMAN. What's the likelihood of the prosecution in a case like that, arrest and prosecution?

Ms. Enos. Again, I think that depends on the seriousness of the injury, unfortunately. If you slap your girlfriend around or your spouse around, the chances of prosecution decrease.

I guess the alarm here is that do Indian women have to be seriously maimed before somebody comes in and prosecutes them?

The CHAIRMAN. Mr. Cowboy, on your Reservation, what's the likelihood of an arrest and a prosecution?

Mr. COWBOY. It depends. The reason why I say it depends is we have to work with the FBI. It depends on the nature of the injury, what the young lady described here.

If it falls under the major crime act, then, yes, the individual would be prosecuted; but if it's a domestic that falls a little short or there is a lot of gray area. You have to understand that.

And if it falls under that, then we have to rely on the FBI's position, if they are going to move forward to investigate it, and the U.S. Attorney's position.

So we rely on these two agencies to make the determination if it's going to be prosecuted. A lot of times they are not prosecuted so we are just standing there and we have to let the individual go.

The CHAIRMAN. Mr. Enas?

Mr. ENAS. It's very much the same. It relies on the offense, whether it's a misdemeanor or a major felony.

The BIA comes in after the investigation of the Tribal Police, and most likely I would say it wouldn't be prosecuted in the State Court so—we have been successful in working with the State Courts.

The CHAIRMAN. The reason I ask the question is it in many ways summarizes the problems. We have people telling us from around the country on Indian Reservations that even in cases of rape that it is not all that certain that there is going to be a prosecution when the perpetrator is known.

It kind of depends on a whole series of circumstances. In many cases, there are areas where if you take someone to a health clinic, there is no rape kit available to gather evidence and a whole list of circumstances where there are a lot of—in this case with this question—Indian women who believe that there are those who are not brought to justice as a result of crimes against women. That's just one area. But——

Ms. Enos. I have to say, Senator, also there is the position, too, that the State has no jurisdiction on a reservation where a victim is an Indian.

The CHAIRMAN. I understand that. Senator Kyl?

Senator KYL. Thank you, Mr. Chairman. Let me just follow along in that line of questioning to Mr. Cowboy.

You have been involved in law enforcement on the largest Reservation in our country. Is your experience that there is a need for resources all the way from the beginning to the end?

In other words, from the number of officers, the vehicles you have, all the way to the charging officers, the detention facilities, the judges, the prosecutors, the defenders, the crime labs?

Does that exist throughout the entire system with your Indian Affairs?

Mr. COWBOY. Sir, I think you hit it right on the spot in one word, crime lab. There is a big gap there right now.

With any case that we investigate, even an expert requires another expert to testify on their behalf. If we don't have a crime lab, you know, where a lot of times our cases are dismissed. That's one area.

The other thing is I think when we talk about the whole system, yes, we do need support at every level in order to be successful. It's all the way to the Court. I think we need to develop our—strengthen our own justice system. I think that's where it's at, and I think that's where we need a lot of support.

Senator KYL. In your experience, is there much difference between the prosecution of crimes by the tribal government against members of the tribe or other Indians on the one hand and the Federal Government's prosecution of crimes committed by non-Indians on the Reservation?

Mr. COWBOY. I work in three states and they all have a different position. I think like in New Mexico, if it's a victimless crime, the State will handle it, meaning if it's a burglary or vehicle, somebody takes an item out of the vehicle or takes a vehicle, if it's not a person involved, the State will handle it on the New Mexico side.

Now when it goes to Utah, they won't accept any cases. And when you go to Arizona, you know, there's some cases that, you know, the counties will handle it but, again, it goes through the layers again. We have to rely on the U.S. Attorney and the FBI.

Senator KYL. And with respect to the serious crimes, since we are talking about serious domestic violence crime against women and so on, with regard to those more serious crimes where the State would not be involved, is there much difference in your experience between the prosecutions by the tribal prosecutors versus those that are handled by the FBI and the U.S. Attorney's Office?

Mr. COWBOY. I think our tribal prosecutors are very aggressive going after the case and, again, it falls back into the facility. When it goes into the Federal cases, then it depends on opinion, you know, what opinion we are going to get back.

Senator KYL. Let me ask you, the other two gentlemen talked a lot about resources, and I noticed you didn't testify much about resources. And you heard me talk about the entire criminal justice system here.

Could you indicate what your community situation is with respect to resources brought against the investigation and prosecution of these crimes?

Ms. Enos. Certainly. The community has to put a significant amount of its budget into the law enforcement issues.

We just completed a state-of-the-art facility where the Federal Government funded approximately half of a $21 million facility that's going to house both juvenile and adult offenders.

As I indicated, we have 117 sworn officers and a significant amount of support staff goes with that as well.

The community has had to enter into a contract with the City of Scottsdale for more than $300,000 just to process evidence because the BIA cut the funding for evidence last year. So the community stands ready and willing to commit resources, not insignificant resources, to the problems associated with law enforcement.

Senator KYL. Would that include the necessary resources to prosecute the crimes against non-Indians that would be not prosecuted by the Federal Government?

Ms. Enos. We would. As I indicated in my testimony or my comments earlier about state jurisdiction over non-Indians, there are a variety of states that have, as this gentleman indicated, different interpretations of application of state law.

As far as the non-Indian that would be in our estimation, we discussed that an example of a possible pilot project would be jurisdiction over non-Indian domestic partners.

To give you an example, in Salt River in 2008 there were 32 crimes in January alone with domestic violence.

In the whole of 2007, there were 451 domestic violence crimes; in 2006, 496 domestic violence crimes.

We have these statistics by virtue of the fact that we have the equipment to keep statistics, the officers to investigate those crimes, the technicians to process evidence so they tell stories.

Senator KYL. And my question is, since obviously the whole point of this is the lack of resources primarily committed by the Federal Government, you are saying that you would make the resources available to make up for this difference and if you were given the jurisdiction that you could prosecute the crimes that you mentioned?

Ms. Enos. Yes. We have committed the resources. Let me say also that one of the unique things about all of the tribes, one of the unique things about Salt River is not only our physical location but the fact that we are one of the successful gaming tribes in Arizona.

Now, we could not do what we do, I dare say, without the resources available to us through gaming, and the fact that we committed a significant amount of those resources towards law enforcement says a lot about our intentions for the future.

Senator KYL. Mr. Chairman, I have got a lot of other questions. I take it you'd like to move on to the next panel here? Or do you want to just keep rotating back and forth?

The CHAIRMAN. I have a series of questions as well. What I'd like to do is submit questions to you for the record because we are trying to get some analysis of the proposals that exist out there, and I want to go to the second panel. Just in the interest of time.

So I want to thank the three of you for your statements, and we will submit written questions to you and ask if you would submit for the record.

We intend to hold the record open for two weeks and ask for submissions not only by the three of you but by others who did not testify but wish to submit questions for the Committee.

Ms. Enos. We also ask leave to supplement our testimony.

The CHAIRMAN. Thank you. Next we will hear from the Honorable Phil Gordon, the Mayor of the City of Phoenix; the Honorable Diane Humetewa, who is the U.S. Attorney for the District of Arizona here in Phoenix, Arizona; and Mr. Rod Mendoza, the chief of police of the Town of Parker Police Department in Parker, Arizona.

Let me thank all three of you for being here. Mr. Mayor, I landed in your city today. Phoenix looks like it's doing well—and Senator Kyl knew Mayor Gordon long before he became Mayor—and I appreciate the work that you are doing, Mr. Mayor.

Mr. Gordon. Thank you.

The CHAIRMAN. If I may call on the U.S. Attorney first and say I was one of those who submitted a letter on your behalf, enormously proud that you are serving as the U.S. Attorney, and we will ask once again the three of you to summarize your testimony. But let's begin with you. You no doubt have heard a lot about the issue of the U.S. Attorney's responsibilities on these Indian Reservation law enforcement issues. It's complicated, difficult, controversial, but we very much appreciate your work and your being here. You may proceed.

STATEMENT OF HON. DIANE HUMETEWA, U.S. ATTORNEY, DISTRICT OF ARIZONA

Ms. HUMETEWA. Thank you. The Department of Justice appreciates the opportunity to testify on its efforts to address Indian Country crime.

I am Diane Humetewa, the U.S. Attorney for the District of Arizona. I wish to also thank the Salt River Pima-Maricopa Indian Community, and in particular President Enos for welcoming us here today.

The Department knows that the needs of the Indian tribal governments in responding to crime and violence continues to be great, and the President and the Attorney General are committed to working with Federal, tribal, state, and local law enforcement to do what it can to provide safety and security in Indian country.

In fact, I was privileged to accompany Attorney General Mukasey on January 14th to the Navajo Nation where he met with President Shirley, the Attorney General, members of the Navajo Nation Tribal Council, and the Supreme Court Justice.

He also toured the detention facility in Window Rock. He spoke with tribal prosecutors, defenders, and social service providers.

Also on February 20, the Attorney General met privately with representatives of the NCAI, the National American Indian Court Judges Association, and the Indian Law Section of the Federal Bar Association to discuss justice related issues in Indian Country.

The Department's efforts in Indian Country are led by the law enforcement agencies and the United States Attorneys. The FBI is heavily involved in investigating major crime act violations and the DEA drug trafficking offenses in Indian Country, and the U.S. Attorney's Office is daily prosecuting Federal offenses arising on Indian land.

The Department's Office of Tribal Justice, Office on Violence Against Women, Office of Justice Programs among others support these efforts.

Of the 94 U.S. Attorney districts, 29 have some Indian Country jurisdiction. Along with the AUSA, each of these districts has a tribal liaison who is responsible for coordinating Indian Country relations in their district.

Currently 44 AUSAs serve as tribal liaisons nationwide, and I would like to acknowledge Vincent Kirby and is also the tribal liaison from my district who is here in the audience today.

In Arizona, due to our vast Indian Country, in addition to our tribal liaison, each AUSA has some responsibility for handling Indian Country crimes.

Also each AUSA in our violent crime section is assigned to a specific tribe and tribal multi-disciplinary team for child abuse cases in order to establish relationships with the tribal police and prosecutors.

We have been doing this for over ten years. In our Flagstaff office, two AUSAs take cases from the northern area Indian tribes. This greatly reduces the travel and overtime previously impacting tribal police department budgets as they no longer have to come to Phoenix to participate in the initial stages of the federal prosecution.

Moreover, it provides Northern Arizona federal crime victims better ability to participate in the preliminary stages of the federal criminal case.

Regarding federal law enforcement efforts, the FBI has worked in coordination with tribal and local law enforcement to ensure that the investigation of crimes in Indian Country is performed in an effective manner.

Even with the heightened demands from terrorism investigations, Indian Country law enforcement remains a high priority for the FBI. In fact, the FBI has increased the number of special agents working in Indian Country crimes by 7 percent since the tragedy of 9/11.

In addition, during the past few years, the DEA has made significant gains with tribal police by providing training, evidence analysis, and developing strategies to address drug smuggling and drug abuse problems in Indian Country.

For example, in 2007, approximately 31.4 tons of marijuana was seized on the Tohono O'odham Nation, which is often used as a major Mexican drug smuggling corridor.

And since 2005, locally the DEA, BIA, FBI, and some tribal police departments, along with my office, participated in a methamphetamine eradication initiative to remove methamphetamine dealers from Arizona's Indian Country.

Let me now turn to an issue that you have expressed an interest in, declination rates. The Department understands that tribal members may feel frustrated when they do not know why or how a particular case was handled after being referred for federal prosecution.

First I want to assure tribal members and this Committee that my office and the offices of my colleagues take very seriously every case referred to us for prosecution.

Second, we caution that the declination rate does not give a full picture of what occurs in a given case.

A decision not to prosecute federally does not necessarily mean the end of a case, and for this reason federal declination figures cannot give a complete picture of how Indian Country crimes are handled.

For example, the case that is initially declined may still be charged after further investigation. The Department is also concerned about publicizing declination reports which are generally not public and the information therein often statutorily protected from public disclosure.

Therefore, the U.S. Attorney's Office works closely with our state, tribal, and local partners to ensure that each alleged crime is effectively and appropriately handled.

Next, let me turn to the Congress' ability to create tribal court jurisdiction over misdemeanor crimes committed by non-Indians in Indian Country.

First, I wish to address the misunderstanding often perpetuated about a jurisdictional gap in Indian Country. It is important to understand that for every crime in Indian Country, there is a court of justice, be it tribal, state, or federal.

For every criminal who commits an offense in Indian Country, there is a venue for justice. In some cases, there are in fact multiple courts with jurisdictions over the matter.

If Congress is considering legislation in this area, it should be aware of significant constitutional concerns. As this the Committee knows, the Supreme Court in *Oliphant versus Suquamish Indian Tribe* 435 U.S. 191 (1978) held that tribal Courts do not have jurisdiction over non-Indians.

Since that case, the executive and legislative branches have considered proposals that would give Indian tribes criminal jurisdiction over non-Indians.

Because DOJ has not been presented with specific legislative proposals on the subject, the Department cannot opine at this time on precisely the type of constitutional concerns a particular proposal would raise.

At a minimum, the Department believes that any legislative proposal must ensure the defendants are granted the due process and other rights provided by the United States Constitution.

Additionally, any attempt to expand tribal court jurisdiction to non-Indians must be evaluated to determine whether it could provide recourse to federal courts to appellate review, including clarifying the scope of that judicial review.

In addition, some tribes do not permit non-Indians to participate in the tribal government process or in jury pools which may raise equal protection issues.

Let me conclude by highlighting our efforts in our district to foster cooperation and coordination between tribes, states, and Federal Government.

As the Committee knows, law enforcement in Indian Country has been hampered by the lack of state, local, and tribal law enforcement authority to investigate federal crimes.

Since last year, through our cross-deputization training program, my office's AUSAs trained over 100 state and tribal police officers on federal criminal law and procedure.

This prepared them to take an examination which, if passed, qualifies them for a special law enforcement commission through the BIA.

The SLEC card gives the officer authority to enforce federal law and to investigate federal crimes in Indian Country. This cross-deputization program is a force multiplier which allows tribal and state police to increase law enforcement efforts in Indian Country.

I am proud of the work that the United States Attorney's office in Arizona has accomplished in this regard and with regard to all

other efforts aimed at addressing violent crime in Arizona's Indian Country.

In closing, I want to thank you, thank the Committee, for the opportunity to discuss these important issues. We are committed to working with you to improve the safety and security of those who live in Indian Country. Thank you.

[The prepared statement of Ms. Humetewa follows:]

PREPARED STATEMENT OF HON. DIANE HUMETEWA, U.S. ATTORNEY, DISTRICT OF ARIZONA

Chairman Dorgan, Vice-Chairman Murkowski, and Members of the Committee: The Department of Justice ("the Department" or "DOJ") appreciates the opportunity to testify before the Committee regarding the Department's efforts to combat crime in Indian Country. I am Diane Humetewa, United States Attorney for the District of Arizona. I welcome you all to the great State of Arizona, and I am pleased to talk to this Committee about DOJ efforts to ensure that the rule of law prevails in Indian Country.

We at the Department of Justice know well that the needs of Indian tribal governments in combating crime and violence continue to be great. We appreciate these challenges, and the President and the Attorney General are committed to working with tribal, state and local law enforcement, the Department of the Interior, and others to do what it can to provide safety and security in Indian Country.

In fact, one of the first extended trips by Attorney General Mukasey was to Indian Country. On January 14th, the Attorney General visited the Navajo Nation's seat of government in Window Rock, Arizona. While here, he met with the Navajo Nation's Tribal President, Attorney General, members of the Tribal Council, and the Chief Justice of their Supreme Court. He also toured a justice center, including the jail and tribal courts, and met with prosecutors, defense attorneys, and behavioral health employees. Furthermore, on February 20th, the Attorney General had a private meeting with representatives of the National Congress of American Indians (NCAI); the National American Indian Court Judges Association (NAICJA) and the Indian Law Section of the Federal Bar Association (FBA) to discuss justice related issues impacting Indian Country.

In general, the Department's efforts in Indian Country are led by the federal law enforcement agencies and the United States Attorneys. The Federal Bureau of Investigation (FBI) is critical to bringing the perpetrators of serious crimes in Indian Country to justice, and investigating major crimes, while the Drug Enforcement Administration (DEA) takes the lead on combating drug trafficking on Indian lands. The U.S. Attorneys daily prosecute federal offenses on Indian lands to the fullest extent of the law. The Department's Office of Tribal Justice, Office on Violence Against Women, Civil Rights Division, Office of Justice Programs, Community Relations Services, and Environment and Natural Resources Division, among others, provide support or supplement these efforts.

First, let me speak about U.S. Attorneys efforts. Of the 94 federal U.S. Attorney districts, 29 have Indian Country jurisdiction. Each of these districts has at least one tribal liaison, an Assistant United States Attorney (AUSA) who is responsible for coordinating Indian Country relations and prosecutions. While many more AUSAs have responsibility in Indian Country, there are currently 44 AUSAs serving as tribal liaisons nationwide. In Arizona, along with the tribal liaison, every AUSA in our violent crime section has some responsibility to prosecute crimes in Indian Country. Each AUSA in the group is assigned to a specific tribe and to a tribal Multi-Disciplinary Team in order to establish routine working relationships with the tribal law enforcement and prosecutors. We have been doing this for more than 10 years. Furthermore, in our northern Arizona office, we have assigned two AUSAs to triage cases from the northern-most Indian reservations. This has greatly benefitted the Northern Arizona Indian tribes because it enables them to bring their cases for initial review in Flagstaff, rather than having to travel all the way to Phoenix. This has saved the tribes a substantial amount of overtime and travel-time pay for their employees, and enables victims of crimes to have greater access to the preliminary state of a Federal court proceeding.

Nationwide, we dedicate significant prosecutorial resources in Indian Country. For example, approximately 25 percent of all violent crimes handled by U.S. Attorneys' Offices occur in Indian Country. These efforts are leading to many successes. In Fiscal Year 2006, the Department's efforts in Indian Country were above average across the board. The Department filed nearly 5 percent more cases than the aver-

age since 1994. Almost 14 percent more cases went to trial than the average since 1994, while our conviction rate rose to 89.4 percent from the 86.2 percent average since 1994. Eighty percent of those guilty of violent crimes were sentenced to prison, and the number of defendants convicted of violent crimes receiving sentences greater than five years increased from 31 percent on average since 1994 to 36 percent.

On the law enforcement side, the FBI has worked very hard to improve lives in Indian Country. FBI Indian Country activities are coordinated by the Indian Country/Special Crimes Unit. This Unit develops and implements strategies to address identified criminal problems in Indian Country, and supports the efforts of all law enforcement personnel working in Indian Country. This includes managing manpower resources, addressing budgetary and resource issues, providing training, procuring services and specialized equipment, and providing assistance to FBI Special Agents assigned to Indian Country, BIA criminal investigators, and law enforcement officers from tribal police departments. These strategies ensure that the investigation of crimes in Indian Country is performed in a manner that will provide the most effective law enforcement services to American Indian people.

These efforts have paid off. Even with the heightened demands from terrorism investigations, Indian Country law enforcement has remained a high priority for the FBI. Contrary to some claims, the FBI has increased the number of Special Agents working Indian Country cases by 7 percent since the 9/11 terrorist attacks.

Additionally, DEA field offices work with state, local, and tribal law enforcement to address issues of drug trafficking in Indian Country. During the past few years, the DEA has made significant gains with the Indian law enforcement community and has coordinated efforts to come up with strategies and solutions to tribal smuggling, distribution and abuse problems. For example, DEA's strategy now includes the increased use of Title III wire tapping as an investigative tool in dealing with the unique problems associated with addressing drug trafficking on Indian lands.

Again, these efforts have paid off. Here, in Arizona, the Tohono O'odham Indian Reservation is the second largest reservation in the United States, sharing approximately 70 miles of border with Mexico. The reservation is believed to be used as a primary corridor for the movement of illegal drugs by Mexican drug trafficking organizations. In 2007, approximately 31.4 tons of marijuana were seized on the reservation.

Much of this success can be ascribed to the Safe Trails Task Forces initiative. The FBI, in conjunction with the DEA and our partners at the Bureau of Indian Affairs (BIA), started the initiative to form interagency partnerships composed of federal, tribal, state, and local law enforcement officers operating throughout Indian Country. The purpose of the Task Forces is to benefit Indian Country law enforcement by leveraging scarce resources in the fight against methamphetamine and other drugs. In 2002, we had six STTFs up and running. Today, we have expanded the program to include eighteen Safe Trails Task Forces nationwide. During Fiscal Year 2007, the STTFs obtained 106 indictments, arrested and/or located 129 subjects, obtained 144 convictions, and disrupted two drug trafficking organizations.

The Department's Office of Justice Programs (OJP) has developed a close working relationship with many American Indian and Native Alaskan tribes and remains committed to helping tribal communities meet the unique challenges they face in the areas of law enforcement and criminal justice. In September 2007, OJP implemented a new Tribal Grants Policy, which will help Native communities seeking OJP resources through its competitive grant solicitation process. OJP has hosted several interdepartmental Tribal Consultations and Training & Technical Assistance (T&TA) sessions. OJP also coordinates the Department of Justice's Tribal Website, *www.tribaljusticeandsafety.gov,* which is used to keep Indian Country informed on all of our tribal initiatives, grants, activities, training and events. This site has grown in popularity since it was launched in 2006. We recognize that the successful STTF efforts impact other components of the tribal, state, and federal justice system and support services, such as meeting confinement needs, placement of drug endangered children, substance abuse treatment, probation, community reentry, and recidivism. We are collaborating with other federal agencies to address law enforcement and safety in a comprehensive fashion.

Let me now turn to an issue that I know the Committee has expressed some interest in–declination rates. First, I want to say that I understand the frustration that many tribal members may feel when they do not know how and why a particular case was handled the way it was. But I want to assure those tribal members and the members of this Committee that my office and the offices of my colleagues take very seriously every case referred to us. We investigate each case and work to prosecute, to the fullest extent of the law, as facts and circumstances warrant. Second, I want to caution that declination rates do not show the full picture on the Department's actions in a given case and the Department has some concerns about

publicizing declination reports. As this Committee knows, U.S. Attorneys' Offices share jurisdiction with state and tribal prosecutors in many Indian Country cases, working closely with our partners such as the BIA to ensure that each alleged crime is effectively and appropriately handled. A decision not to prosecute federally does not mean the end of the case, and for this reason, federal declination figures cannot give a complete picture of how Indian Country crimes are prosecuted. Where federal courts have exclusive jurisdiction—in cases falling under the Major Crimes Act—a case that is initially declined may still be returned for prosecution after further investigation. Additionally, some cases do not fall within federal jurisdiction at all and may be declined after being erroneously referred to a U.S. Attorney's Office.

In some cases, we are restricted by statute from providing declination reports. For example, where Indian tribes have entered into confidentiality agreements with the U.S. Attorney's office, as with Multi-Disciplinary Teams (MDTs) for child sexual abuse cases, information about cases is routinely shared between the federal and tribal agencies. But MDTs are also governed by federal statute, and penalties can apply to those who breach the confidentiality of the investigation and a victim's right to privacy. In other instances, a declination may occur because there is an ongoing investigation that requires the law enforcement agency to protect the investigation. For example, if a grand jury investigation has been convened, law enforcement officers and prosecutors can be subject to criminal liability for improper disclosure of information.

Furthermore, in my experience, we have seen declination reports getting into the wrong hands, jeopardizing investigations and the safety and privacy of witnesses and victims. This is particularly a concern for districts with small tribal populations, in which even reports that have personally identifying information redacted could still be linked to victims.

Next, let me turn to the issue of Congress' ability to create tribal court jurisdiction over misdemeanor crimes committed by non-Indians in Indian Country. Let me start addressing a misunderstanding often perpetuated about a "jurisdictional gap" in Indian Country. I want to state clearly–for every crime in Indian Country, there is a court of justice, be it tribal, state, or federal. For every criminal who commits an offense in Indian Country, there is a venue for justice. In many cases, there are multiple courts with jurisdiction over the matter.

If Congress is considering legislation in this area, it should be aware of significant constitutional concerns. As the Committee knows, the Supreme Court in *Oliphant v. Suquamish Indian Tribe,* 435 U.S. 191 (1978), held that tribal courts do not have jurisdiction over non-Indians. Since that case, the Executive and Legislative branches have considered proposals that would give the tribes jurisdiction over non-Indians. Because DOJ has not yet been presented with a specific legislative proposal on the subject, the Department cannot opine at this time on precisely what kind of magnitude of constitutional concerns a particular proposal would raise. At a minimum, however, the Department believes Congress must consider the type of constitutional concerns identified below.

First, any federal legislation on criminal matters must comport with the due process and other rights guaranteed to criminal defendants by the Constitution and federal law. For example, the Indian Civil Rights Act (ICRA) only guarantees counsel in a criminal prosecution at the defendant's own expense and does not provide for court-appointed counsel. Any grant of tribal court authority over non-Indians, especially in felony cases, would need to address the issue of counsel for indigent defendants, including the process for appointment and compensation of counsel for indigent defendants.

Currently under the ICRA, the only means of federal court review is by means of habeas corpus petitions, which is generally a collateral review involving some form of incarceration. As with state criminal cases, direct review of tribal court determinations by a federal court may be both desirable and necessary. For example, serious misdemeanors that do not lead to imprisonment can significantly impact a defendant even without incarceration. Accordingly, any attempt to expand tribal court jurisdiction to non-Indians must be evaluated to determine whether it could provide recourse to federal courts for appellate review, including clarification of the scope of that judicial review (i.e., whether the review is focused exclusively on constitutional due process or on the application of the given body of law by the tribal court).

Some tribal courts assemble juries from pools composed only of tribal members, and the criminal law and procedure that governs proceedings in tribal courts can be the product of tribal government decisionmaking in which non-Indian and/or non-tribal members and their interest are not represented. The lack of representation by non-Indian or non-tribal members of a tribal community in the tribal governmental process and specifically in jury selection for criminal cases raises equal pro-

tection and due process questions that must be considered in deciding whether it is possible to extend tribal criminal law and tribal criminal court procedure and jury selection to non-tribal members.

Finally, let me conclude by highlighting one of many success stories fostering cooperation and coordination between tribal, state, local, and the Federal Government–that is our cross-deputization program. We have improved the ability of state, local and tribal law enforcement to fully investigate federal crimes and to make arrests under federal law in Indian Country. Under our cross-deputization program, we work with our partners in the BIA to train tribal, state, and local officers, about federal law and give them an opportunity to take an examination and if successful, receive federal Special Law Enforcement Commissions (SLECs) through the BIA.

SLECs assist the Federal Government in combating crime in Indian Country and, in turn, are entitled to the same immunities as other federal law enforcement officers. SLECs allow tribal law enforcement officers to enforce Federal law, to investigate Federal crimes, and to protect the rights of people in Indian country, particularly against crimes perpetrated by non-Indians against tribal members. Most significantly, cross-deputized officers are empowered to make arrests on federal charges in Indian Country, including misdemeanor and felony violations of federal law. In essence, cross-deputizing tribal, state, and local law enforcement is a force multiplier, allowing tribal and state police officers to increase the law enforcement efforts within Indian Country.

Once cross-deputized, these law enforcement officers receive the same protections as federal employees under the Federal Tort Claims Act (FTCA). Thus, if such an officer is sued for state common law torts committed while acting within the scope of the federal deputation, the Department would certify that the individual is a federal employee acting within the scope of employment and move to substitute the United States in his or her stead for the common law torts. The result of substitution is that the officer would be immune from liability for the common law claims as the FTCA provides the exclusive remedy in tort. As with all federal employees, however, coverage is limited to non-constitutional claims. If the deputized tribal officer is sued for a constitutional violation under the Supreme Court's decision in *Bivens v. Six Unknown Narcotics Agents,* 403 U.S. 388 (1971) (which recognized an implied cause of action for deprivation of a constitutional right by a federal officer), the suit would proceed against the individual for that claim, just as it would proceed against any federal officer who is sued on a *Bivens* theory.

I am proud of the work that the Arizona U.S. Attorney's Office and the BIA have done in recruiting tribal and state police officers to earn federal enforcement authority in Indian Country. Just last month, AUSAs from my office trained and tested more than 40 tribal police and Arizona Department of Public Safety officers for SLECs. Those who passed the SLEC test received a certificate granting them federal law enforcement authority in Indian Country. This was the third time that the BIA and the U.S. Attorney's Office in Arizona have teamed up to give the training over the past year, with approximately 100 tribal and state police officers certified through the program. Those officers are making a real difference in tribal communities. The Department is committed to supporting further training sessions such as the one held in Arizona last month. I want to thank the Committee for the opportunity to discuss these issues today. We stand ready to work with the Committee to improve the safety and security of all those who live in Indian Country. Thank you.

The CHAIRMAN. Thank you very much for your testimony. We appreciate you being here.

Mayor Gordon, thank you very much for being here, and you may proceed.

STATEMENT OF HON. PHIL GORDON, MAYOR, CITY OF PHOENIX

Mr. Gordon. Thank you very much, Chairman Dorgan and Senator Kyl. I also want to thank the Salt River Pima-Maricopa Indian Community president for hosting this hearing today.

One may ask why is the "Mayor of Phoenix" testifying at a hearing devoted to Native American criminal justice issues? Let me share a few facts.

Phoenix is the largest city in Arizona, a state with 22 tribes and several of the largest Reservations in the country.

We are the financial, legal, governmental, and economic center for the region, which has three recognized tribes: Salt River Pima-Maricopa Indian Community, Ft. McDowell Yavapai Nation, and the Gila River Indian Community.

In fact, we share 22 miles of our southern border with the Gila River Indian Community, the largest Indian community border in the Valley and one of the largest city borders in the state.

In addition, Phoenix has the third most Native Americans living within its boundaries of any American city.

Of the ten largest U.S. cities, Phoenix has the highest percentage of Native American residents. That means we work closely with both tribal governments and community-based non-profit agencies on issues as varied as cultural and archeological preservation, affordable housing, transportation, and public safety.

One of my priorities as Mayor has been to facilitate regional action on a whole range of issues, specifically public safety.

Crime and the criminals who commit crime know no boundaries. As a responsible City leader, it is imperative that I foster state, tribal, and municipal agencies so that we can all make our residents safer, whether they live in the City of Phoenix, on a tribal reservation, or in another part of the Valley.

Senator Dorgan and Senator Kyl, as I believe you both know, our enforcement agencies in this Valley work together on all levels in a cooperative spirit unlike anywhere else in the Nation.

Our efforts of coordination are renowned as was demonstrated most recently by Superbowl 42 held here just two months ago, which is now viewed as a law enforcement model for national events.

Included in the participation of public safety were many public safety officials from our Native American communities.

There are several areas of collaboration between the City of Phoenix and tribal governments that may be of interest to this Committee. The Phoenix Police Department has several cooperative-use agreements in place with the Gila River Indian Community on a variety of issues.

Specifically we have agreement spelled out in detail on the protocol for dealing with fresh pursuits, apprehensions, and investigations that may occur between the City of Phoenix and Gila River.

We also have a cooperative-use agreement to share radio communications facilities and provide microwave links for the public safety radio network.

We have also provided radio equipment under a Department of Justice program that has facilitated better interoperable communications, and our Phoenix police personnel have met with Gila River staff to work on interoperable issues between the Phoenix South Mountain Police Precinct and Gila River.

In short, the Gila River Division of Public Safety has been a good partner with the Phoenix Police Department, and we have been happy to work cooperatively to assist them with their public safety needs.

Also we have reached out to the Salt River Pima-Maricopa Indian Community and the Ft. McDowell Yavapai Nation on commu-

nications initiatives being led by the Phoenix Urban Areas Security Initiative, otherwise known as UASI.

Phoenix law enforcement has met with Salt River Pima-Maricopa Indian Community on several occasions and will be providing equipment for them to use for interoperable communications in the region.

We are working with them on a possibility of a long-term agreement to join the Valley's regional communications network.

We look forward to continuing that effort and finalizing an agreement that will help protect all Salt River and Ft. McDowell residents and residents throughout the Valley.

We support a number of the concepts contained in the Committee's white paper that is under discussion.

Let me point to three specific areas that would be helpful to regional efforts to prevent crime and improve collaboration between local law enforcement agencies and tribal agencies.

First, the facilitation of cross-deputization agreements between local police agencies and tribal law enforcement.

We support a program within the Department of Justice to encourage and provide technical and other assistance to tribal, state, and local enforcement agencies that have completed or in the process of entering cooperative law enforcement agreements to combat crime on Indian lands.

Second, increase federal support for hiring and training more tribal police officers. That doesn't only help Reservation residents; it helps the entire region by putting more police officers on the ground who are available to investigate and fight crime across jurisdictional boundaries.

And, finally, as part of the reauthorization of the Indian Alcohol and Substance Abuse Act, include more programs for off-Reservation treatment programs and youth assistance so agencies like Native American Connections and the Phoenix Indian Center can continue and expand their collaboration with tribes and their work to help tribal members who may have relocated to urban centers and don't have access to Reservation-based programs.

I appreciate this opportunity to share some of the success stories we have had working with Phoenix-area tribes and encourage the Committee to continue its work to strengthen law enforcement collaboration among and between tribes and federal, state, and local governments.

On behalf of our chief of police, Jack Harris, I would like to thank all—and I emphasize all the tribes for the communication they have given the Phoenix Police officers in protecting our city.

[The prepared statement of Mr. Gordon follows:]

PREPARED STATEMENT OF HON. PHIL GORDON, MAYOR, CITY OF PHOENIX

Background

Why is the Mayor of Phoenix testifying at a hearing devoted to Native American criminal justice issues?

Let me share a few facts.

Phoenix is the largest city in Arizona, a state with 22 tribes and several of the largest reservations in the country. We are the financial, legal, governmental, and economic center for the state, and more specifically, Maricopa County, which has three recognized tribes, Salt River Pima-Maricopa Indian Community, Fort McDowell Yavapai Nation, and the Gila River Indian Community. In fact, we share

22 miles of our southern border with the Gila River Indian Community, one of the largest Indian communities in the state.

In addition, Phoenix has the third most Native Americans living within its boundaries of any U.S. city. Of the 10 largest U.S. cities, Phoenix has the highest percentage of Native American residents. That means we work closely with a variety of organizations, both tribal governments and community-based non-profit agencies, on issues as varied as cultural and archaeological preservation, affordable housing, transportation, and public safety.

One of my priorities as Mayor has been to facilitate regional action on a whole range of issues, including public safety. Crime and the criminals who commit crime know no boundaries. As a responsible City leader, it is imperative that I help foster cooperation among state, tribal, and municipal agencies so that we can make all our residents safer, whether they live in the City of Phoenix, on a tribal reservation, or in another part of the Valley.

Current Coordination and Collaboration Between the City of Phoenix and Local Tribal Governments

There are several areas of collaboration between the City of Phoenix and local tribal governments that may be of interest to the Committee. For example, the Phoenix Police Department has several cooperative-use agreements in place with the Gila River Indian Community on a variety of issues. Specifically:

- We have an agreement spelled out in some detail in a police operations order on the protocol for dealing with fresh pursuits, apprehensions, and investigations that may occur between the City of Phoenix and Gila River.
- We have a cooperative-use agreement to share radio communications facilities and provide some microwave links for them for their public safety radio network.
- We have also provided radio equipment under a Department of Justice program that has facilitated better inter-operable communications, and our Phoenix Police personnel have met with Gila River staff to work on interoperable communications issues between the Phoenix South Mountain Police Precinct and Gila River.

In short, the Gila River Community Division of Public Safety has been a good partner with the City of Phoenix Police Department and we have been happy to work collaboratively to assist them with their public safety needs.

Also, we have reached out to Salt River Pima-Maricopa Indian Community and Fort McDowell Yavapai Nation on communications initiatives being led by the Phoenix Urban Areas Security Initiative, otherwise known as UASI, the Homeland Security Department initiative that supports the unique planning, equipment, training, and exercise needs of high-threat, high-density urban areas.

Although there are no specific agreements in place, Phoenix law enforcement has met with SRPMIC on several occasions and will be providing equipment for them to use for inter-operable communications in the region. We are working with them on the possibility of a long-term agreement to join our regional communications network. We look forward to continuing that effort and finalizing an agreement that will help protect all Salt River and Fort McDowell residents and residents throughout the Valley.

Proposals for Improving Cooperation Between Local Law Enforcement Agencies and Tribal Agencies

We support a number of the concepts contained in the Committee's white paper that is under discussion. Let me point to three specific areas that would be helpful to regional efforts to prevent crime and improve collaboration between local law enforcement agencies and tribal agencies.

- The facilitation of cross-deputation agreements between local police agencies and tribal law enforcement. We support a program within the Department of Justice to encourage and provide technical and other assistance to tribal, state, and local law enforcement agencies that have completed or are in the process of entering cooperative law enforcement agreements to combat crime on Indian lands.
- Increase federal support for hiring and training more tribal police officers. That doesn't only help reservation residents, it helps the entire region by putting more boots on the ground who are available to investigate and fight crime across jurisdictional boundaries.
- As part of the reauthorization of the Indian Alcohol and Substance Abuse Act, include more programs for off-reservation treatment programs and youth assist-

ance so agencies like Native American Connections and the Phoenix Indian Center can continue and expand their collaboration with tribes and their work to help tribal members who may have relocated to the urban centers and don't have access to reservation based programs.

I appreciate the opportunity to share some of the success stories we have had working with Phoenix-area tribes, and encourage the Committee to continue its work to strengthen law enforcement collaboration among and between tribes and federal, state, and local governments.

The CHAIRMAN. Mr. Mayor, thank you very much. Finally we will hear from Mr. Mendoza. Mr. Rod Mendoza is Chief of Police from the Town of Parker in Parker, Arizona. Mr. Mendoza, you may proceed.

STATEMENT OF ROD MENDOZA, CHIEF OF POLICE, TOWN OF PARKER, ARIZONA

Mr. MENDOZA. Senator Dorgan, Senator Kyl, it's an honor to be here. Thank you very much for this opportunity.

Let me state, I'm Rod Mendoza. I am the Chief of Police for the Town of Parker, Arizona. The Town of Parker is a unique situation. My testimony is going to include a summary of the 1990 agreement between the Colorado River Indian Reservation and the Town of Parker.

This agreement had been the result of a 1989 Strand decision. Parker recently celebrated our 100 year township. In 1989, under the U.S. District Court, Judge Strand ruled that the Town of Parker was an Indian Country. It was located within the external boundaries of the Colorado Indian Reservation.

The courts holding that the Town of Parker is in Indian Country results in the Town having no legal jurisdiction over tribal land within the Parker town limits or any state or criminal jurisdiction over tribal members. Or any activities that take place in the town of Parker.

Consequently, tribal members accused of crimes in the town of Parker are subject only to tribal and federal law, not state or local law.

Recognizing this need, the Town and CRIT entered into an agreement that was designed to coordinate law enforcement activities. This agreement is limited to the Town of Parker and is relevant only to law enforcement agencies.

The summary of one of the sections, Section 5, states—Arrest of Indian Subjects, states: That the Town agrees that CRIT will make all arrests of Indians in the town of Parker and Parker Police will notify CRIT Police of an Indian involved in any activity, criminal activity.

There is nothing in this language that states that Parker Police cannot detain an Indian suspected of criminal behavior, nor does it state that the Parker Police cannot detain or arrest anyone suspected of criminal activity until the tribal status is known.

So, in other words, if a tribal member comes into the town of Parker and spray paints a non-tribal member's wall, Parker Police arrives on the scene, we cannot arrest that individual. We can try to detain that individual until CRIT police officers arrive.

If a tribal member comes in and smashes a store window, we cannot arrest that individual, we can only try to detain that individual.

In cases where a subject is a tribal member, CRIT will immediately be notified. Currently the Parker and CRIT police officers work well together on the street and both can be depended upon to assist each other.

With this 1990 agreement with CRIT, we have made great gains. It shows that we can work together. We are working together. Even though there are some problems with this situation, we are working those things out.

Part of the problem is getting the word out to the community that this agreement is in fact the Strand decision, stating that we cannot arrest tribal members so the non-tribal citizens who live within the town of Parker understand the situation.

With that, in July of 2006, we made a press release with the CRIT chief of police. CRIT and the Parker Police chiefs met and confirmed concerning methods of developing and approving police services to our communities.

Among our concerns were to ensure that those who commit crimes in our communities are held accountable and victims of these crimes are kept well informed of the progress of the investigation.

Parker Police and CRIT police officers both attend police academies and are recognized as state certified police officers.

CRIT police officers can enforce state laws and may book violators into the county detention facility or issue citations to appear in the town or county court.

However, CRIT officers cannot arrest non-Native Americans—may arrest Native—let me back up. CRIT officers may arrest non-tribal members but they must be booked into the county facility. They cannot be booked into a CRIT facility.

This is how we are working together. The CRIT Police Department will be notified every time a tribal member is suspected of committing a crime in the town of Parker.

The Parker P.D. will investigate all crimes involving non-Native Americans, CRIT P.D. and Parker P.D. officers will make the determination the suspect is Native American.

Whenever there is not enough evidence to believe the suspect is Native American, Parker P.D. will assume control of the investigation. Parker P.D. will not arrest—again, this is important to understand—will not arrest Native Americans who are involved in criminal activity.

Parker P.D. may detain Native Americans who are committing or have committed a major felony or violent crime or if the activity will seriously create a life-threatening situation.

In other words, the one time that Parker Police Department will detain a tribal member is if a major crime has occurred or someone is going to be seriously injured.

We do not want to detain a tribal member for a misdemeanor where the use of force may have to be involved, so our policy is that we will not detain, we will only try to remain in close contact until the CRIT Police Department can arrive.

If use of force is applied to a Native American by a Parker police officer, the Parker Police chief and the CRIT police chief will meet and discuss the situation within two business days. A copy of the report will be given to the CRIT police chief.

Parker and CRIT police agencies are committed to work together to meet the needs and concerns of the community, even though we are in a unique situation which is viably important that all community members are aware of the agreement, especially the Strand decision and how we are working together.

The investigation of criminal activity and the arrest of tribal suspects is only the beginning of the criminal justice process. An area of major concern among citizens, especially crime victims, is whether tribal criminal offenders are held accountable.

It is not uncommon to see offenders back into the community the very next day as if they were never arrested or charged with the offense. I believe you used the word "catch and release." This creates mistrust between tribal members and non-tribal members within our community. There is a double standard based on tribal status.

During the four years I have been the Parker Police Chief, I have seen a vast improvement in the cooperation between law enforcement agencies.

However, the lack of tribal resources to confine, prosecute, and monitor offenders needs to be corrected.

Juveniles who are arrested for crimes must be transported by bus five to six hours after the hearings to be held in an approved juvenile facility. Transporting these juveniles is costing thousands of dollars to the tribal community.

If the juveniles are not lodged and transported, they are immediately released back into the community without being held accountable for their actions. This empowers the juveniles to continue with their criminal activity.

In conclusion, federal funding is needed for tribal community justice resources, and it should be of the highest priority to ensure that the rights and safety of all are equally protected.

And I also would like to thank Senator Kyl and Ryan Smith for their help during the last year, for whenever I had questions, I was able to call their office and they were able to direct me in the right direction with some good answers.

And I appreciate the opportunity to be here, and I would also like to say that Colorado Indian tribes and the Town of Parker are effectively working together to solve this problem, but a lot of this comes down to federal funding for criminal justice resources.

If the Colorado River Indian Tribe had the resources and a place to detain these people, the non-tribal members in Parker would not be blaming the CRIT police officers for not doing their job, because they are doing their job. Thank you.

[The prepared statement of Mr. Mendoza follows:]

PREPARED STATEMENT OF ROD MENDOZA, CHIEF OF POLICE, TOWN OF PARKER, ARIZONA

My testimony will include a summary the 1990 agreement between the Colorado River Indian Reservation (Law Enforcement Agreement 1990) and the Town of Parker. The agreement may have been the result of the 1989 "Strand" decision (Colorado River Indian Tribes V. Town of Parker 705 F. Supp. 473).

Summary of the "Strand" Decision

The U. S. District Court, Judge Strand, ruled that the Town of Parker was "Indian Country," located within the boundaries of the Colorado River Indian Tribes reservation, (18 U.S.C.A. 1151) and therefore the Town of Parker did not have legal regulatory authority over building activities on lands within the Town that are owned by the Tribes. The Town's regulatory authority extended only to the privately owned fee lands within the Town. The Court noted that the Tribes own approximately one-third of the lands within Parker and that the Town is prohibited from preventing the provision of electrical and water utility services that the Town of Parker exercises direct or indirect control over.

The Court's holding that the Town of Parker is "Indian Country" results in the Town having no legal jurisdiction over tribal land within the Parker town limits or over tribal members' activities that take place anywhere within the boundaries of the Town. Consequently, CRIT members accused of crimes in the Town of Parker are subject only to tribal and federal law, not State or local law, (Seymour v. Superintendent of Washington State Penitentiary, 368 U.S. 351, 82 S. Ct. 424, 7 L. Ed. 2nd 346 (1962)).

In April 1978, Senator DeConcini of Arizona introduced a bill (S. 2854) for the purpose of granting the State of Arizona (Parker Police) criminal and civil jurisdiction over all activities and persons within the Town of Parker pursuant to Public Law 280, (CRIT Ex. 24). DeConcini recognized that without this legislation Parker was subject to a complicated patchwork of state, federal and tribal jurisdiction.

The bill S. 2854 was introduced as an amendment to 18 U.S.C. sec. 1162(a) and 28 U.S.C. sec. 1360(a), which would have added Parker to the list of areas in Indian Country wherein states are conferred civil and criminal jurisdiction (as in California). The Senate failed to pass Bill S. 2854.

Summary of the 1990 Law Enforcement Agreement Between CRIT and the Town of Parker

Recognizing the need, the Town and CRIT entered into an agreement that was designed to coordinate law enforcement activities. This agreement is limited to the one square mile within the Town of Parker and is relevant only to law enforcement agencies. A summary of Section 5, Arrest of Indian Subjects: states the Town agrees that CRIT will make all arrests of Indians in the Town of Parker and the Parker Police will notify CRIT Police of an Indian involved in any activity. There is nothing in this language that states the Parker Police cannot detain an Indian suspected of criminal behavior nor does it state that Parker Police cannot detain or arrest anyone suspected of criminal activity until the tribal status of the person(s) is obtained.

In cases where we suspect a person(s) is a tribal member, CRIT will be immediately notified for assistance. Currently, the Parker and CRIT police officers work well together on the street and both can be depended upon to assist one another.

The Parker Police policy is in conformance with the 1990 agreement with CRIT. If Parker police becomes aware a person(s) is a Tribal member we will not arrest nor will we detain as long as no one is at risk of injury, death or loss of substantial property. The Parker Police Department will not place officers in a position where the use of force may have to be used against a Tribal member. Every effort will be made to notify CRIT and ask for assistance.

The five most common criminal activities concerning Tribal members in the Town of Parker are:

1. Disorderly conduct,
2. Thefts,
3. Assaults,
4. Public Intoxication, and
5. Possession of dangerous drugs.

According to the 2005 International Chiefs of Police Indian County Law Enforcement Section; nationally, 1 in 4 cases of violent crime investigated by the Untied States Attorneys are from Indian Country. 75 percent of federal investigations of Indian Country suspects are for violent crimes.

Town of Parker—July 31, 2006 Press Release, "Local Law Enforcement Agencies Meet and Confer to Enhance Police Services"

On July 7, 2006 the Police Chiefs and patrol supervisors of CRIT Police and the Town of Parker Police Departments conducted a symposium at the Parker Police Department.

CRIT and Parker Police Chiefs met and conferred concerning methods of developing and improving police services to our communities. Among our concerns were to ensure that those who commit crimes in our communities are held accountable

and victims of these crimes are kept well informed of the progress of the investigation. We will not turn a blind eye to criminal activity. Injustice anywhere is a threat to justice everywhere. Our citizens must feel secure in their homes and be free from the fear of crime in their neighborhood.

Our first agenda item focused on the Town of Parker. As previously mentioned, the Parker Police department does not have civil or State criminal jurisdiction over tribal members in Indian Country. (Colorado River Indian Tribes v. Town of Parker; The Judge Strand decision). The jurisdiction responsibility belongs to the CRIT Police Department for all State criminal misdemeanor violations, (Seymour v. Superintendent of Washington State Penitentiary, 1962).

Federal law enforcement agencies, the Bureau of Indian Affairs (BIA) and the Federal Bureau of Investigation (FBI) have jurisdiction in all felony criminal violations and misdemeanor violations concerning non-Native Americans who commit crimes against Native Americans, (18 U.S.C. 1153).

Parker and CRIT police officers attend a police academy and are recognized as State certified police officers. CRIT police officers can enforce State laws and may book violators into the county detention facility or issue citations to appear in the town or county court.

CRIT officers who arrest a non-Native American cannot book them into the CRIT detention facility. CRIT court has no criminal jurisdiction over non-Native Americans. However, CRIT may issue Federal misdemeanor citations to non-Native Americans who commit crimes against Native Americans, citing them to appear in federal court in Flagstaff or in Phoenix, Arizona.

Equipped with the above information the police agencies will continue to improve upon and enhance their joint patrol services and investigation procedures within the Town of Parker.

1. The CRIT police department will be notified and will respond to assist Parker P.D. whenever the possibility of a Native American is involved as either a victim or a suspect.

2. The Parker P.D. will investigate all crimes involving non-Native Americans. CRIT P.D. and Parker P.D. officers will make the determination if the suspect is Native American. Whenever there is not enough evidence to believe the suspect is Native American, Parker P.D. will assume control of the investigation.

3. Parker P.D. may interview Native American witnesses and victims but will not interview Native American suspects. These interviews will be conducted by CRIT P.D.

4. All victims of a crime will be contacted by an officer and given an update of the status of their case prior to leaving the scene of the crime. If the victim is unavailable the officer's business card will be left for the victim.

5. The victim will be given the name of the investigating officer along with a contact phone number and will be kept apprised of the status of their case.

6. Parker will notify CRIT P.D. whenever they are in pursuit of criminal suspects who flee into Tribal Housing areas, i.e., Desert Sun Housing or Blue Water Park.

7. Parker P.D. will notify CRIT P.D. prior to interviewing Native or non-Native Americans who reside or are visiting in Tribal Housing.

8. If a suspect is involved in criminal activity and their tribal status is unknown, he or she will be handled as a non-Native American.

9. Parker P.D. will not arrest Native Americans who are involved in criminal activity. Parker P.D. will detain Native Americans who are committing or have committed a major felony or a violent crime, or the activity will seriously create a life threatening situation, i.e., use of weapons, serious bodily injuries, attempting to drive when seriously impaired. If the decision is made to detain, the officer will notify CRIT P.D. and inform them or our actions and the reason for the detention. We will not detain for misdemeanors. We will provide CRIT P.D. with the information and wait upon their arrival.

10. If use of force is applied to a Native American by a Parker police officer, the Parker police chief and CRIT police chief will meet and discuss the situation within two business days. A copy of the report will also be given to the CRIT P.D. chief.

11. Whenever Parker police officers stop a vehicle for a traffic violation and the occupants are discovered to be Native Americans, the officers will not issue a citation, nor search the vehicle or run warrant or registration information. If necessary, the officer will call for CRIT P.D. for assistance and they will take the necessary action.

12. Parker P.D. will immediately respond to any location that CRIT P.D. has requested help or assistance.

13. CRIT and Parker P.D. will maintain a united front and will publicly support each agency. If concerns arise, they will be immediately addressed by the Chiefs of each agency.

14. CRIT P.D. is currently in discussion for their officers to issue federal misdemeanor citations to non-Native Americans who commit crimes against Native Americans.

15. The two police agencies will conduct joint meetings or training sessions quarterly.

The Parker and CRIT police agencies are committed to work together to meet the needs and concerns of our communities. The quality of life that we enjoy in Parker needs to be unsurpassed. Our families can go out together for walks during the hours of darkness; our children can walk or ride their bikes to school without the fear of becoming a victim to random acts of violence as other families do in communities across our Nation.

The criminal problems we face in Parker are committed by a small percentage of our population. CRIT Police Chief and I are both united in our concerns and commitment to provide excellent police service and response to your concerns.

If you have questions or concerns please contact the Colorado River Indian Tribal Police Department or me at the Parker Police Department.

Additional Concerns

The investigation of criminal activity and the arrest of tribal suspects is only the beginning of the criminal justice process. An area of major concern among citizens, especially crime victims is the whether tribal criminal offenders are held accountable. It is not uncommon to see offenders back in the community the next day as if they were never arrested or charged for the committed offense.

During the four years I have been the Parker Police Chief, I have seen a vast improvement in the cooperation between law enforcement agencies. However, the lack of tribal resources to confine, prosecute and monitor offenders needs to be corrected. Juveniles who are arrested for crimes must be transported by bus for six hours after their hearing to be held in an approved juvenile facility. Transporting these juveniles is costing thousands of dollars to the tribal community. If the juveniles are not lodged and transported they are immediately released back into the community without being held accountable for their actions. This empowers the juveniles to continue with their criminal activity.

Funding for tribal criminal justice resources should be of the highest priority to ensure the rights and safety of all are equally protected.

References

International Chiefs of Police Indian County Law Enforcement Section

Elaine Deck, Section Liaison, Telephone 800–843–4227 ext. 262

Power point presentation "New Challenges for BIA–OLES," 2005 annual meeting.

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United States District Court, D. Arizona.

Colorado River Indian Tribes, an Indian Tribe, Plaintiff, v. Town of Parker, a Municipal Corporation, et al., Defendants

No.CIV–83–2359–PHX–R6S. January 17, 1989. *Judge Strand.*

18 U.S.C.–1151(a). Indian country & Dawes act/general allotment act.

The CHAIRMAN. Mr. Mendoza, thank you very much. Mayor Gordon, let me ask you. You talked about the agreement that you have with the Gila River Reservation and the Tribal Council.

Is there any cross-deputization between the two law enforcement agencies of Phoenix and the Gila River?

Mr. Gordon. Actually our commander is knowledgeable on the issue, with your permission, to answer that.

The CHAIRMAN. There is another question that goes with that, and that is because you share a 22 mile border, I would ask: If there is hot pursuit, for example, that crosses the border from Phoenix into the Gila River Reservation, can the Phoenix Police Department continue that hot pursuit?

Mr. SMITH. There is no cross-deputization. We did pursue it. We have—Mr. Chairman, Alan Smith with the Phoenix Police Department. There is no cross-deputization, that we have kind of an understanding of what each other's roles are but, like I say, there is no cross-deputization.

The CHAIRMAN. If you are engaged in a hot pursuit of a vehicle that has done something you think is significant and it crosses into the Gila River Reservation, the Phoenix Police Department is in hot pursuit?

Mr. SMITH. Yes, that is correct. We will continue it.

The CHAIRMAN. And your relationship with the Gila River law enforcement is such when you continue that pursuit and arrest the perpetrator, if it's someone from the Reservation, you then would hand that person over to the Gila River law enforcement?

Mr. SMITH. That's correct. What we would need do is arrest if it's a non-Native Indian or detain that person. So depending upon the circumstances.

The CHAIRMAN. Thank you very much. I appreciate your help. It's an interesting situation in Colorado because in Arizona you have a pretty substantial population of Native Americans and a good number of Reservations and coterminous with cities. Parker is a different situation. How many people live in Parker?

Mr. MENDOZA. 3,500.

The CHAIRMAN. And you are surrounded completely by Indian Reservation; is that correct?

Mr. MENDOZA. Yes, that is correct.

The CHAIRMAN. I'm asking. Let me go to the U.S. Attorney's Office. One of the things that we have talked about is FBI presence.

The FBI presence in Indian Country has dropped sharply since 2001, and in 1998 and in 2000, early 2000, we included money specifically to increase 30 new FBI agents who had focused solely on Indian Reservation crimes so we will have added 30 FBI agents for that specific purpose, and now post 9/11, 18 of those new FBI agents are gone. They are working on terrorism. So we lost a fair amount of the FBI presence that we had funded.

Funding for U.S. Attorney's Offices has nearly doubled since 1998, but the federal Indian Country prosecutions have fallen in the last five years, right about 26 percent.

There was an investigative story by the Denver Post that showed over the past ten years they have declined to prosecute two-thirds of Indian Country cases nationally.

I don't know the veracity of those numbers except that the anecdotal information from tribes themselves tell me that there's still some problems here, and at least it looks to me like the FBI resources, the additional FBI resources we tended to put into Indian law enforcement did not get there.

I want to ask you a question about due process because you raised, properly I think, a question about due process if the tribal courts would ever be given jurisdiction to prosecute non-Indians.

You are concerned about the due process.

Should we be concerned about due process with respect to tribal courts and the prosecution of Indians. Is there a due process issue, do you think, on Indian Reservations?

Ms. HUMETEWA. I cannot speak blanketly as the Senator—as both Senators Kyl and as you know, there are over 562 federally recognized tribes and each has a unique tribal criminal justice system, and so I couldn't answer that generally.

But I think because the Department does not have particular language, particular legislative language before it, we just raised that as an issue that just generally due process should be addressed in any proposal.

The CHAIRMAN. It's a fair point, and I would agree with it, that if we have a certain status where a tribal court has jurisdiction over non-Indians, we have to make certain that all of the constitutions are guaranteed, due process and so on would be certain there.

You indicate in your testimony something that I was surprised by. You seem to indicate that there is no gap with respect to jurisdiction, and I think most testimony tells us there is in fact a gap.

There is substantial declination. There is a problem certainly in enforcement but also in jurisdiction. Are you telling us that there is no gap in jurisdiction here?

Ms. HUMETEWA. For every crime that is committed, for example as was pointed out by President Enos, if someone commits a crime here in the community, either tribal government will have jurisdiction, the state county attorney's office, Maricopa County for this particular area, can have jurisdiction dependent upon the particular circumstance of the crime, or if it falls into a major crime act violation, the U.S. Attorney's Office would address that prosecution, or if it's a non-Indian and it rises to a particular level of felony offense or even in some circumstances not, then the U.S. Attorney's Office would then look at it for potential felony crime jurisdiction under 18 U.S.C. 1152 so there is a court to address those offenses. That's what I meant by that.

The CHAIRMAN. But on the enforcement side, the same article that I referenced, which was really I think an interesting article, which quoted one U.S. attorney not by name but quoted a U.S. attorney who said my gun cases have to compete, my white collar cases have to compete. One criteria that's never on the list of what I need to be doing are Indian Country cases.

And we had testimony before our Committee of a former U.S. Attorney in Minnesota who said, you know, frankly, I was criticized by the Department because I was spending too much time on Indian law enforcement.

And what that gets to is the question is there appropriate enforcement? And that gets back to the question of declination.

You describe why declination is probably something that's very hard to get at, but I think most people feel that a substantial amount of enforcement is not pursued very aggressively. Your response?

Ms. HUMETEWA. Chairman Dorgan, your question is two-fold, if not three-fold. First, on the issue of declination, let me clarify that every case that is submitted to our office by a federal investigative agency is reviewed to determine whether or not it meets the elements of a particular federal offense.

In other words, is there sufficient evidence to prove beyond a reasonable doubt if we had to go to trial whether we had physical evidence, eye witness testimony, and the like that we could bring that

individual to justice if a trial were ever to be conducted. So we look at the particular circumstances of each and every case.

The statement about declination reports or referrals is problematic to me in that, as I mentioned in my testimony, both in my oral statement and written testimony, so long as the statute of limitations has not run on a particular offense, be it homicide, assault, child sexual abuse, we have the opportunity to review fresh evidence, new eye witness accounts to reconsider whether or not we now today have sufficient evidence to go forward on a case that may have been declined two months ago.

So to issue a report on declinations today would create a problematic, I think, accounting of what actually is occurring on a day-to-day basis in any prosecutor's office.

The CHAIRMAN. My question is not about your role as U.S. Attorney because, as I said, I was proud to support your nomination. But just give me your observation of the Department of Justice statistics that suggest 27 percent—nearly a 30 percent decline in FBI investigated activity since September 2001.

We all know that from the September 2001 terrorist attack, a lot of resources moved in that direction, but since that time nearly 30 percent reduction in FBI investigative activity at a time when the crime rates, I think from most evidence I have, is increasing.

Give me your observation about that. Isn't that a disconnect in terms of whether we are moving toward this issue?

Ms. HUMETEWA. I do recall reading the Denver Post article that you referred to——

The CHAIRMAN. This didn't come from the Denver Post. This is DOJ data.

Ms. HUMETEWA. I have to say, Chairman Dorgan, that I have not read or looked at the particular study that you are mentioning in preparation for this testimony, we did provide to the Committee that there has been a 7 percent increase in special agents in Indian Country in the FBI since 9/11 so that seems to be contrary to the information that you have, and I would be happy to go back and look at that.

I can say in terms of my experience not just as the United States Attorney but also as a former tribal liaison for the U.S. Attorney's Office and as a former U.S. Attorney prosecuting violent crimes of the Indian Reservations in Arizona that there is a very strong commitment by not just those in the federal law enforcement family, but in addition the individual criminal investigators and police officers in Indian Country to go after these individuals who are committing these offenses, in addition to my colleagues in the U.S. Attorney's Office addressing and looking at the particular case referrals that come in on a case-by-case basis to make sure that justice is delivered in Indian Country.

The CHAIRMAN. Mr. Mendoza, finally, the Town of Parker and the surrounding Reservation, have you talked about cross-deputizing?

Have you had discussions with the Reservation officials about whether they would like to cross-deputize?

Mr. MENDOZA. We have talked about that, and a few of our officers have attended the Academy, but we have not been cross-deputized.

Ours is a unique situation, as I explained, with Parker being part of a Reservation. What we are trying to avoid is any type of conflict between the tribal member and Parker Police Department.

What I mean by that is the last thing we want to do is have a relationship destroyed based upon reports that we had used force on a tribal member on a Reservation, and that's what we are trying to avoid at all costs, and I think we are successful in that endeavor by going with the current agreement that we have. So, the answer to your question is no, we have not cross-deputized on the Reservation.

The CHAIRMAN. Finally, Mayor Gordon, do the Phoenix law enforcement officers do cross-training with Gila and other law enforcement agencies in the state?

Mr. Gordon. We have done cross-training, Senator, and we welcome that opportunity both ways.

The CHAIRMAN. The interoperability for radio transmission I thought was interesting. When was that initiated?

Mr. Gordon. Actually the concept of interoperability I think Phoenix started before 9/11 with the Native American communities and the state about four years ago. And Senator Kyl, Senator McCain, and yourself helped actually implement that interoperability agreement.

The CHAIRMAN. Senator Kyl?

Senator KYL. Thank you. I would like to thank all three witnesses for being here. First of all, Mr. Mendoza, as I distill what you said, as the primary problem the fact that you will have primarily juveniles but members of the tribe who engage in misdemeanor activity or nonthreatening activity which results not in their arrest or their detention if they are not willing to be detained voluntarily, I gather you don't use force to detain them.

Isn't the problem that the kids know that now and they kind of thumb their nose at it and say "you can't hold me" and they take off? Is that the issue?

Mr. MENDOZA. I would agree with that issue a hundred percent. The tribes are only able to arrest these juveniles. They have nowhere to put them, but the juveniles that and they know that Parker Police Department cannot detain, cannot arrest or do anything to them. So when they are released back into the community, usually an hour after being arrested by CRIT, they are back in the community.

The community looks at this and they are blaming the tribal community for not caring about them, not caring about their property or——

Senator KYL. You are persuaded that if they had the detention facility, the Reservations, that problem could largely go away?

Mr. MENDOZA. If they had the resources, I'm sure of it.

Senator KYL. I could get into that in a closing statement, Mr. Chairman. Let me ask our U.S. Attorney a couple of questions here.

First of all, I think Senator Dorgan really put his finger on the question and we really don't have the answer here today. The real question, I guess, is why declination.

In other words, you have pointed out that there are a lot of reasons why any prosecuting office would decline to take a case at

least at that time, and there may be some additional factors that relate to the unique situations regarding Indian Country.

But the question is if you account for all of those reasons why a case may not be taken, is one of the reasons also that there is simply a lack of resources which cause you to have to prioritize with the result that you take more serious cases and simply don't have the resources, whether it's the FBI investigating or your office to prosecute?

Ms. HUMETEWA. Senator, in my experience, again, as a prosecutor, as a trained prosecutor, I have to look at every individual case and the evidence behind it to determine whether or not in the first instance we have probable cause to charge an individual.

And I have to say that in this district and, again, I understand that this may be the exception rather than the rule.

We work with very well-trained and well-qualified and well-experienced criminal investigators such as comes out of Director Cowboy's office on a Navajo Nation, the Gila River Indian Community, the Salt River Community.

These individuals have gone through an extensive level of training not just through our cross-deputization program but also the Arizona Department of Public Safety Program. They have Arizona Post certification so that provides them additional authority within their communities.

Now, it's fair to say that from time to time we do have issues with respect to gathering of evidence, gathering of witness statements, items that may turn stale and may then hamper our ability to go forward on a particular prosecution, but I suspect that the U.S. Attorney's Office and the various counties and cities and states that's not—not un-unique I should say. It's not a unique problem for us. I think prosecutor's offices throughout the nation experience that same type of situation.

Certainly I have to say, again, that many of the tribes in Arizona do have the expertise and they have been investigating these types of cases for a long time, and quality product may vary from time to time, but we do what we can with what we have and we have to, again, consider each case on a case-by-case basis to determine whether or not it meets the elements of an offense before we can charge an individual.

Senator KYL. There is great criticism of the U.S. Attorney's Offices, particularly in the Southwest and even in Arizona by—it's not criticism. It's frustration, I guess I will express it that way, that the U.S. Attorney's Office can't take a lot of the so-called smaller drug cases involving border crossing that the U.S. Attorney's Office has a fairly high threshold and the county attorneys are relegated to taking the smaller cases and that you take the more major cases. That's a matter of prioritization, and I think we all understand that.

Given the fact that the federal jurisdiction over non-Indians on a Reservation relates to major crimes, I gather from what you are saying here, you give that a high priority and your primary restraint is not a matter of lack of resources as a result of which you can't prosecute the cases, but simply the usual constraints that any prosecutor's office would have in marshalling the evidence and

making decisions of whether to prosecute or not. Is that a fair statement?

Ms. HUMETEWA. Absolutely. We take our responsibility to prosecute major act violations very seriously.

Senator KYL. I'm going to make a statement. If you can't comment on it, fine, but you are not a member of the bench yet and maybe it's unfair, but you raised an issue in your testimony there are—as a matter of law, the United States Constitution does not protect non-Indian constitutional rights or all non-Indian constitutional rights on the Reservation.

And the question is whether or not a constitutional right could be protected by statute rather than the means by which constitutional rights are traditionally protected, which can be by statute but go beyond statute, habeas corpus being one of the ways.

Is that part of the reason for the concern that you expressed in your testimony?

Ms. HUMETEWA. The Department has that concern along with other concerns that rise to the level of constitutional and due process rights, yes, Senator.

Senator KYL. I would like to make a bit of a closing statement, but should I just go ahead and do that now?

I really appreciate and, again, I want to thank you for holding this hearing. It's evident that Congress needs to do a lot more than it has, and I suspect the administration as well, and I do want to submit some questions to some of you.

One of the things that I'd like to ask all of you, and this applies to other Indian tribes in the State of Arizona—we will try to get this question out to everybody.

And this is the basic question. Chairman Enos testified to the rather fortunate situation where because of the circumstances of the community here, most if not all of the resources necessary for the criminal justice system including detention can be satisfied in tribal resources.

The question is, what extent is that true on your Reservation, the other Reservations, and to what extent do you need the Federal Government to step in with Federal funding?

And I'd really like to get very explicit answers to that if we could, both in terms of amounts and also the types of things from helping with officers, to vehicles, to detention facilities, to judges, defenders, the whole gamut—courtrooms even.

I have always thought for example, Mr. Chairman, that the COPS Program, which was supposed to be temporary when we first adopted it—and I was one of Republicans in the House that supported it, with some political blow-back, I might add. But I supported it because it was supposed to be temporary, but there is a part of it, it seems to me, that doesn't need to be temporary.

There is a Federal nexus or a Federal responsibility to provide law enforcement on Federal Reservations, meaning military Reservation, Indian Reservations, Indian land.

I look at the Tohono O'odham which has a very large part of their border with the country of Mexico and are impacted with the drug trade and so on.

And it seems to me that with the controversy with the COPS Program, something that every member of Congress ought to be

able to agree on, is that at least as to the Federal nexus here, we ought to be all to fully fund law enforcement officials on those Reservations.

So it's a program that already exists. It's a program we found money for in the past, and it seems to me there is a perfect justification to take more of that, given the fact that there is not sufficient money spent by the Federal Government on enforcement on the Reservations.

But the last point I want to make is I'm well aware that that's only the first step. You have to find the resources for all of the other parts of the criminal justice system in addition to that, and I'd really like to get an explicit answer from each of the tribes as to what they think their needs are so that we can begin to get a handle on the magnitude of the problem, and certainly this hearing will help us take the evidence back to Washington to justify the requests that I suspect we'll be making.

The CHAIRMAN. Senator Kyl, thank you very much. I think that it is the case, notwithstanding the jurisdictional issues and other issues, that we are desperately short of funding for a wide range of issues.

There is a report that has been done, a report that was contracted for by the BIA. It's now awaiting release. It has to go through the Office of Management and Budget.

I asked that it be released. It's the position of retention facilities and jails and so on on Indian Reservations. The taxpayers have paid for that report, but we don't have access to it at this point, despite the fact it's been done for some while.

I think the reason we are not given access to it is it's going to show a desperate situation. I have walked into detention facilities and seen a teenage boy laying on the floor intoxicated in a facility that housed adults and a facility in disrepair. That can't continue. It can't happen.

Much of the testimony we heard today was about the lack of detention facilities, and when you do decide you have to detain them, you put them on a bus for four or five or six hours—or transport them, rather, for four to six hours away from their family, away from their Reservation.

So we just have a lot of challenges to deal with. The facilities is one. The court system is another. Adequate financing for all of these issues.

But just at the starting line, if you are 40 percent short of the number of law enforcement officials you need to provide adequate law enforcement on Indian lands in the country, you start with the disadvantage that you can never overcome. And that's just a fact.

So we have got to try to put this together in a way that works. Some of it's going to require additional funding. Some of it's going to require some innovative approaches, and the Committee is anxious to work with all of the Indian Reservations and consult with you. We appreciate the testimony that's been provided at this hearing. I will submit some additional questions to the witnesses.

Mr. Mayor, thank you for being with us today as well. And Senator Kyl, again, thanks for your work. Senator Kyl and I and Senator Murkowski and other members of the Indian Affairs Committee will be continuing to work on this and a wide range of other

Indian issues, and we ask for your cooperation as we proceed. This hearing is adjourned.

[Whereupon, at 3:35 p.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. JOE SHIRLEY, JR., PRESIDENT, NAVAJO NATION

I. The Navajo Nation

a. Background

The United States signed the Treat of 1868 with the Navajo Nation, and is the treaty that is often referenced as establishing the formal government–to-government relationship between the Navajo Nation and the United States, which continues today. Subsequent Executive Orders returned more of the traditional homeland to the Navajo Nation. Through these Executive Orders, the current boundaries of the Navajo Nation expand into three (3) States – Arizona, New Mexico, and Utah.

Geographically, the Navajo Nation is the largest federally recognized tribe in the United States with a landbase that covers over 27,000 square miles, comparable to the State of West Virginia. The Navajo Nation has 255,543 tribal members,[1] of which nearly 170,254 reside within the Nation.[2]

The median age of Navajo tribal members is 22 years of age.[3] The Navajo Nation's per capita income is $6,804.[4] The estimated Navajo Nation unemployment rate is nearly 58 percent (58%).[5] According the 2000 Census, 31.9 percent (31.9%) of tribal housing lack complete plumbing, 28.1 percent (28.1%) lack complete kitchen facilities, and 60.1 percent (60.1%) lack telephone service.

b. Government

The Navajo Nation's Executive, Legislative and Judicial branches are centrally headquartered in Window Rock, Arizona. The executive branch is headed by a president who is popularly elected to a four year term. There are 14 executive divisions within the executive branch with more than 6,500 employees.

An 88-member popularly elected Council, with 12 standing oversight committees, serves as the legislative branch of the Navajo Nation. The Navajo Nation Council is the body of the Navajo Nation that promulgates laws that govern the Navajo Nation and its tribal members, as well as certain conduct of non-member Indians and non-Indians within the territorial boundaries of the Navajo Nation.

The judicial branch consists of a Navajo Nation Supreme Court, seven district courts, and seven family courts. The Navajo Nation Supreme Court is composed of one chief justice and two associate justices.

c. Criminal Jurisdiction on the Navajo Nation

Crimes committed within the Navajo Nation are under the jurisdiction of the tribal, federal or state governments, depending on the identity of the victim(s) and suspect(s) (i.e., Indian or non-Indian); the seriousness of the offense; and the state in which the offense was committed.

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[1] Navajo Nation Vital Records Office (2001).
[2] United States Census (2000)
[3] Id.
[4] Id.
[5] Navajo Nation Economic Development Office.

Federal jurisdiction over crimes committed in the Navajo Nation is codified at 18 USC § 1153 (more commonly referred to as the "Major Crimes Act"). The Major Crimes Act applies to crimes committed in the Navajo Nation. The Major Crimes Act specifies major crimes in Indian country are subject to federal jurisdiction when the offense is committed by, or against, an American Indian. The crimes subject to federal jurisdiction by the Major Crimes act include: murder, manslaughter, kidnapping, maiming, aggravated sexual abuse, sexual abuse, incest, sexual abuse of a minor or ward, attempted rape, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, assault against an individual under the age of 16 years, arson, burglary, robbery, and larceny.

In the absence of federal statutes limiting tribal criminal jurisdiction, the Navajo Nation exercises criminal jurisdiction over non-major crimes committed by tribal members, non-member Indians, and in certain cases, non-Indians. Navajo Nation criminal jurisdiction is generally confined to non-major crimes within the territorial boundaries of the Navajo Nation. These criminal cases are handled by Navajo Nation tribal prosecutors and are tried in Navajo Nation courts.

The States of Arizona, New Mexico, and Utah retain criminal jurisdiction over crimes by non-Indians against non-Indians committed in the respective state boundaries located within Navajo Nation.

Criminal Jurisdiction/Crimes Committed in Indian Country

Identity of Suspect	Identity of Victim	Type of Offense	Criminal Jurisdiction
Indian	Indian or Non-Indian	Major Crimes	Federal
Indian	Indian or Non-Indian	Non-major Crimes	Tribal
Non-Indian	Indian	Any Offense	Federal
Non-Indian	Non-Indian	Any Offense[1]	State

Source: Title 18, Chapter 53, USC § 1152 and § 1153.

[1] Except those crimes normally included under federal jurisdiction.

d. Navajo Nation Crime Data

In a report to the U.S. Attorney General and the Secretary of the Interior, the former Deputy Attorney General, Kevin V. Di Gregory stated, "there is a public safety crisis in Indian Country. Basic law enforcement protection and services are severely inadequate for most of Indian Country."[6] Several years later, in 2005, the public safety crisis in Indian Country has grown to epic proportions, most notably in the Navajo Nation.

[6] Kevin V. Di Gregory, U.S. Deputy Attorney General, Report to the Executive Committee For Indian Country Law Enforcement Improvements (1997).

The Indian Country crime statistics presented by the U.S. Department of Justice in 2000 is a national picture of crime in Indian Country. However, crime statistics in the Navajo Nation provide a clearer snap shot of the challenges the Navajo Nation faces on a daily basis. On any given year, Navajo Nation Law Enforcement answer over 289,000 calls and makes over 39,000 arrests, nearly 1,000 of which are major crimes.[7]

Listed below are the selected 2003 annual crime statistics for the Navajo Nation Department of Law Enforcement presented as a report to the Department of the Interior:

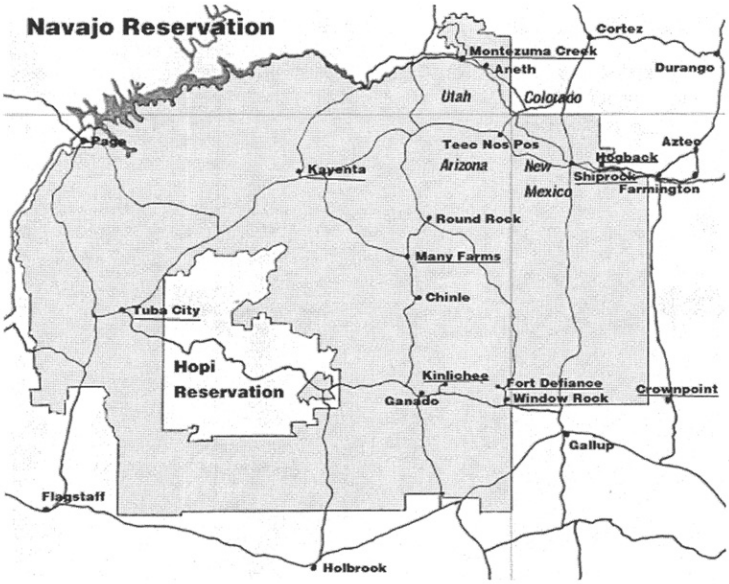
Navajo Nation Department of Law Enforcement Annual Law Enforcement Report to the Department of Interior for Calendar Year 2003, Selected Crimes*

Selected Part One Offenses	Total Offenses CY2003	Cleared by Arrest or Exceptional Means	Alcohol Related CY2003	Drug Related CY2003	Offenses Committed by Juvenile
Homicide-Manslaughter	51	2	22	0	0
Forcible Rape	121	11	55	8	33
Child Abuse	2,554	1,316	1,467	61	202
Domestic Violence	12,253	7,633	7,741	273	386
Robbery-Strong Arm	29	18	13	2	0
Aggravated Assault-Firearm	20	12	18	2	0
Aggravated Assault-Other weapons	244	101	127	2	1
Aggravated Assault-Hands, foot, fists, etc.	6,520	3,149	3,543	105	411
TOTALS	21,792	12,242	12,986	453	1,033

Other Than Part One Offenses	Total Offenses CY2003	Cleared by Arrest or Exceptional Means	Alcohol Related CY2003	Drug Related CY2003	Offenses Committed by Juvenile
Drug Abuse-Possession	1,124	874	391	632	384
Driving While Intoxicated	4,091	4,035	3,759	39	94
Liquor Laws	3,598	3,292	3,168	62	151
Drunkenness	22,119	21,578	20,537	140	637
TOTALS	30,932	29,779	27,850	873	1,266

* Calendar Year 2004 data is currently being compiled by Navajo Department of Law Enforcement, Information Management Services.

[7] Navajo Nation Division of Public Safety Statistics.



NAVAJO DIVISION OF PUBLIC SAFETY
Navajo Division of Public Safety STATISTICAL INFORMATION 2000 – 2003

CRIME	2000	2001	2002	2003
HOMICIDE	25	23	33	26
SEXUAL OFFENSE	623	728	681	646
ROBBERY	12	18	99	17
ASSAULT	6,799	7,011	7,676	8,069
BURGLARY	1,455	1,454	1,260	1,295
LARCENY	2,036	2,014	1,970	2,229
AUTO THEFT	1,119	1.091	1,244	1,352

e. US Department of Justice and Tribal Law Enforcement

The United States Department of Justice has a significant role in supporting tribal law enforcement and justice systems, including corrections. Additionally, the Department of Justice also administers federal funds that enable tribes to build the capacity to fight crime and promote public safety.

In a five year span, between 1998 and 2003, the Department of Justice budget authority increased by 23.3 percent (23.3%) while the Department's discretionary budget increased by 5.4 percent (5.4%); during that same period, funding for tribal programs increased by 86.7 percent (86.7%). Regardless, funding for tribal programs remained only 1 percent of the Department's total budget.[8]

Though the Department of Justice is to be applauded for the effort to assist tribal law enforcement, funding for tribal law enforcement and justice systems fluctuate from year to year, and in some cases federal funding is eliminated. The Office of Tribal Justice's tribal detention facility funding serves as a prime example of funding fluctuations. The grant program for tribal jail construction was funded at $44.4 million in 2002, however, by 2003 funding was reduced to less than $5 million. In 2004 President Bush's budget requests proposed an elimination of funding for the tribal jail construction grant.[9]

II. <u>The Navajo Nation Department of Public Safety</u>

The Navajo Division of Public Safety has an annual budget of nearly $60 million with over 700 employees. Navajo Public Safety consists of seven (7) Police Districts and six (6) Adult correctional Facilities Navajo Public Safety funds are from external sources such as federal funding, approximately eighty six percent (86%), while 14 percent (14%) of Public Safety funds are from Navajo Nation General Funds. The division provides services in the following areas: law enforcement, criminal investigation, corrections, highway safety, and fire and rescue.

a. Public Safety Issues

The Navajo Nation population grew by 21 percent between 1990 and 2000.[10] The rapid population growth of the Navajo Nation presents ever increasing challenges such as increasing rates of crime. The aging law enforcement infrastructure coupled with inadequate law enforcement resources raises serious concerns for public safety within the Navajo Nation. Public safety is a fundamental element in the preservation of Navajo communities and culture.

i. Navajo Department of Law Enforcement

The Navajo Department of Law Enforcement currently funded at a staggering low ratio of .06 Police Officers per 1,000 people, compared to the national average of 2.5 per 1,000. Essential services are limited with minimal coverage to carry out the full obligation of "Protecting and Serving" the general public within the jurisdictional boundaries of the Navajo Nation. The Navajo Department of Law Enforcement is committed to providing prudent and prioritized services on a 24 hours basis as demanded by the general public within all Navajo Nation

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[8] The US Civil Rights Commission, *A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country* (July, 2003).
[9] Id.
[10] United States Census (2000)

communities, chapters, businesses, schools, and private entities.

The Navajo Nation must be adequately funded at a level to meet the needs of its growing population. Navajo Nation Law Enforcement Personnel require proper benefits and training, vehicles, updated equipment, communication services and retirement compensation, which most BIA, surrounding states, counties and federal government personnel derived from their respective law enforcement agencies.

The current funding level of $13,815,224.00 does not provide the basic salary needs for the Law Enforcement personnel for the full fiscal year; in fact, in the current FY 2006, a shortfall of $6,119,317.00 in salaries is expected. This base law enforcement funding does not address the need for overtime compensation incurred due to the coverage of the vast geographical area. The distance between districts results in longer than normal response time and requires extensive travel time.

The Navajo Nation's current estimated need is approximately 250 additional police officers to meet the level of coverage of 2.5 officers per 1,000 to provide optimal service.

To date, the Navajo Nation has been augmenting operating revenues through funds obtained from sources other than the Bureau of Indian Affairs. Through these funds, Navajo has been able to aggressively recruit and train new officers. Additionally, Navajo has made great progress in initiating technological advances by implementing state of art communication system. These improvements are providing the officers with wireless connectivity virtually from any community in the vast area of coverage. The new equipment will allow for instant retrieval of criminal background information from local, state and federal data bases. Furthermore, the new data capturing system being implemented at the Training Academy requires training for technicians who will be operating the system. It is essential that NDLE be funded at level to achieve its goal of additional officers and sustain the improvements made. Most of the grants will soon be exhausted; consequently, other funding sources will be needed to maintain an adequate number of law enforcement personnel and meet daily operating expenses for officers.

ii. Navajo Department of Criminal Investigations

The Navajo Department of Criminal Investigations (NDCI) is an established and nationally recognized law enforcement program. NDCI is comprised of 54 duly certified criminal investigators that have the inherited responsibility of providing investigative services involving major crimes within the exterior boundaries of the Navajo Nation and Indian Country. NDCI is one of three separate law enforcement programs within the Navajo Division of Public Safety. NDCI collaborates with numerous tribal, city, state and federal programs to address violence against its citizens.

In order to effectively perform the duties and responsibilities of a criminal investigations program several basic needs must be considered and provided, which include maintaining contractual certification requirements, transportation, equipment and salaries. The Department of Interior has an entrusted responsibility to financially support NDCI; furthermore, it must be realized that there truly exists a need for reconsideration of increasing its annual budget amount. NDCI is expecting a shortfall of $2,721,457 for FY 2006. At present, NDCI is deliberating the

possibility of both commissioned and civilian lay offs for the coming new year. This would severely jeopardize NDCI service capabilities and create an adverse effect for those ongoing investigations.

NDCI is afforded funding from the Navajo Nation General Fund account, but that amount is limited and subject to government priorities. In addition, NDCI has received Grant funding from the United States Department of Justice in the amount of $202,143 for Gang Violence Interdiction which is restricted to weaponry, ammunition, communication, surveillance, personal protection equipment, and overtime relating to the grant guidelines. The grant is extremely helpful; however, additional funds are needed for personnel salaries, basic operating expenses, forensic investigations, and costs associated with training and travel.

Statistically, violent crimes on the Navajo Nation are not decreasing. The citizens of the Navajo Nation are exposed to numerous negative influences which directly contribute to violent acts. It is imperative that we continue to prosecute those individuals who instigate and perpetuate these types of crimes. Without an effective and intelligent criminal investigations program, the citizens of the Navajo Nation will experience severe hardships.

iii. Navajo Department of Corrections

The Navajo Nation Department of Corrections will operate on a budget of $2,668,044.00 for FY 2006. The funding provided by P.L. 93-638 covers personnel cost and no operating cost. As a result, in 2005, the Department of Corrections reduced its administrative personnel to the bare minimum and reserves the limited funds for detention personnel and operation.

The Navajo Department of Corrections operates six adult detention facilities located in Window Rock, Chinle, Kayenta, Dilkon, Shiprock and Crownpoint. Three of these facilities are temporary holding facilities for new arrestees, while the other three are used for serving inmates. The National ratio for inmates/officer coverage is 1/10; whereas, Navajo is at 1/493 based on the 2005 statistics. The Navajo Nation Detention facilities operate under a consent decree of mandates which includes square footage per inmate; coverage by 3 officers per shift; 2,200 calorie diet; provision of postage and writing materials; individual hygiene and bedding requirements.

The Department of Corrections served 36,364 individuals in 2005. Each of the six adult detention facilities served on average 6,060 inmates with an average stay of eight days. Due to the limited jail bed spaces, law enforcement officials and the Navajo Nation Tribal Courts release arrested individuals to make room for new arrests.

According to the Navajo Department of Law Enforcement, approximately 289,774 responses were made to calls for services in fiscal year 2004, of which 56,768 were processed by Law Enforcement Officers with some type of report, while 39,289 individuals were arrested. Of the 39,289 arrested, 36,364 were booked into Navajo Detention facilities. An alarming 3,000 individuals who committed a criminal act were <u>not</u> processed into the local jails following arrests due to lack of jail bed spaces. These individuals were arrested and released.

In summary, it is imperative that the Navajo Department of Corrections receive adequate funding to address the ever-growing criminal activities and resultant inmate population within the Navajo Nation. The current funding level is used for personnel cost with no room for cost of living adjustments, additional staffing to adequately operate the six detention facilities. The current funding level does not allow for Navajo to meet the training requirements, medical and required psychological, operating expenses for uniforms and equipment. The Detention facilities were built more than 30 years ago and required extensive repairs and maintenance. Accordingly, operation and maintenance cost of $3,556,000.00 have been included in the FY 2006 funding request along with personnel cost of $3,850,615.00 for a total FY 2006 Funding request of $7,406,615.00.

iv. Navajo Nation Detention Facilities

Navajo Nation law enforcement make over 38,000 arrests annually yet Navajo Nation detention facilities have bed space for only 103 inmates. Navajo Nation detention facilities have consistently operated more than 60 percent (60%) above capacity. As a result of severely limited space and to create more space for serious offenders, the Navajo Nation criminal justice system is forced to release less serious criminal offenders back into communities.

A federal report on tribal jails stated, "tribal jails fall short of basic professional standards due to a shortage of operating funds, training, and technical assistance...[O]perations are substandard in such critical areas as staff and inmate safety, inmate services and programs, fire safety, communicable disease prevention, sanitation, and hazardous substance control."[11] While a Department of Interior report stated that tribal detention facilities were "a national disgrace."[12]

III. Navajo Nation Public Safety Requirements

The Navajo Nation has significant needs in order to best serve and protect the Navajo People.

First, the Navajo Nation requests that Congress double the FY2008 Enacted level of $14M to $28M in FY2009 for Bureau of Indian Affairs (BIA) Public Safety Construction and direct the BIA to allocate a fair portion of such funds to tribally-owned/638 Contracted facilities.

Currently the BIA funds only BIA owned and operated detention facilities. The Navajo Nation does not receive any construction funds under this budget line item. The Navajo Nation owns and operates, under a 638 Contract with the BIA, six adult detention facilities located in Window Rock, Chinle, Kayenta, and Dilkon, Arizona, and in Shiprock and Crownpoint, New Mexico. Three of these facilities are temporary holding facilities for new arrestees, while the other three are used for serving inmates. Therefore, in addition to doubling the FY2008 Enacted level for FY2009, the Navajo Nation requests Congress to direct the BIA to allocate a fair portion of the Public Safety Construction funds to tribally-owned/638 contracted facilities.

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[11] The U.S. Civil Rights Commission, *A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country* (July, 2003) citing Office of Tribal Justice, *Report of the Executive Committee for Indian Country Law Enforcement Improvements: Final Report to Attorney General* (October, 1997).

[12] The U.S. Department of Interior and the Bureau of Indian Affairs, *Neither Safe Nor Secure: An Assessment of Indian Detention Facilities* (September, 2004).

Second, the Navajo Nation requests a 20% increase in Bureau of Indian Affairs Operation of Indian Programs Law Enforcement budget over the FY2008 enacted levels in order to accommodate Navajo Nation Law Enforcement Personnel funding request of 8-10% percent over the FY2008 enacted levels

The Navajo Nation requests Congress to increase the BIA Operations of Indian Programs Law Enforcement budget by 20% over the FY2008 Enacted levels in order to accommodate Navajo Nation Law Enforcement Personnel funding request of 8-10% over the FY2008 enacted levels. Further, the Navajo Nation urges Congress to direct the BIA to establish a sound, policy-based funding formula based on population, land base, economic conditions, and law enforcement resources for the distribution of BIA Operation of Indian Programs Law Enforcement funding.

Finally, the Navajo Nation requests that Congress to reject the FY2009 President's Request to consolidate DOJ Tribal Funding and to increase the Department of Justice Tribal COPS budget by 20% and double the FY2008 enacted amount of $8M to $16M for Tribal Detention Facilities Construction.

The Navajo Nation requests Congress to maintain its prior fiscal year appropriations decisions to reject the consolidation of DOJ Tribal funding into one consolidated tribal grants program. Instead, the Navajo Nation urges Congress to maintain the current budget structure and increase the Department of Justice's Tribal Community Oriented Policing Services (COPS) FY2009 budget by 20%. Additionally, the Navajo Nation requests Congress to double the FY2008 Enacted amount of $8M to $16M for Tribal Detention Facilities Construction.

IV. Conclusion

The Navajo Nation faces significant challenges in providing for the safety of our Navajo People. The Division of Public Safety has the daunting responsibility to protect the Navajo People and those visiting our land, investigating crimes, and maintaining the Nation's detention facilities. We lack the resources and the manpower to properly secure and police a territory the size of West Virginia with such a large population. As a result, our Navajo People are faced with increased incidences of criminal activity perpetuated by individuals who know we lack the police officers to track them down, and the facilities to detain them. We need your help to address our public safety concerns.

PREPARED STATEMENT OF HON. DANIEL EDDY, JR., TRIBAL CHAIRMAN, COLORADO RIVER INDIAN TRIBES

Introduction

Mr. Chairmen, Members of the Committee, Senator Kyl and guests. I want to thank you for this opportunity to appear before your committee today to discuss law enforcement issues in Indian Country. I am Dan Eddy, Jr., Chairman of the Colorado River Indian Tribal Council and today I will highlight some of the law enforcement problems that we face on our reservation today. I can assure you that our problems are not unlike many others in Indian Country. This is an issue of increasing importance to all of us and we are grateful that the Committee has dedicated this time and these resources to advance the discussion of our concerns and needs.

The Colorado River Indian Tribes ("CRIT") is facing the same dilemma as many Indian tribes across the nation with its Tribal Justice System where it is severely under-funded by the Federal Government. The BIA funds approximately 30 percent of the cost needed to operate law enforcement and detention programs and CRIT is left with the burden to absorb the rest of the costs. CRIT Uniformed Police and Adult Detention Programs are severely under-funded and CRIT has repeatedly objected to the shortfall in funding.

Further, even though CRIT has retroceded its P.L. 93–638 Contract for Juvenile Detention, the BIA has not fulfilled its obligations by failing to transport CRIT juvenile offenders in a timely manner. The most alarming of these incidents was when a Minor was not transported back to the reservation until thirteen (13) days after her scheduled release time. To-date, CRIT is holding five (5) juveniles that are awaiting transport from the BIA. The longest stay period has been over three (3) months for one of these juvenile offenders. CRIT is now forced to release these juvenile offenders because the Temporary Holding Facility is not appropriate for long-

term detention. Not surprisingly, juvenile recidivism on the reservation is very high. Further, CRIT was reimbursed only $250,000 out of the $680,000 owed by the BIA in April, 2007. To date, eleven (11) months later, CRIT has not seen any additional payment.

CRIT's three (3) programs (Juvenile Detention, Adult Detention, and Uniformed Police) will be discussed below in detail.

I. Juvenile Detention

In May of 2004, the BIA removed all CRIT juveniles from the CRIT Juvenile Detention Facility on the reservation. The reason that the juveniles were removed was because the youth facility was connected to the adult detention facility and did not meet the Department of Justice requirements for sight and sound separation between the adult and juvenile detainees.

CRIT juveniles are now housed at the Gila County Juvenile Detention Center in Globe, Arizona, five (5) hours or 250 miles away from the reservation. However, the National Institute of Corrections has a regulation that mandates that no individual subject to incarceration under the Federal system and Federal guidelines can be incarcerated at a facility more than 200 miles from his/her home. The BIA is currently violating this regulation.

Unfortunately, the many families of these juveniles are unable to physically visit with the detainees. Even a trip to Globe is unattainable for those families with little to no income and no means of transportation.

With our present situation, it is very difficult to deliver mental health and substance abuse services to the juvenile detainees in Globe; therefore, CRIT juveniles are not receiving any of these much needed services. If these juveniles were on or closer to the Reservation, CRIT Behavior Health Services and the Alcohol and Substance Abuse Program as well as the Juvenile Probation Department, would be able to adequately serve these children.

Having the BIA assume this transporting duty has lead to another grave problem—CRIT juveniles were not being transported back to the reservation in a timely manner pursuant to CRIT court orders for release or hearings. The most alarming of these incidents was the non compliance of transport by the BIA on a Release Order issued by CRIT Juvenile Court; the Minor was not transported back to the reservation until thirteen (13) days after her scheduled release time. The transport of these juveniles occurred only after a formal letter from the CRIT Chairman was sent to the BIA Supervisory Corrections Officer in Phoenix.

Further, until they are transported to Globe, CRIT juveniles are being held at CRIT Temporary Holding Facility, which under its current condition, is only appropriate to hold juveniles on a temporary basis. However, since the BIA cannot locate available facilities to take juvenile offenders, these children remain at CRIT Temporary Holding Facility up to several months. To-date, CRIT is holding five (5) juveniles that are awaiting transport from the BIA. The longest stay period has been over three (3) months by one of these juvenile offenders. Initially, the BIA picked up these children within forty-eight (48) hours of a transport order. CRIT is now forced to release these juvenile offenders because the Temporary Holding Facility is not appropriate for long-term detention. Not surprisingly, juvenile recidivism on the reservation is very high.

To make matters worse, CRIT expended approximately $680,000 of its own funds from 2005–2007 in the performance of BIA transport duties alone for these juvenile offenders, without factoring in management and housing costs when BIA fails to relocate them to an appropriate detention center; these additional costs are approximately another $250,000 conservatively. After a long and exhaustive engagement with the BIA, which went all the way up to the Director of Law Enforcement, CRIT has been reimbursed only $250,000 out of the $680,000 owed as of April, 2007. To date, eleven (11) months later, CRIT has not seen any additional payment.

Currently, CRIT Juvenile Detention Program costs the Tribes approximately $240,000 annually.

II. Adult Detention

The BIA's proposed base-funding for the P.L. 93–638 Contract for Adult Detention is $270,000 for the 2008 fiscal year. The total projected program cost is approximately $760,000 each fiscal year. Since the beginning of 2007, the Tribe has complained about the shortfall in funding. The projected BIA funding only covers approximately 36 percent of the cost to operate this program; CRIT absorbs 64 percent of the cost.

In 2007, as a result of the shortfall, CRIT Tribal Council took action not to recontract the adult detention program. In late April, in reliance on a promise of additional funding from the BIA, the Tribal Council took action to extend the 2006 Adult

Detention P.L. 93–638 Contract to June 30, 2007. This extension was made in reliance on the following additional funds being made available to CRIT: (1) an increase in funding by $180,000 and (2) the restoration of approximately $30,000 in 10 percent hold-back funds. These funds were to carry the program to the end of the federal fiscal year on September 30, 2007.

In June, the BIA asked the Tribe to extend the 2006 Adult Detention P.L. 93–638 Contract to December 31, 2007. CRIT asked the BIA to retract the request, as it was our understanding the additional funding the BIA agreed to provide was only intended to carry the program to the end of the federal fiscal year (September 30) not the end of the calendar year (December 31). However, BIA did not retract the letter and the Tribal Council Chairman agreed to extend the 2006 P.L. 93–638 Contract to December 31, 2007.

III. Law Enforcement

The BIA's proposed base-funding for the P.L. 93–638 Contract for Uniformed Police (Law Enforcement) for the 2008 fiscal year is $673,000. The total projected program cost is approximately $2,115,000 annually. Thus, the BIA funding only covers approximately 32 percent of the total cost and CRIT absorbs 68 percent of the cost.

CRIT has been very conservative with the Uniformed Police budget due to the extreme shortfall in funding. Unfortunately, our conservative spending puts our Police Department at a disadvantage because neighboring cities pay at a more competitive rate with a more competitive benefit package. Hence, CRIT's turnover rate for Uniformed Police is alarmingly high, around 50 percent between 2006 and 2007.

As a consequence of the high turn over rate, CRIT Officers are placed in a compromising position where they work long hours to compensate for the lack of adequate staffing. This leads to both physical and mental health issues for the Officers and safety issues for the Reservation.

Conclusion

It is evident from that the BIA is failing in its fiduciary and other legal obligations to CRIT. The shortfall in law enforcement and detention funding is exposing CRIT to very serious foundational problems such as a lack of safety and order on the Reservation. Moreover, even when the BIA assumes the responsibility such as the holding of juvenile detainees, it even fails to do so. Additionally, CRIT needs to be reimbursed by the BIA for the outstanding balance of approximately $500,000 for the costs of services provided. To-date, eleven (11) months later, CRIT has not heard a word from the BIA regarding this amount owed.

PREPARED STATEMENT OF CARL J. ARTMAN, ASSISTANT SECRETARY, INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. Chairman and Members of the Committee, I am pleased to provide this statement for the record on behalf of the Department of the Interior regarding Law and Order in Indian Country. The Bureau of Indian Affairs (BIA) has a service population of about 1.6 million American Indians and Alaska Natives who belong to 562 federally recognized tribes. The BIA supports 191 law enforcement programs with 42 BIA-operated programs and 149 tribally-operated programs. Approximately 78 percent of the total BIA Office of Justice Services' (OJS) programs are outsourced to Tribes.

The OJS provides a wide range of justice services to Indian country, including police services, criminal investigation, detention facilities, tribal courts, and officer training by the Indian Police Academy.

Indian country law enforcement provides services to a population that is predominantly under the age of 25 and experiences high unemployment rates, and lacks municipal infrastructure. Indian lands range from remote wilderness to urban settings. The close proximity of a number of reservations to the international borders of Mexico and Canada make these locations the perfect targets for drug trafficking and other smuggling operations. Recent reports and news articles outline the challenges faced by criminal justice systems in Indian country. Crime rates on most reservations are unacceptably high.

The Indian Law Enforcement Act of 1990 (25 USC 2801) and the regulations contained in Title 25 of the Federal Code of Regulations provides the statutory and regulatory authority for the BIA. Under this statute, the BIA provides basic police and corrections services while other federal agencies such as the Department of Justice (DOJ), the Federal Bureau of Investigations (FBI), the Drug Enforcement Administration (DEA), and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) also have responsibilities to investigate crimes in Indian country.

Strengthen Tribal Justice Systems and Recruitment/Retention Efforts

The Department of Interior's BIA provides several programs designed to strengthen Tribal justice systems. For example, the BIA operates the Indian Police Academy (IPA), which provides basic police training (16 weeks) and a variety of other police, jail and radio dispatch courses for tribal and BIA law enforcement and corrections officers. The IPA is co-located with the Department of Homeland Security's Federal Law Enforcement Training Center (FLETC) at Artesia, New Mexico. The IPA staff provide basic coursework in policing, criminal investigations, and detention. In addition, the IPA offers numerous advanced training courses such as child abuse investigation procedures, domestic violence training, community policing, drug investigation, use of force, firearms instruction, archeological resource protection, police management and supervision, crime scene processing, detention, and dispatcher training.

Our training partnership has proven to be very cost effective because we share trainers and facilities. The BIA and tribal criminal investigators receive specialized advanced training at the main FLETC facility in Glynco, Georgia. Select BIA and tribal law enforcement managers also participate in the FBI's National Academy in Quantico, Virginia. Many tribal communities choose to use respective state Peace Officer Standards and Training courses to supplement training of their police.

Upon completion and graduation, the officers have the requisite Federal credentials to be commissioned to serve their communities. The training programs are unique to Indian country policing and are similar to other Federal policing and corrections training required by other Federal law enforcement agencies serving the Federal Government. Additionally, the OJS provides training for tribal court personnel, which is sponsored by the OJS Office of Tribal Justice Support and by the Tribes themselves. It is the BIA's goal to ensure all training programs are offering the best possible training to tribal and BIA law enforcement, corrections, and tribal court staff. For the Committee's information, please find attached Table A, which outlines the number of training classes offered and the number of officers trained in FY 2007.

Attachment A

BIA-Indian Police Academy FY 2007 Training Statistics

Advance Training FY07		# classes	# trained
CJIC - Export Trng		26	592
CITP - Glynco, GA		8	24
FLETC Adv Trainings		39	183
Meth Lab Awareness		3	122
Basic Drug Investigations		3	53
Operation Eagle		10	240
	Sub total	16	415
Corrections Armed Transport TP		5	14
Corrections In-Service		10	301
Chief of Police In-Service		1	19
Police Officer In-Service		2	26
Peer Support		1	19
Law Enforcement Assistant Trng		1	31
	Sub total	20	410
FBI Training		9	93
Basic Training FY 07			
Basic Telecommunication Operator TP		1	18
Basic Correction Officer TP		3	131
Basic Police Officer TP		3	119
	Sub total	7	268
	Grand total	125	1985

In addition to the BIA's efforts to strengthen tribal justice systems, the BIA has centralized its law enforcement, corrections and tribal courts programs within one program management area titled, the Office of Justice Services (OJS). This organization allows for a centralized focus of the administration and management of basic justice services as well as lending to a cohesive approach to program implementation that allows for unity and cooperation throughout programs.

In an effort to improve recruitment and hiring within all service areas, the OJS is implementing a Recruitment Plan that includes task items for short, intermediate, and long term planning efforts. These efforts include, but are not limited to, increasing the personnel staff available to process and track status on OJS personnel actions; implementing age waivers; awarding a contract to improve recruitment efforts at colleges and the military to obtain better qualified applicants; improving and streamlining the process for background checks; and investigating the use of other manpower resources from other qualified law enforcement providers.

Crime Rate Data Collection

The BIA's crime data are collected by the OJS through monthly crime reports that are submitted by Indian Country jurisdictions (tribes and BIA law enforcement). The method currently used by OJS is as follows: crime reports that are collected are entered into an automated database tool that gathers law enforcement statistics at the lowest level. Crime data are entered at the field from the individual law enforcement agencies that are implementing policing programs. Tribal policing programs without direct access to the BIA's automated database tool submit hard copy information to their respective districts for input into the system. Crime data information submitted for entry into the system is verified by the agency and then is reviewed a second time at the District Commander level. The District Commander must then provide final approval before the crime data are used at the Headquarters Office for quarterly performance reporting and the development of other statistical reports. It should be noted that internet restrictions hinder the timely collection of crime data. For the Committee's information, please find attached Table B, which outlines the FY 2007 crime statistics.

Att achment B

FY 2007 Crime Rates for All Types of Crime

District	Agency	Type of Program	Service Population	Violent Crime Rate per 100,000 Inhabitants	Property Crime Rate per 100,000 Inhabitants	Other Crimes Rate per 100,000 Inhabitants
I						
	Bay Mills	638	1,268	158	2,603	21,530
	Cheyenne River	638	8,500	1,047	165	108,988
	Crow Creek	BIA	2,225	989	584	40,854
	Flandreau	638	1,910	105	733	13,194
	Ft. Berthold	638	8,396	226	0	8,587
	Ft. Totten	BIA	6,223	1,430	1,944	45,814
	Grand Traverse	SG	1,759	227	569	17,396
	Hannahville	638	583	3,259	44,940	110,463
	Keweenaw Bay	638	3,325	0	481	1,353
	Lac Du Flambeau	638	3,800	579	9,868	41,421
	Lac Vieux Desert	638	322	1,242	15,839	167,081
	Little River Band of Ottawa	638	1,382	289	3,546	10,637
	Little Traverse Bay Band	638	1,200	167	333	2,250
	Lower Brule	BIA	1,590	881	63	99,308
	Lower Sioux	638	737	678	2,442	17,096
	Menominee	638	5,111	959	2,817	8,022
	Minnesota	BIA	1,000	600	300	18,100
	Oglala Sioux	638	45,000	180	140	21,636
	Omaha Tribe of Nebraska	638	5,227	2,258	3,004	39,372
	Oneida Police - WI	SG	20,000	40	675	12,860
	Pine Ridge	BIA	45,000	142	76	318
	Red Cliff	638	2,513	199	2,228	4,417
	Rosebud	638	21,417	887	2,573	80,389
	Saginaw Chippewa	638	1,447	1,728	6,012	38,217
	Sisseton-Wahpeton	638	11,266	36	524	8,140
	Standing Rock	BIA	10,633	1,138	564	14,502
	Stockbridge Munsee	638	737	678	10,041	28,358
	Turtle Mountain	BIA	15,000	747	2,593	36,507
	Winnebago	BIA	4,343	990	1,036	44,347
	Yankton	BIA	3,500	800	1,000	28,229
II						
	Absentee-Shawnee TPD	SG	12,721	63	212	5,235
	Anadarko Agency	BIA	18,154	17	248	4,225
	Cherokee TPD	SG	123,215	11	31	292
	Choctaw TPD OKA	SG	209,353	0	63	234
	Cit Potawatomi TPD Okla	SG	11,011	136	2,098	1,053
	Comanche	638	11,722	68	793	3,327
	Concho	BIA	7,147	42	504	5,107
	Eastern Shawnee Tribe Okla	SG	592	338	9,628	54,561
	Iowa-Oklahoma	638	3,824	26	105	2,589
	Iowa Tribe of Kansas & Nebraska	638	3,845	26	26	3,537
	Kaw TPD	SG	3,621	0	525	2,099
	Kickapoo TPD Okla	SG	2,675	150	748	37,757
	Miami	BIA	811	0	5,672	62,269
	Muscogee-Cree TPD	SG	55,817	5	168	1,091
	Osage	638	11,960	25	543	3,562
	Otoe-Missouria	638	930	215	1,290	6,344
	Pawnee Tribe	638	15,413	6	32	253
	Ponca Tribe Okla	638	2,675	224	1,607	6,243
	Prairie Band of Potawatomi-Kansas	638	2,018	694	2,032	27,205
	Sac and Fox Tribes Okla	SG	8,523	329	258	5,151

District	Agency	Type of Program	Service Population	Violent Crime Rate per 100,000 Inhabitants	Property Crime Rate per 100,000 Inhabitants	Other Crimes Rate per 100,000 Inhabitants
	Sac & Fox Tribe Kansas	638	422	0	1,422	16,588
	Seminole Nation Lighthorsemen	638	4,013	50	249	11,562
	Southern Plains	BIA	1,079	185	463	1,946
	Tonkawa	638	1,102	91	363	20,690
	Wewoka	BIA	24,489	4	20	208
	Wyandotte TPD	SG	2,159	46	0	1,992
III						
	Ak Chin	SG	984	407	711	407
	Cocopah	638	1,081	3,053	4,348	108,511
	Colorado River Indian Tribe	638	3,000	467	12,300	111,233
	Duckwater	SG	149	0	0	17,450
	Ely Shoshone	SG	300	333	3,000	10,000
	E. Nevada	BIA	2,000	250	0	9,400
	Fallon	638	1,100	182	1,909	37,727
	Ft. Apache	BIA	18,000	694	89	222
	Ft. McDowell	638	1,000	2,100	7,300	135,600
	Ft. Mohave	638	534	5,243	30,899	402,809
	Gila River TPD	SG	11,021	2,187	5,372	34,579
	Hoopa TPD	SG	3,500	1,400	4,000	67,171
	Hopi	BIA	7,207	222	14	42,417
	Hualapai Tribe	638	1,901	6,733	2,472	123,514
	Las Vegas Paiute	638	60	3,333	75,000	720,000
	Lovelock	638	150	1,333	2,667	96,000
	Moapa	638	250	4,400	10,800	144,400
	PascuaYaqui	638	10,075	1,012	1,697	26,084
	Pyramid Lake	638	2,054	389	487	19,961
	Quechan Tribe	638	1,200	2,833	5,000	29,250
	Reno-Sparks Indian Colony	638	1,050	1,143	3,333	64,571
	Salt River TPD	SG	7,605	1,012	9,915	68,652
	San Carlos Apache	638	12,776	1,064	4,274	85,128
	S. Paiute	BIA	220	455	455	11,818
	Table Mountain	638	115	2,609	67,826	313,913
	Tohono O'dham Nation	638	26,000	558	1,658	16,188
	Truxton Canon	BIA	600	5,833	833	51,167
	Uintah & Ouray	BIA	15,000	220	133	20,113
	Walker River	638	900	1,556	2,111	47,444
	Washoe	638	1,580	2,342	1,772	52,025
	Wells Indian Colony	638	150	0	667	50,667
	White Mountain Apache	638	12,429	1,513	4,119	59,747
	W. Nevada	BIA	1,002	798	399	16,567
	Yavapai Apache	638	1,829	383	1,312	12,630
	Yavapai Prescott	638	182	3,846	45,055	282,967
	Yerrington	638	506	988	2,174	55,731
	Yomba	638	100	0	0	3,000

District	Agency	Type of Program	Service Population	Violent Crime Rate per 100,000 Inhabitants	Property Crime Rate per 100,000 Inhabitants	Other Crimes Rate per 100,000 Inhabitants
IV						
	Acoma TPD	638	4,762	231	252	16,800
	Isleta	638	4,441	585	2,702	20,986
	Jemez	638	2,557	782	665	9,151
	Laguna	638	5,895	153	1,018	16,489
	Mescalero	BIA	4,312	3,989	1,786	68,205
	Navajo Nation	638	185,190	237	911	62,232
	N. Pueblos	BIA	15,814	221	285	6,646
	Ohkay Owingeh	638	2,068	193	1,112	15,280
	Pojoaque	638	348	1,149	14,368	625,287
	Ramah Navajo	638	3,100	65	3,129	32,968
	Santa Ana	638	716	419	5,587	65,363
	Southern Ute	638	1,399	3,002	1,144	659,471
	S. Pueblos	BIA	10,432	451	422	15,405
	Taos Tribal Police Department	638	2,600	231	38	10,538
	Tesuque	638	435	0	1,609	21,609
	Ute Mountain Ute	BIA	3,000	767	267	71,500
	Ysleta Del Sur	638	1,002	1,297	3,892	22,355
	Zuni TPD	638	9,997	260	410	16,495
V						
	Assiboine and Sioux Tribe	638	7,036	1,563	3,667	48,806
	Blackfeet	BIA	8,000	7,100	7,063	413,725
	Burns-Paiute Tribe	638	243	0	0	29,218
	Chehalis Business Council	638	3,436	58	2,008	23,108
	Chippawa Cree TPD-NR	SG	3,200	1,781	438	72,250
	Coeur D'Alene	638	10,000	1,240	780	47,280
	Confederated Tribes - Colville	638	9,023	22	22	78
	Confederated Tribes - Coquille	PL280	300	0	1,000	4,667
	Crow	BIA	7,739	517	2,442	87,143
	Flathead TPD	SG	28,297	357	693	10,492
	Ft. Belknap Community Council	638	4,834	103	103	6,661
	Hoh Police Department	BIA	150	0	9,333	140,667
	Jamestown S'Klallam Tribe	SG	559	537	0	13,953
	Kalispel Business Committee	638	200	500	8,500	83,000
	Metlakatla TPD	SG	2,781	0	144	12,190
	Neah Bay -- Makah TPD	SG	1,237	243	1,132	41,148
	Nez Perce Tribe	638	3,327	481	3,306	31,289
	Nisqually TPD-NR	SG	6,200	32	113	1,000
	Nooksack Tribal Council	638	825	2,182	7,515	15,758
	N. Cheyenne	BIA	10,986	410	546	40,251

District	Agency	Type of Program	Service Population	Violent Crime Rate per 100,000 Inhabitants	Property Crime Rate per 100,000 Inhabitants	Other Crimes Rate per 100,000 Inhabitants
	Olympic Peninsula	BIA	172	581	10,465	46,512
	Port Gamble TPD-NR	SG	1,160	1,379	2,672	35,345
	Puyallup Tribal Council	638	3,224	186	2,916	14,919
	Quileute Tribal Council	638	650	2,923	4,923	48,154
	Quinault TPD-NR	SG	3,203	31	718	86,981
	Sauk-Suittle Inian Tribe	638	100	1,000	2,000	35,000
	Shoshone Bannock	638	5,759	469	1,563	211,252
	Siletz TPD-NR	SG	308	325	20,130	78,571
	Skokomish TPD-NR	SG	1,500	1,733	6,600	46,800
	Spokane	BIA	3,000	1,133	1,600	26,700
	Suquamish TPD-NR	SG	3,783	106	3,146	13,957
	Tulalip TPD-NR	SG	3,604	694	3,274	64,456
	Umatilla TPD-NR	SG	2,622	343	3,509	17,849
	Upper Skagit Tribal Council	638	304	0	987	23,355
	Warm Springs	638	3,355	5,782	10,551	91,893
	Wind River	BIA	11,227	677	641	43,395
	Yakima Tribal Council	638	16,806	30	2,333	13,245
VI						
	Cherokee Police Department	638	7,477	254	976	2,541
	Chitimacha Police Department	638	450	222	13,333	77,778
	Choctaw Police Department	638	8,099	1,901	2,037	29,152
	Coushatta Police Department	638	819	977	12,454	30,769
	Mashantucket Police Department	638	723	1,107	4,979	11,203
	Miccosukee Police Department	638	589	2,377	13,243	107,301
	Mohegan Police Department	Tribal	1,611	1,738	6,145	26,319
	Narragansett Police Department	638	2,748	182	582	3,166
	Oneida Nation Police Department	638	650	1,846	314,462	191,231
	Passamaquoddy Indian Township	638	707	283	11,881	88,260
	Passamaquoddy Pleasant Point	638	1,158	432	17,876	36,097
	Penobscot Nation	638	540	926	12,593	152,222
	Poarch Creek Police Department	638	2,389	84	1,758	21,306
	Seminole Police Department	638	2,959	2,839	18,452	73,606
	St. Regis Police Department	638	10,830	268	702	23,047
	Tunica-Biloxi Police Department	638	318	4,717	37,107	80,503

In its effort to provide technical assistance to Tribes to establish management information systems for tribal collection of crime data, the OJS is considering the feasibility of the Incident Management Analysis and Reporting System (IMARS), which is a Department-wide information collection, analysis, and reporting system initiative. IMARS was proposed by the National Park Service in 2003 and is currently in Phase II of development. The concept behind IMARS is to provide a common information sharing capability across all participating functional areas within DOI for capturing and reporting law enforcement, emergency management, and security incident information. Once IMARS is available Department-wide, the OJS will determine the feasibility of providing an opportunity for tribal collection of crime data using IMARS.

Special Law Enforcement Commission (SLEC) Training and Certification

In an effort to make special commissions available to tribal, state, and local law enforcement, the BIA encourages cross-commissioning so that Federal, tribal, and state authorities can make arrests for each jurisdiction. For instance, BIA offers qualified tribal and state law enforcement officers Federal Special Law Enforcement Commissions (SLEC) so they can enforce federal law. This closes loopholes and allows police to focus on investigating the crime instead of sorting out jurisdictional details, which can be done later with the assistance of legal counsel.

Supplemental training is provided by the BIA and, more recently, through the offices of the United States Attorneys to utilize both tribal and state law enforcement officers in Federal and tribal policing as authorized under the Law Enforcement Reform Act. The Office of the Solicitor and the United States Department of Justice offices determine extension of Federal Tort Claim coverage as authorized under the Reform Act. For the Committee's information, please find attached Table C, which illustrates the SLEC count for all District Locations.

Attachment C

SLEC Count for all District Locations

District I

Rosebud	16
Winnebago	3

District II

Miami Tribe of Oklahoma	5
Miami Police Dept	30
Eastern Shawnee Tribal Police	6
Chickasaw Nation	12
Choctaw Nation	18
Citizen Band of Potawatomi	14
Prairie Band of Potawatomi	4
Cherokee Nation Marshall Service	19

District III

Sycuan Tribal PD	7
Hualapi Tribal PD	2
Pascua Yaqui Tribal PD	22
Gila Hoopland Tribal PD	6
River Tribal PD	56
Washoe Tribal PD	3
Las Vegas Tribal PD	1
Tohono O'Odham Tribal PD	8
Tule River Tribal PD	3
Ft. Mohave Tribal PD	7
La Jolla Tribal PD	1
FT. McDowell Tribal PD	13
Los Coyotes Tribal PD	1

District IV

Laguna	4
Jicarilla	3
Montezuma	26
Cortez	22
Southern Ute	52

District V

Shoshone & Arapaho	4
Crow Tribal	3
Skokomish Tribal	1
Ft. Hall Tribal	21
Marion County, Sherriff's Office	61

District VI

Chitimacha Police Department	6
Choctaw Police Department	36
Oneida Nation Police Department	30
Coushatta Police Department	9
Poarch Creek Police Department	15
Seminole Police Department	44
Cherokee Police Department	36
Mohegan Police Department	17
Mashantucket Police Department	18
Narragansett Police Department	3
St. Regis Police Department	13

Total SLECs for all OJS Locations	**681**

Tribal Court Jurisdiction

The Department's view is that Congress, consistent with the constitution, has the authority to establish tribal court jurisdiction over crimes committed by non-Indians. Though most felonies and serious misdemeanors committed by non-Indians are subject to prosecution at the Federal level, there is no effective way for tribes to address the more numerous misdemeanor crimes committed by non-Indians. The Federal Government has jurisdiction over the criminal acts of non-Indians in Indian country under the Assimilated Crimes Act. When a non-Indian commits an offense in Indian country, including a misdemeanor, State law covering the offense is assimilated into federal law and can be charged by the United States Attorney. Providing tribes with increased authority and jurisdiction to arrest and adjudicate non-Indians for crimes committed within Indian country would require additional study of each tribe's capacity to take on the added jurisdictional responsibility to do so effectively.

Tribal Sentencing Authority

Current Federal law provides a ceiling on tribal court penal authority to sentence of no longer than one year and up to a $5,000 fine for each offense. Some tribes currently sentence tribal offenders concurrently for more than one offense which, in the aggregate, can total more than one year. There are at least two major challenges faced by BIA and tribal corrections programs with the care of inmates subject to long term sentences for non-Federal felony crimes committed in Indian country:

1.) There is limited detention space on or near most Indian communities. There are also limited funds to contract for detention bed space in a non-tribal or non-BIA facilities. Extending sentences for longer than one year will result in increased costs to both the BIA and tribal governments.

2.) Not all tribal courts have an effective appellate process. Thus, a defined, effective, consistent, and transparent appellate process is important to ensure civil rights are protected and the tribes are not unduly subjected to habeas corpus claims in Federal court.

Mr. Chairman and members of the Committee, I thank you for providing the Department of Interior's Bureau of Indian Affairs the opportunity to comment on the specific issues related to Law and Order in Indian Country. We will continue to work closely with the Committee and your staff, tribal leaders, and our Federal partners. The Bureau of Indian Affairs will be happy to answer any further questions you may have.

PREPARED STATEMENT OF WILLIAM R. RHODES, GOVERNOR, GILA RIVER INDIAN COMMUNITY

I. Background

The Gila River Indian Community ("the Community") is located in Maricopa and Pinal Counties in Arizona. The Community shares its borders with the City of Phoenix, Chandler, Coolidge, Casa Grande, Maricopa and Queen Creek. The Community has entered into mutual aid law enforcement agreements with some of these communities to address the unique conditions of the Community. The Community's total enrollment is 19,000 members. The jurisdiction of the Community extends over approximately 600 square miles of Reservation land. Interstate 10 cuts across the Reservation. The Community has a fully developed criminal justice system which employs over 250 people and includes the Community Court, Law Office, Police Department, Probation Department and Detention Facilities. The following is a brief background on each Community department:

A. Community Court. There are a total of eight (8) Community Court Judges. In 2003, the Community Court moved into a new state of the art court building with six (6) courtrooms that include video monitoring and recording systems. The Court has the space to accommodate jury trials and appellate hearings. The Community Court building is 31,450 square feet. The 2007 operating budget for the Court was $5.2 million dollars, including $37,000 dollars from two (2) state grants. The Court does not receive federal funding.

B. Law Office—Criminal Division. The Law Office-Criminal Division employs ten (10) licensed attorneys as prosecutors and ten (10) support staff to represent the Community in prosecuting crime, civil code enforcement, child dependency cases and delinquency cases in the Community's Courts.

C. Police Department. Until 1998, the Community relied on the Bureau of Indian Affairs (BIA) for law enforcement services. Since then, the Community has

entered into a 638 contract for law enforcement services and the Gila River Police Department has grown. It now employs 90 sworn police officers. Gila River Police officers: (1) are commissioned to enforce the laws of the Gila River Indian Community; (2) are Arizona post certified officers; and (3) are Special Law Enforcement Certified by the BIA law enforcement. Thus Gila River Police Officers can enforce tribal, federal and state laws. The operating budget for the Police Department in 2007 was $13.0 million dollars with a federal contribution of $3 million dollars.

D. Probation Department. The Probation Department employs nineteen (19) probation officers and is comprised of three (3) divisions: adult, juvenile and diversion probation programs. In addition to the regular probation programs, the Probation department administers diversion programs for juveniles, including teen mentoring, teen court and drug court programs.

E. Detention Facilities. The Department of Rehabilitation and Supervision manages two (2) detention facilities located within the Reservation. The adult detention facility is 97,000 square feet, employs 97 staff members and can house 224 inmates. The Juvenile Detention facility is 35,000 square feet, employs 56 staff members and can house 106 juveniles. Both detention facilities were constructed in 2001. The construction cost for both facilities was $37.8 million dollars, with a federal contribution of $9.8 million. In 2007, the operating budget for both facilities was $9.0 million dollars, including a federal contribution of $3.1 million dollars.

II. Tribal Justice Issues

The following sections will address the Community's concerns regarding tribal justice issues.

A. Federal Accountability—Indian country statistics should hold more weight in Assistant United States Attorney (AUSA) evaluations. AUSA's should not solely be evaluated on the number of successful prosecutions—instead, the number of cases they prosecute and the cases they decline should also be considered. The Special United States Attorney (SAUSA) Program should also be re-examined. At one time, this program allowed tribal attorneys to prosecute cases in federal court. If re-instituted, the program needs to provide training to tribal attorneys and perhaps funding.

B. Jurisdictional Issues—Jurisdiction is always a complex problem in Indian Country. Indian or non-Indian status of both the victim and the offender determine whether a crime falls under tribal, state or federal jurisdiction. Crimes committed by non-Indians that do not rise to the level of federal prosecution, like sexual assault and domestic violence, are rarely prosecuted. While technically there may exist a court of justice for every crime committed in Indian country, the reality is non-Indian offenders almost always go unpunished. Further, for crimes committed by Indian offenders, tribes are limited by the Indian Civil Rights Act which restricts punishment to one (1) year for any offense. The Community proposes two (2) potential solutions to protect victims from domestic violence and sexual assault when committed by a non-Indian. First, the Indian Civil Rights Act needs to be amended so that tribal courts may punish more than one year for an offense. Second, the Community urges Congress to consider allowing Indian tribes to exercise personal jurisdiction over non-Indians and subject matter jurisdiction over these specific crimes because of the urgent need to protect victims.

C. Detention Facilities—In general, detention facilities in Indian Country need to be evaluated. The Community has invested substantial tribal resources in both a juvenile and adult facility, however, problems still remain. The Community faces a severe problem with housing serious offenders and/or gang members with less serious offenders. Housing serious offenders with misdemeanor offenders often facilitates criminal contacts, increases crime and strains already limited detention facility staff. A regional detention facility for more serious offenders in Indian Country should be established. Additionally, funding for adequate staff and medical services is much needed. The Community provided most of the funding for the creation of its detention facilities and provides most of the funding for its continued support, but increasing crime strains tribal resources and hinders adequate services.

D. Law Enforcement—There are numerous law enforcement challenges in Indian Country including lack of funding and resources. The Community employs approximately 90 sworn officers. About 20 officers are on duty per shift for the entire 600 square miles of the Reservation. With the increase in crime in Indian

Country the need for support from the Federal Bureau of Investigation (FBI) is increasingly important. Although the Gila River Police Department works cooperatively with FBI Agents on the investigation of Major Crimes, the reduction of FBI Agents greatly hinders the investigations, thereby affecting the number of cases that are federally prosecuted. As an alternative, if the presence of FBI Agents in Indian Country continues to decrease, there should be an increase in advance training and resources to tribal police departments.

In addition, the Community along with many other Indian tribes is experiencing an increase of gang activity within their reservations. Indian tribes struggle to deal with the criminal conduct and drug activities that often accompany gang presence. Tribal law enforcement departments investigate drive by shootings involving gang members. The crime of drive by shooting is not included as an enumerated offense under the Major Crimes Act. The fact that the drive by shooting is not a federal offense frustrates law enforcement and tribes because the penalty under tribal law is minimal when weighed against the criminal conduct that often impact whole Indian families. Therefore, the Community encourages Congress to amend the Major Crimes Act to include the crime of drive by shooting.

E. Drug Trafficking and Illegal Immigration—Drug trafficking and illegal immigration are serious crimes that affect the Community, however cooperative relationships and investigations with federal agencies, such as the Drug Enforcement Agency (DEA) and the Immigration and Customs Enforcement (ICE) departments to combat these problems is lacking. Tribal law enforcement departments are expected to investigate large drug cases without federal support or assistance, which often results in the U.S. Attorney denying the prosecution of these cases because of high threshold amounts or the manner in which the investigation was conducted was inconsistent with the federal standards. These cases are left to be handled by tribal prosecutors who can only prosecute Indian defendants and request punishment for only 365 days of detention and/or a $5,000 dollar fine. Non-Indians transporting and/or selling drugs in Indian Country take full advantage of the jurisdictional issues and nominal consequences.

The Community faces problems with illegal immigration that tax Community resources. Tribal ranger resources are expended to deal with considerable illegal dumping and trespassing. Additionally, when tribal law enforcement encounters illegal immigrants, sometimes they must wait substantial amounts of time for ICE to respond. Therefore, the need for joint operations and cooperation between tribal law enforcement and federal agencies is imperative to prevent Indian tribes from further expending their already scarce resources and also in the interest of tribal, local and federal homeland security goals.

F. Data Collection/Technology. As a response to the Adam Walsh Act passed by Congress in 2006, the Community passed an ordinance mandating sex offenders located within the Reservation to register with the Gila River Police Department. In addition, the Police Department was also selected by the Department of Justice for an Amber Alert in Indian Country pilot project. It is evident from the increase of responsibilities placed upon tribal police departments that the need for technology and access to databases and the accurate collection of crime statistics is imperative to the ability of tribal law enforcement to respond to crime in Indian Country. Tribal law enforcement departments lack basic access to the national and/or state database systems that track important information such as warrants, investigative leads, and stolen information. This inability to access and obtain information compromises officer safety and hinders an accurate response to crime in Indian Country. In response to this problem, the Gila River Police Department has entered into mutual aid agreements for inoperability and access to these databases. However, inadequate technological support, in the form of computer aided dispatch systems, prevents law enforcement from fully maximizing these databases.

Funding is also desperately needed for the collection and examination of evidence. The Community, like many tribes, lacks a facility for processing evidence like fingerprints and DNA evidence. A lack of funding prevents law enforcement from sending all but the most important evidence to state and federal labs. Tribal prosecutions are hindered and frequently dismissed by the lack of access to these resources.

III. Conclusion

The Community commends the Committee for focusing attention on the issue of law enforcement in Indian Country. We look forward to working with the United

States Senate to support the legislative changes necessary to successfully combat crime in Indian Country.

Thank you for this opportunity to submit a written statement on behalf of the Community.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BYRON L. DORGAN TO HON. DIANE HUMETEWA

Question 1. Your testimony states that there are no jurisdictional gaps in Indian Country, and that "for every crime in Indian Country, there is a court of justice." Do you believe that there are gaps in enforcement? Please discuss the Department's efforts to prosecute reservation-based misdemeanor crimes committed by non-Indians with Indian victims.

Answer. The Department takes seriously all crimes committed in Indian Country and recognizes the obligation to appropriately prosecute those crimes. The cases the Department prosecutes in Indian Country represent some of our most significant and challenging work. Approximately 25 percent of all violent crimes that U.S. Attorneys investigate nationally occur in Indian Country. In addition, in FY 2006, the Department's efforts in Indian Country increased across the board. For example, in FY 2006, the Department filed 606 cases against 688 defendants in Indian Country, which is nearly 5 percent higher than the average since 1994. In FY 2006, 82 cases went to trial, 13.8 percent more than the average of cases each year since 1994. The conviction rate for Indian Country prosecutions in FY 2006 was 89.4 percent, slightly higher than the 86.2 percent average since 1994. Eighty percent of those guilty of violent crime in Indian Country were sentenced to prison in FY 2006. The number of defendants convicted of violent crimes receiving sentences greater than 61 months has also increased from 31 percent on average to 36 percent in FY 2006.

While several agencies have law enforcement responsibility in Indian country, they continue to work together to fight crime. For example, first responders may consist of state, local or tribal law enforcement officers. Those officers often secure crime scenes, while assisting victims of crime and restoring order to volatile situations. If the crime is a major crime, those first responders will often transfer the crime scene to federal agents upon their arrival at the scene. Those federal agents then collect and maintain any evidence while completing any required additional investigation in preparation for prosecution by the appropriate United States Attorney's Office.

Question 2. Your testimony indicates significant constitutional concerns regarding tribal court jurisdiction over non-Indian defendants. Please provide the Department's views or concerns, if any, with constitutional rights afforded to Indian defendants in tribal courts.

Answer. The Department's testimony did not address the general issue of constitutional rights afforded to Indian defendants in tribal courts, but rather described particular concerns that might arise, depending on the specific legislative proposal, with respect to legislation that would give tribal courts jurisdiction over non-Indians.

The constitutional rights afforded to Indian defendants in tribal courts are implemented by the Indian Civil Rights Act of 1968 ("ICRA"), 25 U.S.C. §§1301–1303. Congress enacted ICRA to provide individual Indians with most of the protections guaranteed by the Bill of Rights while also promoting self-government by federally recognized Indian tribes. *See Santa Clara Pueblo v. Martinez,* 436 U.S. 49, 57, 60–63 (1978). The rights guaranteed by ICRA include the Fourth Amendment's protection against unlawful search and seizure; the Fifth Amendment rights not to be placed in double jeopardy or required to be a witness against oneself; the Sixth Amendment rights to be informed of the nature of the accusation, to confront witnesses, and to be tried by jury; the Eighth Amendment protections against excessive bail, fines, or cruel and unusual punishment; and the Fourteenth Amendment rights to equal protection and due process of law. However, ICRA guarantees assistance of counsel only at a defendant's own expense (though many tribes apparently do provide appointed counsel). *See* 25 U.S.C. §1302. ICRA also provides that habeas corpus review is available to any person detained by an Indian tribe. *See id.* §1303.

Tribal courts have retained their sovereign authority to prosecute criminal offenses committed by Indians within their territory. *See* 25 U.S.C. §1302(7); *United States v. Wheeler,* 435 U.S. 313, 323–325 (1978). In 1990, Congress amended ICRA to "recognize[] and affirm[]" "the inherent power of Indian tribes . . . to exercise criminal jurisdiction over all Indians." 25 U.S.C. §1301(2). A tribal court thus has jurisdiction not only over the tribe's members, but also over members of other federally recognized tribes who commit crimes within its territory. *See* 25 U.S.C.

§ 1301(4) (defining "Indian" as any person subject to federal jurisdiction as an Indian under the Major Crimes Act, 18 U.S.C. § 1153); *United States v. Antelope,* 430 U.S. 641, 646–647 & n.7 (1977) (federal criminal jurisdiction under the Major Crimes Act does not apply to "many individuals who are racially to be classified as 'Indians,'" but rather to enrolled members of tribes whose official status has not been terminated). The Supreme Court has upheld Congress' constitutional authority "to permit tribes, as an exercise of their inherent tribal authority, to prosecute nonmember Indians." *United States v. Lara,* 541 U.S. 193, 210 (2004). It is important to note that the current framework for tribal jurisdiction is premised on the limitation of a statutory maximum punishment of one year of incarceration.

Question 3. What percentage of Indian Country criminal cases were declined by U.S. Attorneys offices nationwide in 2006 and 2007? Please indicate the general reasons for declinations, and if possible attribute percentages to those reasons. What in your opinion needs to be done to reduce the number of declinations?

Answer. Law enforcement in Indian Country creates unique challenges. The cases presented are as diverse as the tribes located in Indian Country. Criminal cases arising in Indian Country are most often reactive cases. Reactive cases are those cases in which a crime has occurred and the investigation is in response to the criminal activity and generally requires immediate action by law enforcement officials. The typical federal case involves a proactive investigation. A proactive investigation is an investigation in which various law enforcement tools may be used, such as: wiretaps, search warrants, grand jury proceedings, cooperating informants, and undercover operations; to successfully build a case over time. As such, Indian Country prosecutions are more closely related to the types of cases handled by state and local prosecutors.

The Department is committed to improving data collection and analysis in Indian Country and increasing transparency. At this time we do not have statistics that we believe accurately reflect the rate of declinations in Indian Country. Case closures occur for a number of reasons. For example, a case may be closed after it has been prosecuted by tribal or state officials, a case may be closed while waiting for additional investigative matters to occur or case closure may occur when there is no prosecutable violation under federal law. The Department is working to develop improved data regarding the ultimate disposition of cases including case declinations and case closures.

Question 4. Do U.S. Attorneys offices have a consistent policy on how they accept criminal cases? For example, does every office accept cases or investigations filed by tribal police officers?

Answer. Department of Justice policy does not mandate or restrict the intake of cases from a tribal agency. Many offices currently accept cases directly from tribal law enforcement officers. As you know, tribes come in a variety of sizes and cultures; but the police agencies within those tribes reflect that same diversity. Each U.S. Attorney's Office is in a unique position to observe and best evaluate the appropriate method of intake from state, local, and tribal law enforcement partners.

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