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BUREAU OF INDIAN AFFAIRS MANAGEMENT REFORMS

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

ON

TO PROVIDE A REPORT OF THE NATIONAL ACADEMY OF PUBLIC ADMINISTRATION TITLED, "A STUDY OF MANAGEMENT AND ADMINISTRATION: THE BUREAU OF INDIAN AFFAIRS"

APRIL 12, 2000
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BUREAU OF INDIAN AFFAIRS MANAGEMENT REFORMS

WEDNESDAY, APRIL 12, 2000

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m. in room 485, Russell Senate Office Building, Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senators Campbell and Inouye.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Good morning. The committee will come to order.

Today we will hear testimony regarding the report of the National Academy of Public Administration on the Bureau of Indian Affairs [BIA] management problems, and its recommendations on overcoming these problems.

Since it was established as part of the War Department in 1824, the BIA has been studied and reorganized more times than any agency in the Federal Government, as far as I can tell.

The Meriam Report of 1928, the 1989 Report of the Special Subcommittee on Investigations, and the 1994 Joint Tribal/DOI/BIA Task Force on BIA Reorganization, to name but a few, have served to highlight the problems in the BIA.

I think it is fair to say that most of the "remedies" proposed for the last 176 years have been more about moving boxes around within the BIA than about real reforms leading to a more effective BIA.

In my mind, the NAPA report reinforces the real issue regarding the future of the BIA—how, in the Indian Self-Determination Era, can we encourage and expedite the evolution of the BIA from an agency that is a direct service provider to one that provides technical assistance and guidance to Indian tribes, and then gets out of the way of the tribes?

I want to make clear that proposed changes in the BIA structure or the operation of it should be fully aired before they are implemented. And I would hope that the Assistant Secretary would look to both the tribes and this Committee for some guidance in that regard.

I look forward to hearing the witnesses today, and to the NAPA recommendations on how we can work to improve the BIA's per-

formance in order to raise the Indians' standard of living, and to fulfill the trust obligations of the United States.

One of our first witnesses is running a little bit late, but we will go ahead and start with Kevin Gover, assistant secretary. And if Mr. Hanson comes in, we will have him sit down, and we will get back to him.

Welcome to the committee, Mr. Assistant Secretary.

STATEMENT OF KEVIN GOVER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. GOVER. Thank you, Mr. Chairman. It is always a pleasure to appear before the committee.

As the committee is no doubt aware, we commissioned a report from the National Academy of Public Administration a little over 1 year ago, and were talking about that, for some time, even before that.

Mr. Chairman, Mr. Hanson, has arrived.

The CHAIRMAN. Since you have already started, you can just go ahead and proceed.

Mr. GOVER. Well, I was hoping he could warm the seat for me.

Mr. HANSON. You are on your own. [Laughter.]

Mr. GOVER. When I first arrived at the Interior Department and assumed my responsibilities, it was evident immediately that some of the primary issues in the Bureau were really the most basic.

Our ability to account for the money that Congress appropriates, our overall management and personnel systems, and our use of technology clearly was not just years but perhaps even decades behind the curve and the way other agencies were operating.

You may recall, Mr. Chairman, when I appeared before the committee for my confirmation hearing, I talked about changes that needed to be made within the BIA; not so much new authorities and the like, but rather to begin to do correctly the things that Congress has already empowered us to do. And the NAPA report is very much a part of that effort.

At the urging, in fact, of the appropriations committees on both sides of the Congress, we did contract with NAPA to conduct an overall management and administration review. We wanted to know from an objective, authoritative, professional, outside source what our problems were.

We had many opinions from within the Agency, of course, on what those problems were and what the solutions were. But it seemed to me that it was time for us to have an outside group with the expertise to really take a hard look at us. I think they did exactly that.

Obviously, the findings in the NAPA report are not flattering, but the truth hurts, sometimes. And it became even more clear than it had before that the BIA had to overhaul its internal management administrative systems, really, almost starting from the ground up.

That is the commitment that we have made. We agree with the findings in the NAPA report. We intend to implement virtually all of the recommendations that NAPA made.

The primary recommendation of NAPA was the development of genuine administrative oversight capabilities in the Office of the Assistant Secretary.

Again, when I first arrived, I had hoped that we would be able without a great deal of restructuring, to begin to improve our performance in these areas. And, in particular, I had hoped that we would be able to leave our management and administration capability in the BIA under the deputy commissioner.

There was an argument to be made, and one that Congress, in essence, asked us to take a look at; that we should split our administrative activities between BIA and the Office of Indian Education Programs [OIEP] and really empower OIEP to conduct its own management administrative practices and functions, and leave each side of the organization responsible for its own business.

I resisted that, frankly. I thought that we should try to be as efficient as possible, and use the existing structure and the existing personnel to get these things done.

NAPA has, in essence, found differently and, has told us that you have two separate agencies now; you need to begin to treat them like that. The only way to oversee these two separate line organizations appropriately is to create this oversight capability in the Office of the Assistant Secretary.

So NAPA recommended the creation of a Deputy Assistant Secretary for Policy, Management and Budget. Under that Deputy Assistant Secretary, who would be a career person, recruited through the personnel process, we would have five major functions. We would have a Chief Information Officer, a Chief Financial Officer, a Human Resources Director, an EEO Director, and finally, a Director of Planning and Policy Analysis.

One might fairly ask why we did not have those things before. I think there are many answers. But what they really boil down to is that the administrative structure and practices of the BIA had not changed in some time.

It certainly did not change to accommodate the new reality of a more nearly independent Office of Indian Education Programs and, of course, the realities of the fiscal year 1996 budget cuts.

In fiscal year 1996, the BIA took an overall 9 percent cut in its appropriations. Similarly, the TPA account was cut by 9 percent. Education was not cut. We tried to hold education harmless. So something had to give.

And what gave was BIA's administrative capabilities, so that Central Office and the regions took over 20 percent cuts; almost all of that in administrative capability.

So what we find now in the field is where we used to have a Property Officer, a Procurement Officer, a Safety Officer, a records officer in each region, and even at many of our field locations, we now have, for example, Probate Specialists, who are also assigned to maintain records and to maintain property. And that means, that is bad news for our Records Program, our Property Program and, of course, our Probate Program.

What NAPA has said to us is, make a plan, make it a good one, and re-staff those positions, so that you can begin to carry out your basic responsibilities.

We are making progress, Mr. Chairman. Two years ago, the first audit that came in on my watch was for fiscal year 1997. We received that in 1998. It was very ugly. We had a number of material weaknesses, a lot of shortcomings, and an inability to account for all the resources that Congress has made available to us.

Our audit improved, somewhat, in the next year. We are expecting a very strong improvement again this year. It has been some number of years since the Bureau of Indian Affairs has had a clean audit. That is simply unacceptable.

First of all, we fail to meet our basic responsibilities as an agency of the United States. Second, it undermines our credibility when we come before the Congress, and ask for more resources to deliver services in Indian country. It is bad for the BIA and it is bad for the tribes, when we are unable to do so.

So our commitment, Mr. Chairman, is to begin to provide the Congress and the public with a true accounting of the resources that are provided to the BIA.

Now I know that the committee is concerned about the movement of the two large offices from Albuquerque. We thought about that very carefully. It was not an easy decision. You know, New Mexico is my home State. You are never anxious to make enemies where you live. I was not anxious to do so.

Nevertheless, on balance, on the recommendation of all of my senior managers, and in light of my own experience with both the Division of Accounting Management and the Office of Information Resources Management, I felt that the best thing to do was to recentralize.

Now I would point out that a number of our programs remain in Albuquerque. Education has a large presence in Albuquerque, as does law enforcement. The program elements of the BIA belong closer to Indian country. We left them there and, in fact, we intend to increase our commitment in both law enforcement and education to this western location.

What did not make any sense to us any longer was to have our basic administrative functions be conducted at such a distance from central management. I know that it is partly just a matter of out of sight, out of mind.

The reality is, it is much easier to supervise someone face-to-face, when you can sit down with them and say, here is exactly what I expect of you; and on a day-to-day basis, have a sense of the activity in that office.

We could not do that with those folks in Albuquerque. And the results were that those two offices showed up with the greatest number of weaknesses that compromised the integrity of our financial statements.

We would note that the Congress did provide us $5 million to begin implementing the NAPA report, for which we are very grateful. The conference report for our appropriations legislation specifically noted that we may be using some part of that funding to relocate those two offices.

The Congress also was good enough to give us the authority to offer voluntary separation incentive payments to the folks who were working in Albuquerque, so that we could ease their transition out of Federal service, if they chose not to relocate to Washing-

ton. And so we are grateful for both of those actions that the Congress gave us.

It did, in one sense, hasten our decision to move the two offices, in this respect. The authority we had to offer these special incentives to the employees in the Central Office West expired on December 31.

And when we were deliberating on whether to do this, frankly, I would have preferred waiting a little longer, especially with IRM, for the simple reason that we were in the middle of trying to make sure that our systems were going to survive Y2K without incident.

In fact, they did. I wanted to wait a little bit on IRM. I could not do that, if I was going to offer those incentive payments to those employees.

What probably seemed like a rush decision, in fact, was a rush decision. We think it was the right decision. We felt we had to make it, to be fair to the employees, and so we did. Those two offices now have relocated to Washington, DC.

I would note that when the Chairman and Vice Chairman wrote to me a few weeks ago, asking me to sort of slow down on that, literally, people were in transit at that moment. And I was unable to stop what was going on. So for that, I do apologize that the committee was not more fully informed, both of our intentions and of the execution of the NAPA report.

With that, Mr. Chairman, I think that summarizes the major issues arising from the NAPA study. We want to thank NAPA for its report. It was money well spent, in our opinion.

I should also point out that we have retained NAPA to assist us in the implementation. NAPA has done a very rare thing for a Federal contractor. They were both on time and under budget in providing their report to us.

We have been able to take advantage of their services to assist us in the implementation of their recommendations, and we are grateful for that.

With that, Mr. Chairman, I thank you for the opportunity to appear here.

[Prepared statement of Mr. Gover appears in appendix.]

The CHAIRMAN. Thank you. I have some questions that I will ask in a few minutes. And Senator Inouye has some that he will submit to you, since he has a tight schedule this morning, if that will be all right.

Mr. Hanson, you may proceed.

STATEMENT OF ROY HANSON, PANEL CHAIR AND ACADEMY FELLOW, NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

Mr. HANSON. Thank you, Mr. Chairman. I am pleased to present the findings and recommendations of the report of the National Academy of Public Administration on the Management and Administration of the BIA.

The full text of my testimony has been submitted for the record, so I will just spend a few minutes to summarize the highlights, many of which Mr. Gover has already mentioned.

The CHAIRMAN. It will be included, in total.

Mr. HANSON. If I put it in one phrase, I would say that the thing that the Academy panel felt was most important for the BIA was

that it get the management fundamentals right, as a foundation for administering better the programs for which it is responsible.

Basically, we found that the management administration of the Bureau and the Office of the Assistant Secretary were not adequately organized and staffed to carry out effectively their various trust and program responsibilities, or to operate an effective and efficient agency.

Specifically, there was no existing capability to provide the budget, human resources, policy, and other management assistance that the assistant secretary and the BIA need.

The staff do not receive adequate management and administrative training. The BIA does not have adequate standards to determine its staffing and other administrative and resource requirements.

The strategic planning, annual performance planning, and program analysis are not institutionalized. And important manuals and other administrative handbooks that are necessary for the employees to carry out their functions are out of date.

Mr. Gover has already indicated that they are trying to make and are making substantial progress on these areas. We made some specific recommendations to deal with each of these problems. And, again, the Assistant Secretary has indicated that they are moving on these.

First of all, to ensure that the Assistant Secretary for Indian Affairs has the capacity to lead the BIA and to hold its components accountable for their performance, we recommended three things.

First was the establishment in the Office of the Assistant Secretary of a Policy Management and Budget Office that has five components: a controller unit, with program analysis, budget and accounting groups; a plans and policy group; a human resources group to deal with work force issues and services; an information resources management group, charged with creating and maintaining Bureau-wide information systems; and an equal employment opportunity group.

Second, the Assistant Secretary should make use of the Working Group of the Domestic Policy Council in a more strategic way, to coordinate and harmonize programs for American Indians and Alaska Natives.

And third was to recognize that the service providing organizations in the BIA are, indeed, independent operating entities, and each should report directly to the Assistant Secretary, and have both the responsibility and authority to provide programs and services, and to handle their own administrative activities.

The second major area of recommendations dealt with establishing managerial discipline within the Agency, and to comply with GPRA's focus on results that make a difference in the lives of Native Americans.

So we recommended that the Assistant Secretary strengthen the BIA's strategic planning and annual performance plan to meet GPRA requirements; that there be established a system of management and performance reviews of key managers and staff; and that modern information technology be used to update, disseminate, and keep current the BIA manuals and operating handbooks.

We estimated that the implementation of these recommendations probably requires about 50 positions in the Washington Headquarters, and that the Headquarters' operation ultimately can not be effective without adequate support staff in agency and area offices.

The amount of staff needed in the field can only be determined after a careful workforce analysis, to assess the existing capabilities and deficiencies in each office.

As Mr. Gover pointed out, our staff, in doing interviews in the field, found that there were a lot of people that had been assigned collateral responsibilities for which they were not trained. The result being that neither the collateral responsibilities or the main program responsibilities were being adequately carried out.

So one of the first tasks of the new management staff should be the development of the workforce analysis. In fact, NAPA staff are now working with the BIA on this.

And one of the first tasks of the new management staff should be the development of management milestones for achievement of tangible results. Again, high on that list should be a clean audit, within a reasonable period of time. Credible and well documented program requirements—when they come to this committee and the House committee, they need to have data that you can depend on, and that they can depend on.

There should be evidence, in a reasonable time, of reduced friction among the program and service units of the BIA, and an end to the perception that some tribes hold that the Central Service units are unresponsive to their needs and requirements.

They should develop performance measures that are consistent with GPRA, that allow the Assistant Secretary to hold program directors accountable for their performance as managers of services and of the resources that Congress has allocated to them.

There should be clear policies and guidelines for employees to follow in the performance of their trust program delivery and oversight responsibilities. There need to be mechanisms for better coordinated Indian policy across all of the relevant Federal agencies.

And there should be a demonstration that there is increased confidence among the tribes that when they move to self-determination and self-governance, that will not result in a neglect of the Federal responsibilities to the tribes.

Finally, we recommended that neither the Assistant Secretary or the Secretary of the Interior or the Congress should take all of this on faith, but that the Assistant Secretary should prepare an annual progress report to the Secretary and to the Congress on the implementation of these recommendations, the effects of the changes on the effectiveness and efficiency of the Bureau, and the reasons for the progress that has been shown, or the lack thereof, so that you can, in turn, hold the Assistant Secretary and the BIA accountable for its performance.

Thank you, Mr. Chairman, and I would be happy to answer any questions you may have.

[Prepared statement of Mr. Hanson appears in appendix.]

The CHAIRMAN. Thank you, Mr. Hanson. I appreciate you appearing today.

Mr. HANSON. I might mention, Mr. Chairman, that Eddie Brown is here. He is one of the members of our panel.

The CHAIRMAN. Yes; he has been a very valuable voice to this committee, by the way, and we are happy to see him. He will be back to testify in a little while.

Let me ask you both a couple of questions. First, to our Assistant Secretary, if the past is any prediction of the future, you may have less than a year in your present position. And you will be going back, perhaps to beautiful New Mexico, as the new administration comes in.

Can you give the committee an indication of what programs, as defined in NAPA, that you will hope to have implemented, before you leave?

Mr. GOVER. Yes, Mr. Chairman; by the end of this fiscal year, we will have established the Office of Policy Management and Budget, and have staffed the primary positions.

At that point, we will be starting the process that NAPA described of creating these program indicators and measures of success, and that will be complete.

Obviously, we will have completed the re-consolidation of the administrative function from Central Office West to here in Washington, DC. I guess those will be the main things.

I am sort of reluctant to go out on a limb, here. We have made so much progress on our financial audit in the past year, thanks in great amounts to Deborah Maddox, our new Director of Management and Administration.

We are keeping our fingers crossed that we may actually achieve the clean audit this year. Even if we do not, we will have re-established so much of the basic data that I am confident that next year we will have done so. But I would love to be able to leave office saying our last audit was a good one.

The CHAIRMAN. Did I understand you to say that it would take about 50 additional positions to implement these recommendations?

Mr. GOVER. That is what the NAPA report says. In all candor, I expect to deal with no more than half of that.

The CHAIRMAN. Have those additional positions been factored into your budget this year?

Mr. GOVER. Yes.

The CHAIRMAN. They have?

Mr. GOVER. Yes; in our budget request, we received $5 million from the Congress this year. We asked for an additional $9 million for next year. That will not just staff the Assistant Secretary's Office and the Deputy Assistant Secretary for PMB, but it will also allow us to start to deploy additional administrative personnel in the field.

The CHAIRMAN. I see, and the move from Albuquerque, NM to Reston, VA, how many people does that involve?

Mr. GOVER. There were about 130 positions in Albuquerque, NM. Something around one-quarter of those actually moved.

The CHAIRMAN. And the other ones, what, retired or went into a different agency?

Mr. GOVER. Do not hold me to the exact figures, but about another quarter voluntarily separated, with the incentive payments,

including retirement. Approximately half, then, were involuntarily separated from the Government. We were able to place some of those, but not the majority.

The CHAIRMAN. This is really not so important with the movement, but I just have got to be interested. Those that were separated, were they separated at their existing level of pay, or were they given promotions when they were separated?

Mr. GOVER. I do not know the answer to that. They certainly were not given promotions by me. I would have to find that out.

The CHAIRMAN. Could you find that out for me? Because you know, as usual, Mr. Assistant Secretary, your mission is to work with the tribes and the Indian people. But sometimes when they do not like what is going on in the BIA, guess who they come to? They come to this committee, through letters or phone calls or so on.

That was one of the comments I had heard a number of times, that some people were upset that some of the people that were leaving had gotten big promotions, just before they left.

Mr. GOVER. I will find out. I would find that troubling, as well.

The CHAIRMAN. I would appreciate it if you could find that out.

On March 21, Secretary Babbitt issued a Secretarial order, restructuring your office. Was that order subject to discussion or consultation with the Indian tribes that will be affected by it?

Mr. GOVER. Only in the sense, Mr. Chairman, that we have been talking about this NAPA study for well over 1 year. I have discussed it at each NCAI meeting since that time. We have had different groups of tribes that we worked with, and really have been putting this information out there. We put out the NAPA report to each and every tribe, and told them we intended to implement this.

The CHAIRMAN. So what has been the reaction from the tribes?

Mr. GOVER. Well, frankly, it has been virtually none. I think the vast majority of the tribes consider this our business.

The CHAIRMAN. As much as they criticize, they did not have anything to say about this?

Mr. GOVER. Well, not many of them criticized the report to me. We had a meeting in NCAI, and nobody showed up.

The CHAIRMAN. No; I mean, the many other things the BIA does, the tribes end up criticizing.

Mr. GOVER. Well, they have opinions about a good many matters. This is one, I really think that the vast majority of the tribes just said, look, this is for you guys; this is you guys' mess to clean up.

Now the exception to that were the New Mexico tribes, who were very concerned because, of course, it was their tribal members that worked at the Division of Accounting Management [DAM] and OIRM.

I did meet with them several times, but after the fact, admittedly, and explained to them the basis of the decision, and that we were not going to turn back from it.

The CHAIRMAN. Well, on the movement of people from Albuquerque, NM to Reston, VA, I understand there are also some programs being expanded in New Mexico, and there is a flow going the other way of jobs, too. Is that correct, from the BIA?

Mr. GOVER. That is correct.

The CHAIRMAN. What is the net results?

Mr. GOVER. The net result is probably the BIA is down 100 jobs in New Mexico. The jobs that we moved out there were primarily in education, and we are going to expand our law enforcement presence there.

And as I indicated, I see a strong rationale for having the service programs located closer to Indian Country.

The CHAIRMAN. Yes.

Mr. GOVER. I see no strong rationale for having our basic accounting and administrative functions located away from Washington.

The CHAIRMAN. Yes; I think you are probably right.

And, also, I want to focus on the manpower, again, a little more. The NAPA report proposes adding about 300 new staff at a cost of $10 million to $15 million. But you do not believe that you need that many people, apparently.

Mr. GOVER. Mr. Chairman, I am reluctant to disagree with Mr. Hanson here. But I do not see that we want to create a huge new body of people here in Washington. Fifty is a lot of people. I think it is more than we need here.

The CHAIRMAN. I agree to that.

Mr. GOVER. I am much more interested in putting that 150 to 200 people out in the field in two respects.

One, we already know that the BIA side is badly crippled, in terms of their administrative personnel. We want to give a number of personnel to the Office of Indian education programs, and make them responsible for their own accounting, procurement, property management, et cetera.

We are really finishing this process of creating two agencies, which is, as I said, what Congress told us to do.

Mr. HANSON. Mr. Chairman, I would just emphasize that the personnel estimates in the NAPA report are essentially back-of-the-envelope estimates, based on our general experience about these sorts of things. And if the Secretary is able to do the job with fewer people, it will not make NAPA mad.

The CHAIRMAN. I understand that. He will not mind that at all. And we will not either, because we have got to find the money.

Last year, Mr. Assistant Secretary, you testified before this committee that you envisioned the role of the Bureau ultimately to be a technical service provider to the tribes as they administer most, if not all, the BIA programs. Will implementing NAPA's recommendations help get to that point?

Mr. GOVER. Well, Mr. Chairman, what I indicated was that I see three major issues for the BIA. First, is to carryout the primary trust responsibility. Second, is to account for the money that Congress provides to us. Then third, is to provide technical assistance.

I will claim credit for progress, both in trust and in this accountability issue. But I must say, we have not gone anywhere on providing technical assistance. And I am afraid I am going to have to leave that for the next person.

The CHAIRMAN. I understand.

I might also ask you, do you need any help from us? Is there any legislative changes that we need to do, or that we would have to do, to help you implement these recommendations?

Mr. GOVER. The one thing that the committee may want to consider is that NAPA recommended we break ourselves into three line organizations: Education, law enforcement, and what we will call office of Indian programs, also known as BOB, the balance of the BIA.

The CHAIRMAN. That is what you are reluctant to do, however.

Mr. GOVER. I was reluctant to separate law enforcement for this reason; that unlike education, where it is clear that Congress has created a separate statutory authorization for the organization, and really told us to take a look at separating it completely, we do not have that kind of authorization with law enforcement.

If the committee wants to undertake an analysis of that issue, we would be grateful to work with you, and really think together on whether that is a good idea.

The CHAIRMAN. All right, we will look into whether we ought to give you that authorization to be able to do that.

Also, my last question is, Mr. Assistant Secretary, the named Plaintiff in the trust case, Elouise Cobell, submitted testimony charging that the real motive for the relocation of the information resources unit was to retaliate against those BIA employees who have criticized the TAAMS system. Would you like to respond to that?

Mr. GOVER. Well, it was not to retaliate against those folks. Frankly, I was unaware that there were critics from OIRM toward the TAAMS system.

What we had to do, early in the process, was pretty much exclude IRM from the development of TAAMS, because they were not getting it done. They were not accomplishing the objectives that had been laid out for them in terms of the data cleanup, data management, and systems security.

Given that TAAMS was such a high priority, we literally took IRM out of the development of TAAMS. I am sure that bred some resentment there, but I felt it was necessary, if we were going to get TAAMS done. That was the motive for moving TAAMS away from IRM.

We still gave IRM an independent opportunity to succeed on other fronts. They did so on Y2K, and we were very grateful for their work. They did not do so on other fronts.

The CHAIRMAN. Okay, I thank you Mr. Assistant Secretary.

Mr. Hanson, your testimony says that the BIA lacks the internal staff capabilities that typically support managerial and administrative excellence. I assume that NAPA does studies for other agencies, as they have for the BIA?

Mr. HANSON. Yes.

The CHAIRMAN. How do you compare the Bureau with the other agencies, or did you do that before you finished this?

Mr. HANSON. We did not do that explicitly, no, sir.

The CHAIRMAN. Then how do you make the comparison, or how do you come to this conclusion, if you have not compared them with other agencies?

Mr. HANSON. This is a general comparison, Mr. Chairman. And it is based, essentially, on the experience of the study staff, who are all highly experienced, former Federal officials or employees, or have substantial consulting experience with Federal agencies.

The CHAIRMAN. I understand.

What is the basis for the report's statement that statutory restrictions on the oversight of self-determination contracts and compacts creates the potential for abuse?

Mr. HANSON. I am sorry, I am going to have to get back to you on that one.

The CHAIRMAN. All right.

Mr. GOVER. May I respond to that, Mr. Chairman?

The CHAIRMAN. Yes; please do.

Mr. GOVER. In our review of the audits, in the single audits that the tribes submit, year by year, we are finding very considerable evidence that these funds are being taken and used for non-Federal purposes, non-BIA purposes, and outside the intent and the specific terms of the contract.

Our ability to do anything about that is very limited. There is no question that some of these funds are being misused. Now does that mean they should be withdrawn? No, it does not mean that. It does mean that our oversight and our awareness of these issues is not enough.

The CHAIRMAN. Give me an example or two of the specific examples of abuse.

Mr. GOVER. Without naming any specific tribes, I recently got a list of about 80 tribes, whose fiscal year 1997 audits showed that they have taken Federal funds, used them for non-Federal purposes, and do not have enough money in their general funds to repay Federal accounts.

The CHAIRMAN. Was that 97 tribes?

Mr. GOVER. About 80 tribes.

The CHAIRMAN. 80.

Mr. GOVER. That was in fiscal year 1997. Now when we learned about that, we began to require them to do better.

The CHAIRMAN. What recourse do you have when that happens? What do you do?

Mr. GOVER. Well, there is not a lot we can do. I have the option of pulling the contract from them. That is not an attractive option, because what will happen is, the services will stop.

Even if we retook the program, we would be litigating it, and we would be out trying to hire new people. Meanwhile, the Indian people on the reservations are not getting the services. As a practical matter, that is not a recourse for us.

In some instances, we have been able to say, we are not going to pay your contracts or costs until you clean up these audits and, in fact, even submit your audits.

We had people who were not submitting audits, and have not submitted audits since 1994. They were basically telling us, yes, we know we have to, but there is nothing you can do about it if we do not.

And I said, well, we are going to pull your contract support. If you want to litigate, you can explain to the judge how you do not have to submit audits. We have succeeded in getting the number of delinquent audits way down. On the problem of misspending Federal funds, short of pulling the program away from them, we have very few options.

The CHAIRMAN. Well, if they have used the money for something else, other than the services that it was supposed to go to in the first place, does that service sort of come to an end, if the money has been drained away from it?

Mr. GOVER. One would have to assume that to be the case. And here is a second weakness. There is no requirement that we be told.

For example, in the case of self-governance tribes, we know where the money comes from. We know which accounts they come from. Once it goes to the tribe, they have complete discretion to reprogram and use it in any manner they should.

The CHAIRMAN. They can transfer it around without oversight; is that correct?

Mr. GOVER. Right, we do not know.

Now let me just be clear. I got in this same kind of trouble with that credit card thing, a couple of weeks ago.

The CHAIRMAN. Yes.

Mr. GOVER. The vast majority of the tribes do comply. We are not talking about the whole universe. Still, we want 100 percent. I want 100 percent of my employees with clean credit cards, and I want 100 percent of the tribes with clean audits.

I should get back to my initial point. First, the BIA has to get a clean audit, before we start casting stones.

The CHAIRMAN. Thank you for that.

To better coordinate the Federal resources, you also recommend that the Bureau better utilize the Indian Working Group of the Domestic Policy Council. In your opinion, is this coordination in lieu of the management reforms you propose, or in addition to the reforms?

Mr. HANSON. This is in addition to, or a part of the reforms that we propose. There are many programs, as you know, Mr. Chairman, throughout the Federal Government, that have an effect on Indian country.

And the Domestic Policy Council, it seemed to us, provided an opportunity for the Assistant Secretary to work with these other agencies in a working group, to make sure that these programs are better coordinated, so that their effect is essentially more efficient and more effective in providing services.

The CHAIRMAN. In the report, where in the report does it recommend that the Office of Information Resources Management be relocated from Albuquerque, NM to Reston, VA?

Mr. HANSON. We do not make a specific judgment on that.

On page 45 of the report, in the paragraph just before the section that is titled, "Managing for Results," we have indicated that it was likely, we said, that the geographical consolidation of the various elements in Washington would be desirable, but we felt that that was a judgment that needed to be left to the Assistant Secretary and to the department.

The CHAIRMAN. I see.

Okay, well, I thank you for appearing. I may just ask you one final thing, Mr. Assistant Secretary. Has the Policy Council's Indian Working Group been any help to you?

Mr. GOVER. It has. As I indicated in the hearing last week, Mr. Chairman, that has been the source, for example, of these Executive orders on tribal colleges and Indian education.

In light of last week's hearing and because of your comments and Senator Inouye's comments, we are meeting Friday to make a plan to undertake the program review that you suggest in S. 612, and to look at other opportunities for the consolidation of Federal assistance to the tribes.

As I indicated, we support the concepts of S. 612, and we are going to follow the committee's instruction to pursue it.

The CHAIRMAN. Okay, I thank you.

One last thing, too, as you probably know, the committee wanted to move Mr. Slonaker's nomination. He has met with the tribes, and I think most of us are very supportive of moving that, and moving his confirmation.

But one Senator, a Senator from Oklahoma, Senator Inhofe, apparently has a problem with your department's draft trust principles, and has been holding that up. Are you willing to postpone that order?

Mr. GOVER. If it would get Mr. Slonaker confirmed, we would.

The CHAIRMAN. Okay.

Mr. GOVER. Let me offer an alternative. We will make the changes that were provided to us by the tribes, with one exception.

The tribes would like for us to strike, as one of our responsibilities, the responsibility to confirm that when a tribe contracts or compacts trust programs, that they are meeting their responsibilities to the individual account holders. We think that that is part of our trust responsibility to confirm that the tribes are doing that.

Other than that, we had a meeting yesterday. With only the tiniest non-substantive exceptions, we intend to make the changes that the tribes recommended.

The CHAIRMAN. Okay, we will pass your information on to Senator Inhofe, and hopefully, we will move his nomination.

Thank you for appearing today, both of you. We will follow-up with some questions from Senator Inouye in writing, and perhaps from some of the other members, too.

Mr. GOVER. Thank you, Mr. Chairman.

Mr. HANSON. Thank you, Mr. Chairman.

The CHAIRMAN. We will now to go panel two. That will be Ron Allen, from the National Congress of American Indians; Eddie Brown, from Washington University at St. Louis; and Mr. O'Donnell, of the Law Offices of John O'Donnell, from Los Angeles, CA.

Let us proceed in that order, with you first, Ron. You may abbreviate your comments. All of your complete written testimony will be included in the record.

STATEMENT OF W. RON ALLEN, VICE PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS

Mr. ALLEN. Thank you, Mr. Chairman. It is always a pleasure to be here to talk about these various policies, as well as legislative issues that affect Indian country.

You have my testimony, which provides you a number of our thoughts about the NAPA report and the proposal by the Bureau

with regard to restructuring and addressing their responsibilities. I have mixed feelings about this proposal. And the reason we have mixed feelings about it is for a number of reasons.

The CHAIRMAN. You usually appear with very definite feelings on issues that we face.

Mr. ALLEN. Yes; well, they are very definite on both sides, I can tell you that. [Laughter.]

You know, there is no question that every tribal leader in Indian country will say the Bureau needs to get its act together. It needs to become responsible and take the lead role that it should be playing in the Federal Government with regard to Indian affairs and advancing the agenda of Indian country, which is to empower tribal governments.

Tribal governments are well established, well recognized governments that exist within the American political system. The Bureau has a lead role in advancing that agenda.

It has not done a very good job for a number of reasons. And without a doubt, it has not done a good job in terms of how it administers its own responsibilities.

The Bureau has reorganized itself many times over in its history. And one would ask, you know, what is the hold-up in terms of it being more effective, more responsible, and more accountable?

And quite frankly, we would say that leadership has a lot to do with it. We would concur that expertise and training in those kinds of matters are also important.

When you look at the recommendations of the NAPA report and the proposal of the BIA, the tribes say, gee, we would like those kinds of resources to do the same thing, you know, to assist us in advancing our agenda.

But tribes definitely believe that the Bureau does need to be restructured. We do believe that a lot of the initiatives that are identified in the report and that are identified in the Bureau's proposal are meritorious; they have value in them.

Now the issue really is, which of those movements are most important? Are we going to have some conflicts over the empowerment movement of the 638 self-governance tribes versus what the system is doing in terms of it reestablishing what we would refer to as the bureaucratic tentacles that have suppressed the tribes for so many years?

And over the last 10 years, you know, we have seen a major movement where the tribes have taken control from the Bureau over its matters. We would argue that unequivocally, we have been successful. We know we have blemishes; but who does not?

As Assistant Secretary Gover said, they have their own problems. And before they start casting stones about audit issues or expenditures of resources, et cetera, they have got to get their own act together. We are doing that, and we are doing it in a very effective way. And we are doing it with very limited resources.

What we would argue is that the Bureau does need to work with the tribes more closely. It needs to work with us in terms of what is the best way to advance the reorganization of the Bureau in terms of how is it going to work.

So when it proposes moving offices, like the Office of Governance or the American Union Trust Program, under a particular deputy,

security, or principal deputy secretary, the question is how is this going to work? Or what it is doing is, it is suppressing the advancement of the tribes' agendas or issues that they want to raise with the Interior, as a matter of policy.

Is there going to be more layers or people that we have to work our way through, in order to get things done, and have policy advanced forward that is constructive and in favor of the tribes? We do not know that. And the jury is out with regard to that matter. So we have lots of reservations about it.

In the TPA report that we advanced a number of months ago and submitted to this Congress, we had made a very strong recommendation that one of the agendas that the Bureau needs to advance is reporting and accountability.

We absolutely object to the notion that the Bureau conveys to the Congress and to the public that they do not know what is going on in the self-governance programs. That is simply not true. They do know. They can know.

And all they have to do is start being honest about what is going on with regard to the use of these funds to the advancement and the interests of our community, categorically, whether it is education; whether it is natural resources management; whether it is economic development; and so forth.

We have a myriad of things, like any other government. And, of course, we use those moneys to the best discretion and the best interest of each of our communities, which will vary from community to community, in terms of what their priority is.

They do know what is going on, and they can know what is going on, and many times, they do not even ask the right questions.

We are quite outraged by the perception that the Bureau conveys to you that they do not know what is going on with our money. Now we have offered structures that we think are very straight-forward formats, in terms of providing accountability and reporting what is going in these activities, to report to you, the Congress, so that we can make a case for more money.

In the past few years, the Bureau has been making the case that they can not account for these moneys, so the only way that they can move forward is an advance for funds which they can account for; and, that is, a good example was law enforcement.

Tribes would fully agree that law enforcement is a good example. But, quite frankly, the mere fact that it has to be pulled out to justify additional moneys is not a good basis to make a case.

And what it is doing is, it is de-empowering the tribes, because their argument is, they have more control over the accountability of those resources. We object to the notion that the Bureau or the Administration may say to you, you have gone too far in empowering tribes and taking the Bureau out of the business of managing tribes.

That is a statement that we are incensed about. That is wrong. And the fact is that if this is truly a partnership, a concept that has been advanced for many, many Administrations, then they should be working with us, in terms of how to move that agenda forward.

And we believe that can happen in an effective, responsible way, if they really would want to reach out to us, and make this thing move forward.

And also, in the NAPA report, you had talked earlier about the three concepts of the balance of the Bureau's budget and the education program in enforcement. Again, we would argue, that is problematic, because you are creating additional bureaucracies that are unnecessary, and it needs to be consolidated for the interests of the tribes.

So we believe that we can move this thing forward. We believe that you need to take a look at how the Bureau is going to advance this agenda, and require them to work more closely with the tribes.

Secretary Gover said he talked to the tribes, and there has been no reaction. That is not true. That is not true, because we have made it very clear that we have very serious concerns over what the Bureau is doing and how it is going to be used as a matter of practical application.

We have advanced our own proposals with regard to how the Bureau can improve the self-governance office, which is a very minimally staffed office, that currently funds well over 200 tribes over $240 million. And they do not have adequate resources in order to provide their responsibilities to the tribes, and to coordinate with the rest of the Bureau's programs.

There is nothing in here about advancing that agenda. And that has been one of the most successful agendas in the initiative that this administration and the past Administration has advanced, and the Congress has fully embraced.

And so we have serious problems about how this reorganization advance that agenda, in conjunction with 638, which is right on a parallel track with the tribes, with self-governance. Because what it is about is, it is about empowering tribes.

Now our concern is that as we move forward, we want the Bureau to be more accountable. We want them to have greater capacities and strengths. It does have to be a balance. But the true agenda can not be lost. It is about empowerment of tribal governments. It is not about empowerment of the bureaucracy.

And quite frankly, Assistant Secretary Gover has said to this Congress, and to the tribes, that his vision which, quite frankly, is the tribal vision, is that in the future, they will have very minimal responsibilities—financial responsibility, trust responsibility, technical assistance, and policy advocacy.

Now that is a minimal operation, when tribes truly become totally empowered to take over these bigger programs. And the issue is, does this agenda advance that, or is it going in the other direction of the old way of doing business, and strengthening the bureaucracy's role over tribal governments?

There are many other things I could share with you, Mr. Chairman. But I will conclude my statement by saying that we believe we should move forward, but we need to move forward together. We need to move forward cautiously and carefully, so that we are comfortable of how we are going to advance our mutual agendas.

Thank you.

[Prepared statement of Mr. Allen appears in appendix.]

The CHAIRMAN. Thank you. I have been on this committee a number of years. And I do not ever remember you appearing here that you have not given a very forceful, passionate statement, in defense of Indian people. And I appreciate that, Ron.

I wish the Assistant Secretary had stayed to hear that. But I am sure that his staff will review it with him, or he will see it on the tapes or something. But thank you for those comments.

We will go ahead now to Dr. Eddie Brown. It is nice to see you, again. This is twice now in about 3 weeks. Eddie, it is good to see you here.

STATEMENT OF EDDIE F. BROWN, KATHRYN M. BUDER CENTER FOR AMERICAN INDIAN STUDIES, GEORGE WARREN SCHOOL OF SOCIAL WORK, WASHINGTON UNIVERSITY

Mr. BROWN. Yes; good morning, Mr. Chairman and members of the committee.

As an American Indian panel member of the National Academy of Public Administration, I would like to thank the committee for the opportunity to discuss the proposed recommendations outlined in the NAPA report. The following is a summary of my testimony. And a full copy of my statement has been submitted for the record.

The CHAIRMAN. It will be included, in total.

Mr. BROWN. The BIA is an agency under siege. There is no question about that, as we have discussed here this morning.

We have reached a point that if the Bureau is to survive, all stakeholders must make a concerted effort to invest in the BIA to ensure that it can effectively carryout its trust obligations, and the facilitation of tribal self-determination and self-governance.

My comments this morning will address three areas of concern. First, I fully concur with the overall findings of the report that is found in the NAPA study. And that is the current management and administration of the BIA are not fully adequate to meet all of its trust responsibilities and to operate an effective and efficient agency.

The BIA's inability to correct these weaknesses has made it difficult for the Bureau to obtain the administration's and Congress' support needed to address the funding needs of tribal programs.

The seriousness of the Bureau's administrative and management weaknesses can no longer be ignored or supported through half-hearted attempts to rectify these major problems.

If Congress, the administration, and tribal governments choose not to support the investment necessary to correct these administrative and managerial weaknesses, then we must be prepared to accept the eventual dismantling of the BIA.

Second, although the Assistant Secretary of Indian Affairs is the primary Federal advocate for American Indians and Alaska Natives, the NAPA study concluded that the Office of the Assistant Secretary does not have the internal staff capabilities to carryout its administrative responsibilities.

Based on this finding, members of the NAPA panel recommended that the first step should be to provide the Assistant Secretary with the necessary administrative and managerial structures and sufficient staff to lead the Bureau in planning budgeting and information resource management.

These resources would allow the Assistant Secretary to more effectively consult with tribal governments and Congress in implementing its trust obligations and facilitation of tribal self-determination and self-governance.

The appropriation of $5 million in the fiscal year 2000 budget for the establishment of the Office of Policy and Planning within the Office of the Assistant Secretary marked the first step toward reinvesting in the BIA.

The Assistant Secretary, however, as stated, will need the continued assistance of NAPA staff and the cooperation and support of all stakeholders to guarantee the recruitment of senior managers who possess demonstrated competencies in the areas of policy development, management, and budget.

The Assistant Secretary's request for $9.2 million in the fiscal year 2001 budget would then be used for additional field staff positions, staffed with well-trained and qualified individuals.

Third, the successful implementation of the NAPA recommendations will necessitate strong, creative leadership within the Office of the Assistant Secretary and BIA administration, the support of the Department of the Interior and the Office of Management of Budget, and allocation of necessary funds from Congress.

It will also require the collaboration, support, and cooperation of the Bureau of Indian Affairs' major stakeholders; that is, tribal governments.

Previous and current BIA tribal initiatives that are directly related to the internal administration and management of the Bureau, such as the Joint Tribal BIA Department of the Interior reorganization recommendations, and the determination of tribal and residual shares must be considered in implementing the proposed NAPA plan.

A process must be developed to allow the Assistant Secretary's Office and tribes to jointly consider these initiatives in the Bureau's restructuring efforts. There must be reassurance that ongoing collaboration with tribes regarding how changes to the internal structure and addition of staff will further promote tribal self-determination efforts and fulfill BIA's trust obligations.

I conclude my testimony with the following quote from the NAPA study.

In this report, the academy panel recommends a series of reforms. None are new. But together they constitute an agenda that is critical and ambitious, yet achievable.

Thank you, and I would be happy to answer any questions that you might have.

[Prepared statement of Mr. Brown appears in appendix.]

The CHAIRMAN. Thank you. I will have a couple, but we will go on with Mr. O'Donnell, first, though.

STATEMENT OF J.L. O'DONNELL, ESQUIRE, LAW OFFICES OF JOHN L. O'DONNELL

Mr. O'DONNELL. Thank you, Mr. Chairman and members of the committee. I am deeply grateful at having received your invitation to speak to you today.

I represent the Federal employees whose careers and lives are being decimated by the Department of the Interior and BIA execu-

tive committee decision to relocate the BIA Office of Information and Resource Management from Albuquerque, NM to Reston, VA. Some of the background and context, I am sure you are aware of, but I would like to go over a few very important points.

The Office of Information and Resource Management is the BIA's data and communications center. This office operates nationwide systems and staffs the trust beneficiary help desk. This is the desk where there are not only telephone questions that are answered, but people actually staff it, and Indians' trust beneficiaries come in to answer questions from local and surrounding areas.

The mission of this facility is to manage the applications and data that result in payment to Indian trust beneficiaries. This group responds quickly and efficiently to beneficiary questions and concerns, and ensures that checks are issued to the beneficiaries, many of whom rely on these funds to feed, clothe, and house themselves.

Last year, over 321,000 beneficiaries received over $212 million, as a result of the experienced, effective, and diligent work of the Indian employees of the OIRM.

The problems identified in the recent NAPA report, as you mentioned, are long standing. These problems led to oversight committees in the 1980s and 1990s, and legislation in 1994. However, reform did not occur.

In 1996, Elouise Cobell filed suit here in the District of Columbia, alleging mismanagement of Indian trust funds. In December 1999, in an opinion almost mirroring the deficiencies in the NAPA study, Judge Royce Lamberth held that the Defendants, including Secretary Gover, were held to be in breach of their trust responsibilities to the beneficiaries.

The judge ordered an accounting and reformation. In fact, the NAPA report has become a centerpiece of litigation surrounding the accounting and reformation.

In a separate opinion, the judge held Secretaries Babbitt and Rubin in contempt for failure to produce trust documents, making misrepresentations to the court, and further cover-ups regarding their misrepresentations.

At almost the same time, and I leave it to the likelihood of coincidence, to your better judgment, an executive committee of the BIA ordered the Office of Information and Resource Management transferred, and the Division of Accounting transferred from Albuquerque to the Washington metropolitan area.

It is critical that this committee is aware that Albuquerque is where the bones are buried. And it is this data and the people who work there that are the key to investigation of the mismanagement.

By this action, the BIA is effectively terminating scores of highly trained, long-term Indian employees. The impact on these employees, their families, and the people they serve is simply catastrophic.

My clients, many of them who are trust beneficiaries themselves, desire that you understand that the relocation of the OIRM office functions exacerbates the Interior's continuing breach of its trust duties by significantly increasing the risk that key documents will continue to be destroyed, and funds will be lost or rendered inaccessible.

Since the wheels of relocation have commenced to turn, the OIRM office in Albuquerque has received an unprecedented rash of calls from the beneficiaries, who have begun to feel the effects of this illogical and irreparable destruction of data and services.

The security of Treasury checks has been compromised, and the privacy of trust beneficiaries continues to be violated without their consent, as contractors without security clearance have begun to replace Indian employees of the Albuquerque office.

The contractors on site have publicly stated, and I quote,

We do not have the required institutional knowledge, but we will figure it out, even if it takes 2 or 3 months.

Current OIRM employees react in hours and sometimes minutes to handle problems that threaten to come between trust fund beneficiaries and their often sole source of income.

As I stated, I represent these employees. And with your permission, I will offer a glimpse of the impact on these hard working, qualified Indians, who are praying today as you offer this hearing.

My family is being affected by the move. As Indian people, we are tied to the land and culture. Ninety-nine percent of the Indian people on reservations are west of the Mississippi River. This move is an indictment on our culture, religious, and heritage rights, which I enjoy in my native homeland. My mother has recently died, and I am handling home site issues. I can not leave. I can not move to Reston, VA.

This is from another computer specialist.

I am from Isleta Pueblo, and was born and raised an American Indian. Isleta Pueblo is strongly religious. And our cultural society is so close-knit and very active that some tribal members are not allowed to live outside Isleta Pueblo Reservation.

My husband belongs to a society for the community of Isleta Pueblo, and he is not allowed to live off or leave the reservation for a long period of time. The society requires spouses to take part. So I have a big responsibility.

Relocating to Reston, VA is not a viable choice for me and my family. I have no choice but to forfeit my position as a computer specialist, because of traditional ceremonies and the society that my husband belongs to.

Also, my husband recently had a heart attack, and he has not been able to work. He is still under a doctor's care. As the relocation goes forward, I may get severance for 4 months. But the health care I provide to my family will no longer be available. My income is the only source for my family.

The BIA has sought to justify the dismantling of the OIRM function in Albuquerque through a dishonest and distorted reading of the NAPA report. The relocation is contrary to both the letter and the spirit of the report.

While the report recommended the establishment of a Chief Information Officer, the report makes absolutely no mention of relocating the office. And the report is absent any criticisms of the operations of the division of the OIRM.

And I think it is important, Mr. Chairman, that operations and administration is defined and clarified here. Mr. Gover indicates in his testimony this morning that the operations needs to be closer to administration. What, in fact, operations needs to be closer to is the people that they serve. The people who are in the OIRM office are serving Indian clientele, and that is where the Indian clientele is located.

This relocation is a mismanagement of funds. Congress appropriated funds for the sole and explicit purpose of implementing BIA management improvement recommendations of NAPA. However, NAPA did not recommend dismantling the OIRM operations, nor did it recommend the transfer of functions to Reston, VA.

One can search all 130 pages of the NAPA report in vain and find no such suggestion. In fact, NAPA recommends that OIRM operations in Albuquerque be used to assist weaker divisions of BIA to facilitate the improvement of operations throughout BIA.

It is black letter law that the use of appropriations for purposes other than those expressly authorized by Congress constitutes a violation of the Anti-Deficiency Act, 31 USC 1301(a).

Where an appropriations specifies the purpose for which funds are to be used, as Congress mandated here through H.R. 3423, Section 137(a), the Anti-Deficiency Act restricts the use of funds to that specified purpose. Thus, no funds so appropriated can be used lawfully by the Interior or its contractors to transfer OIRM functions to Reston, VA or to delegate functions of OIRM to a Government contractor.

Finally, Mr. Chairman, Kevin Gover, in his written testimony, indicates the importance of what is occurring is an increased confidence among the tribes of moving toward self-determination and self-governance. Nearly 70 Indian jobs will be lost.

The area of Reston, VA, in the Washington metropolitan area, has a 28-percent deficiency in a hiring pool for technical jobs. The same does not exist in Albuquerque, NM.

The cart has once again been put before the horse. The NAPA report recommends a human resource function to analyze situations like this. And what has occurred is, in fact, people have been transferred and jobs have been changed before an Office of Human Resources has even been established.

Assistant Secretary Gover indicates that the transfer has taken place. The transfer has not taken place. Most of the employees still remain at OIRM, and are handling their day-to-day functions.

Moreover, no employees have been contracted here to take on the responsibilities that are now being carried out in Albuquerque, and it will indeed be a very difficult task in this competitive market to hire the technical expertise that will be necessary to continue these functions here in Reston, VA. And less than one-half of the employees have been able to transfer.

Finally, I think it is important that almost 1 month ago, I met with chief counsel for this committee and requested the chair and cochair, in a bi-partisan effort, contact Secretary Babbitt, and request that he suspend this transfer. I appreciate very much that the committee sent out a letter in this regard. However, your request was ignored.

Stronger action is now required. What is at stake is not only the jobs of these highly qualified people, but what is, in fact, at stake here are the very trust beneficiaries themselves, who are being served.

It is incumbent upon this committee to do the best job that they can, and take whatever action is necessary to stop this relocation immediately, at least until the NAPA report can be put into place and some type of human resource analysis can be done for what has occurred.

[Prepared statement of Mr. O'Donnell appears in appendix.]

The CHAIRMAN. I thank you for that very detailed presentation.

I think one of the problems historically that Indian people and Indian tribes face is that we do not have very much continuity

around here. Every 4 to 8 years, we get a new President, that may have a new agenda for Indians. And with elections going the way they are, you know, every 2 years, you may have a whole new Congress on the other side, and a third of the Senators, too.

And so we tend to keep tribes historically rebounding back and forth from the intent at the time, that may change in the future. And it makes it very difficult for tribes.

And I will tell you, I am not here to defend bad management by the Bureau. And I have taken them on more than once, myself, as some other members have, too.

But I understand the hardship, too. In fact, I suffer some of the same hardship. All of us do. It comes with the territory, in some cases, when you are in public service. That was my choice, however. I ran for this office.

But I understand what you are saying. I see my family maybe one day a week, which is not enough to suit me. And I like the West much better than I do the East.

I am a member of the Gourd Society, the Chief Society, and some other things, and an enrolled member of a tribe. So I understand the difficulty.

But whenever you go in public service, I do not think you can get a commitment, whether you are joining the Army, or getting a job, or running for office. You can not get a commitment that the job is going to be where you want to be, all the time. It just comes with the territory that there are some hardships involved in public service.

Mr. O'DONNELL. Well, I would comment, Mr. Chairman, that in fact this is a unique situation, because these are Indian employees. And they are entitled to special preference, based on the Indian Preference Act.

The CHAIRMAN. Yes.

Mr. O'DONNELL. And what is occurring here, Mr. Chairman, is that the transfer is making it possible to go.

The CHAIRMAN. But is there anything in the law or any regulation that you know of that says they are entitled to special preference, and you have to put the job where they want it?

Mr. O'DONNELL. No; Your Honor, or Mr. Chairman.

The CHAIRMAN. I have not been elevated to that stature, yet. I am still a lowly Senator. [Laughter.]

Mr. O'DONNELL. Excuse me, this is my first time appearing in front of a Senate committee.

The CHAIRMAN. That is okay.

Mr. O'DONNELL. I am used to the rhetoric that I am used to in court.

The CHAIRMAN. Right.

Mr. O'DONNELL. What this transfer is, is really a job action. And it is having the practical effect. And while there really is not any precedent in the area, what is occurring is, these people are being fired. They are being fired, and they are being forced into retirement. They are not having their jobs transferred.

The CHAIRMAN. When they got the job, do you know if they had any guarantees that the job would stay there, or that they had any longevity with the job, or something of that nature?

Mr. O'DONNELL. Of course not, Mr. Chairman; there are no Federal employment contracts of that nature.

But I would indicate, Mr. Chairman, that there are several employees who have worked at this location for more than 10 years. And, in fact, I have spoken with several employees whose parents and uncles have been members of the BIA, and worked in this area.

There becomes the natural assumption, over time, that if you are in a service organization, that you want the services to be provided by employees who are at that location.

And, again, emphasizing the real difference here, from what Mr. Gover had to say, the administrative function is not what is a key here. It is the operational function. It is making sure that the people who get these checks are taken care of, and that they get their checks in a timely manner, and that there is someone for them to reach out to.

What is going to occur now is that they will be reaching out from the western United States to Washington, to employees who are not Indian, employees who are not trust beneficiaries, employees who do not have institutional knowledge. And, in fact, those employees do not even exist, as we sit here today.

The CHAIRMAN. On April 6, Judge Lamberth lifted his restraining order, which I am sure you do not agree with. And so you suggested that this committee take stronger action. What do you suggest? We did write that letter, as you recommended, to Secretary Babbitt.

Mr. O'DONNELL. What I suggest is, what has occurred is a violation of the Anti-Deficiency Act. The specific appropriations that Congress made, in reference to the change in BIA management, which is now embodied in the NAPA report, does not give specific authorization for this type of a relocation.

Congress needs to simply step up and say, you have taken the money we appropriated to you to do something we did not permit you to do. And if you do not use it for what we told you that you could use it for, we are taking it back, and effectively stop the relocation by taking the appropriation money back.

The CHAIRMAN. You know, we have a term around here that we have had for the last few years called, "legislating by rule and reg." We see it with BLM, Forrest Service, and many other forms of land, and not just Indian tribal land. And it means, basically, that the administration has made a lot of rules, with no legislative authority to do so.

We only have two or three ways we can address that. First, we can introduce a bill to try to overturn that. But guess who will veto the bill?

Second, we can go to court, but we do not win there very often, either, because the administration appoints the judges.

And the third way is, as you suggest, you deal with it through the appropriation process. But I can tell you who gets blamed for shutting down Government, whenever we have tried to do that in the past. When we have tried to cut off money to something they want to implement, they just simply will not support that.

And consequently we, here on the Hill, get blamed for shutting down Government. When people line up at the Washington Monu-

ment, and they find the doors shut, guess who they call? They raise the dickens with us. So, you know, it is easily said. It is not so easily done.

In addition to that, I mean, we have 100 flaming eagles on this side of the Hill, and another 435 on the other side. And it is like "herding cats." You can not get them all to support anything.

And so I mention that just to point out the difficulty when you say, well, you just cut off that money. Boy, it is not so easy to do, sometimes.

Mr. O'DONNELL. What we are talking about is 70 employees and only the funds for relocation. It is a small matter.

The CHAIRMAN. yes.

Mr. O'DONNELL. And, in fact, what you are avoiding is shutting down a portion of the Government. As I mentioned, there are no employees who have been hired to replace these employees in New Mexico. The people that the Government serves, these trust beneficiaries, are the ones who are truly in danger here, Mr. Chairman.

The CHAIRMAN. As I understood the Secretary to say, about 25 percent were relocating. Is that correct?

Mr. O'DONNELL. That is correct.

The CHAIRMAN. And if 25 percent chose to relocate, rather than to be terminated, was there another percent that got jobs in other Federal agencies, too?

Mr. O'DONNELL. Some did. Some are waiting. There has been some half-hearted attempts to contact the Census Bureau, and make room for other employees.

But the fact of the matter is, as this relocation progresses, it looks like 50 percent of these 128 employees are going to be out of jobs. And these are Indian employees, Mr. Chairman.

The CHAIRMAN. Yes; I understand.

Well, Ron, impart some of your wisdom on this issue, if you would. NCAI's main concern seems to be the lack of tribal involvement with recommendations. And, yet, you support many of the proposals.

Do you recognize the need for the BIA to beef up the administrative capabilities? And if that requires movement of people from one location to another, how do you feel about that?

Mr. ALLEN. We think that for the Bureau to restructure, in order to become more efficient in terms of its operations does make sense. Many components of the NAPA recommendations and what the Bureau is trying to do, do make sense. And we concur with that. We do not have any problems with the Bureau building its managerial capacity back up.

We did get a set-back, a few years back, when we lost a lot of key FTEs and their ability to do their job. So that certainly is a problem.

But we want to make sure that as the Bureau is moving the restructuring forward, what the tribes' concern is how that structure affects the implementation of the self-determination and self-governance legislation. And the empowerment of tribes is a major issue.

And, actually, which is the priority? Do you know what I mean? If you create a career position as a deputy assistant secretary, is that more important than establishing a comprehensive database

system, to provide better accountability? I would argue, no, that that position is not more important. So, you know, what are you putting in front of the other?

And I do want to make one more point, too, so that you also understand. The Bureau is asking for resources in order to strength its administrative accountability and managerial capacity.

It is interesting that they are looking for the resources to do that job, to be accountable to the Congress when they do not advocate for full funding for CSE, which is the same responsibility that the tribes have with regard to those operations. I find that a very interesting dichotomy of advancing of their agenda.

The CHAIRMAN. So with about one-half of all of the Bureau dollars going out under 638 contracts and compacts, you believe that this, if I can just paraphrase it, perhaps re-Federalizes some of the Indian issues?

Mr. ALLEN. Could you say that, again?

The CHAIRMAN. Do you believe that this restructuring re-Federalizes some of the Indian issues, so it would have some impact on the 638 contracts and compacts?

Mr. ALLEN. We think it can. And if they work with us in terms of how to do that, we are comfortable with that idea.

The CHAIRMAN. Dr. Brown, what is your feeling about that?

Mr. BROWN. Well, right now, I am sitting here going through all kinds of feelings.

And let me tell you that an assistant secretary comes to Washington, DC to provide leadership, not to bow to everyone's wishes, because he cannot. His major responsibility is to provide the leadership to carryout the trust responsibility, and to assist tribes and facilitate self-determination and self-governance. He has to be given the flexibility to do his job.

Now if every time the Assistant Secretary makes a decision that does not fit particularly one group, and that group begins to make waves in regards to limit that, and we begin to bounce around, the Assistant Secretary cannot do his job appropriately.

This NAPA report lays out, I believe, a very clear process. And I do not want to get distracted by a lot of other issues. The fact is that the Bureau needs to improve. The Assistant Secretary, I believe, has provided that leadership. I think the NAPA study is there. It is clear. He needs to be allowed to move ahead to get that done.

Now there will be other changes that will occur that may not be mentioned in the NAPA study. But through the leadership and the understanding of the Assistant Secretary, he needs to be given the flexibility to do the job.

Now I am speaking out of frustration, having sat and dealt with the trust funds, back in the early 1990's. And every time we tried to make a move to work with the situation in New Mexico, to bring in outside support and assistance to try to clear that up, we were met at every turn by either unions, workers who were disgruntled, et cetera, and we were stopped in our tracks from making any kind of movement.

Now I believe very strongly that the Bureau needs to work closely with tribes. I learned that lesson through the Blue Book, many years ago, in early 1990.

And I think that needs to continue, and I think perhaps there is some weakness in that area of addressing the residual and tribal shares, as well as the recommendations that the earlier committee had laid out. I think those need to be looked at and worked closely with.

But, again, I can not stress enough, that every time the Secretary makes a move, if it disapproves with one group, we can not allow that to stop what happens.

Now, naturally, those kind of concerns will happen. People will suffer. There is no question about it. But I believe, as you have stated, we are civil servants. If we take a job with the United States Government, then we have a right or responsibility to advocate on that behalf, and deliver the very best service that we can for tribal governments and tribal people.

And I think we are committed to that. And I think some of the decisions are going to have to be difficult to clean up this situation. And as I said earlier, either we are going to clean it up, or we are going to dismantle it.

And the question is, I think, at the table right now, either we are going to reinvest and strengthen this, in a manner that needs to happen, or we just need to do away with the Bureau, and see what happens.

The CHAIRMAN. Jack, let me get back to you, with just one last question. I understand that you are not appealing the decision of Judge Lamberth. Is that correct?

Mr. O'DONNELL. Well, first of all, Mr. Chairman, I should make it clear that I am not a lawyer who is involved in the *Cobell* litigation. I simply represent the workers from Albuquerque.

The CHAIRMAN. Do you know why they are not appealing then?

Mr. O'DONNELL. I am unaware, Mr. Chairman. I was out of the country during the time that that occurred.

The CHAIRMAN. I understand. Well, I certainly appreciate you being here.

I am sure Senator Inouye has got a number of questions that he would like to ask you. And when you get those, if you could get those back to us expeditiously, I would appreciate it.

Frankly, I do not know where the committee goes from here on this issue. I guess we will just have to weigh it and get Senator Gorton's view, who is a member of this committee, but also the chairman of the Interior Appropriations, as you know. But, hopefully, when we get all done with it, it will hurt as few people as possible.

But I do appreciate you being here. We will keep this hearing record open for 2 weeks. If you have any further comments, I would appreciate it. Certainly, I appreciate the long distance that you have been able to come to testify for us, Eddie. So thank you very much.

Mr. BROWN. Thank you.

The CHAIRMAN. With that, this hearing is adjourned.

[Whereupon, at 10:55 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF KEVIN GOVER, ASSISTANT SECRETARY, INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

In late Fall of 1998, the Assistant Secretary for Indian Affairs (Assistant Secretary) and the Assistant Secretary for Policy, Management and Budget of the Department of the Interior (DOI) discussed commissioning a study to establish a blueprint for improving the Bureau of Indian Affairs' (BIA) management and administrative systems. These discussions were expanded to include others within DOI and the Congressional Subcommittees for Interior's appropriations. The Appropriations Subcommittees supported such a study and recommended employing the National Academy of Public Administration (NAPA).

NAPA is an independent, nonpartisan organization chartered by Congress to assist Federal, State, and local governments in improving their effectiveness, efficiency, and accountability. For more than 30 years NAPA has assisted Federal agencies, Congress, State and local governments, and education and philanthropic institutions in addressing both short-term and long-term challenges, including: Budgeting and finance, alternative structures, performance measurement, human resources management, information technology, devolution, strategic planning, and managing for results.

NAPA's Board of Trustees provides overall guidance and leadership. Virtually all NAPA activities are conducted through panels composed of NAPA Fellows and others with expertise in the area of examination. Projects are supported by executive and administrative staff, and project staff who work in program concentrations.

Since its founding in 1967, NAPA has focused the capacities of institutions to perform effectively. The Academy's framework of governance provides a formula for examining public management processes, functions, strategies, and institutions. The framework identifies four dimensions for evaluating systems and structures for meeting public needs: Public purposes and strategies, institutional roles and responsibilities, performance capacities, and change.

NAPA followed its usual practice of establishing an Academy Panel of Fellows to provide overall study direction and guidance, establishing an Academy Study Team of Academy staff, and acquiring other technical expertise needed to conduct the study and prepare recommendations. The study began in March 1999 and was completed in late August 1999. Interviews were conducted with 260 people, including 206 from within BIA and the Assistant Secretary's office, 24 tribal leaders, and others from government agencies and Congress. The interview comments were evaluated and contrasted with information gathered from BIA and observations of the interviewers.

NAPA found that, without additional personnel and major management and organizational reforms, the BIA will be unable both to fully meet its responsibilities to the 1.4 million American Indians and Alaska Natives it serves and to operate an effective and efficient agency. NAPA went on to say that BIA does not have the capacity, to effectively perform basic Federal functions of accounting, property management, human resources management, procurement, and information resources

management. Further complicating matters at BIA is the fact that staff do not receive adequate training. Strategic planning, yearly performance reviews, and program analysis are not institutionalized. The Academy panel also pointed out the need for more managerial discipline and additional administrative personnel to help remedy these problems.

While the panel found serious management and administrative deficiencies at BIA, it points out that the agency is showing hopeful signs of improvement. Senior managers realize that in order to keep pace with the expanding needs and interests of the population BIA serves, they must address BIA's administrative and management shortcomings, enhance its effectiveness, and improve its efficiency.

NAPA made a variety of conclusions and recommendations for improvement of administration and management of BIA. The study findings are that (1) there is no existing capability to provide budget, human resources, policy, and other types of management assistance to the Assistant Secretary and the BIA, (2) staff does not have adequate training in management and administrative skills, (3) strategic planning and program analysis are not institutionalized, (4) policy manuals and implementation handbooks are out of date, and (5) the three service organizations in BIA operate semi-independently through their own field organizations, but only one element had resources for administrative support.

NAPA's foremost recommendation was that staff support be provided to the Assistant Secretary to lead BIA in planning, budgeting, finance, human resources and information resources management to begin correcting these deficiencies and managing for results.

NAPA also stated, "If the three service-providing organizations [Operation of Indian Programs, Office of Indian Education Programs and Office of Law Enforcement Services] are to be held accountable for performing their missions, they need to have responsibility for providing their own administrative support." This leads to the recommendation to place new administrative personnel at all levels of the BIA's Education and Law Enforcement offices.

The results that NAPA believes implementing these recommendations will accomplish are:

- a clean financial audit within a reasonable period of time;
- well documented estimates of program requirements that are accepted by DOI, OMB and Congress as credible, regardless of the funding levels ultimately achieved;
- reduced friction between the program and service units of BIA, and an end to the perception among Tribes that BIA is unresponsive;
- clear policies and guidelines for employees to follow in the performance of their duties; and
- increased confidence among the tribes that moving to self-determination and self governance will not result in the neglect of Federal responsibilities.

DOI and BIA embrace the recommendations of the report. While NAPA's findings are consistent with evaluations conducted by the Office of the Inspector General (OIG) and others who have reviewed or audited BIA activities, NAPA's report is unique in its recommendations.

Beyond these recommendations lies a considerable volume of work. Implementing NAPA's recommendations will require:

- Establishing an Office of the Deputy Assistant Secretary for Policy, Management and Budget that reports directly to the Assistant Secretary for Indian Affairs and is capable of providing direction for BIA's administrative operations, including budget, financial management, human resources management, information resources management, records management and procurement management.

  DOI and BIA with NAPA's assistance prepared a Secretarial order containing functional statements for sub-units to establish US office. The Secretary signed the Order on March 21, 2000. Component units include the Chief Financial Officer, Chief Information Officer, Human Resources, and Policy and Planning. Position descriptions for the key positions have been prepared and are being evaluated by the Assistant Secretary for Indian Affairs' servicing personnel office in preparation for advertisement.
- Identifying the specific actions needed to improve BIA administrative systems so they meet management and regulatory standards.

  NAPA is assisting DOI and BIA in reviewing administrative systems to determine problems and corrective actions. Management systems and controls are being reviewed for adequacy and consistency with other comparable organizations, and whether the systems and controls satisfy Federal agency requirements.

- Creating plans for improving administrative systems and establishing organizational responsibility for carrying out and monitoring plans.
  BIA's administrative systems have been reviewed, found wanting, and corrective action plans have been prepared in the past. However, limited resources and inadequate monitoring of past plans have resulted in incomplete corrective actions. DOI, BIA and NAPA will evaluate resources needed to complete actions and establish monitoring processes to assure completion.
- Creating management processes for assigning responsibility and holding people accountable for results.
  BIA will establish mechanisms to assign responsibilities and hold managers accountable for accomplishing goals to be established by the new office of the Assistant Secretary.

DOI, BIA and NAPA are identifying the staffing needs through workforce analyses to determine the optimal levels of staff for the new headquarters unit and the field organizations. The analysis will evaluate the types of positions needed, the number of positions needed, and where the positions should be located to provide the most efficient and effective service delivery.

The NAPA report and past OIG surveys confirmed that hands-on management, daily direction, and increased communications are essential for effective management and timely response and followup. The OIG found that the 13IA was not in compliance with a number of statutes including the Chief Financial Office Act of 1990, the Debt Collection Improvement Act of 1996, the Credit Reform Act of 1990, and the Prompt Payment Act. The long-standing nature of these material weaknesses has resulted in a qualified audit opinion for the BIA.

The NAPA report also found that the BIA used information technology far less than other government organizations and, specifically, recommended that the BIA aggressively pursue the development of information systems to increase the efficiency of its operations. One of the most important findings of the NAPA study in this area was the lack of senior management participation in Information Resources Management planning or new product development.

The geographic distance between BIA's Washington headquarters and its Albuquerque accounting management and information. resources management operations greatly contributed to the BIA's predicament. We determined that relocation and consolidation of all BIA administrative operations to the Washington metropolitan area was a critical first step. We are confident that face-to-face, direct supervision of the accounting and information resources management staff will result in improved financial and information technology services.

The employees within the Division of Accounting Management were presented with a Notice of Transfer of Function on November 5, 1999, and the employees of the Office of Information Resources Management were notified on December 6, 1999. This notice provided background information on the decision to relocate the organizations and explained the transfer process and the rights of the employees as they proceed through the process. Employees were offered fall relocation benefits with their acceptance to transfer with their current position. Understanding the difficulty in making such a decision, we provided the employees with an additional 2 weeks beyond what is required by regulations to make their decision. To date, approximately 50 of the 128 employees in both divisions have indicated they will transfer with their functions.

To further assist employees, BIA requested and received from Congress the authority to extend the Voluntary Separation Incentive Payment program to Albuquerque employees affected by the transfer of functions. The fiscal year 2000 Departmental appropriations bill provided a narrow window (until December 31, 1999) through which employees could benefit from Voluntary Separation Incentive Payments (VSIP) of up to $25,000. The BIA had to move swiftly to notify the employees of the transfer of their functions to insure they had the option to participate in VSIP. Thirty-one (31) employees have retired and received the VSIP.

BIA management is assisting employees impacted by the relocation. We are currently working with the Census Bureau, which is interested in hiring available BIA employees who have chosen not to transfer. We have issued hiring restrictions to all our offices within the Albuquerque commuting area to afford displaced employees hiring priority. In addition, the employees are eligible for the Office of Personnel Management's Career Transition Assistance Program making them eligible for special hiring priority in all Federal agencies.

DOI and BIA intend to implement the NAPA recommendations. We will continue to use NAPA's expertise as consultants and advisers during this implementation. We will establish and hire staff for the new office within the Assistant Secretary's office during this fiscal year. This staff will participate in the design of the field or-

ganization and develop the necessary policies and procedures for the new field structure to properly operate. The request for funding for fiscal year 2001 will allow the BIA to make progress toward filling field positions. We will let the development of policies and procedures, and workload analysis drive the number of additional field staff to be hired and the locations for placement. I believe that the DOI and BIA have an opportunity to significantly improve BIA's efficiency and effectiveness, and to increase accountability throughout the organization.

This concludes my remarks on the NAPA report. I will be happy to answer any questions you may have.

TESTIMONY OF

ROYCE HANSON

PANEL CHAIR AND ACADEMY FELLOW

NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

BEFORE THE

UNITED STATES SENATE

COMMITTEE ON INDIAN AFFAIRS

CONCERNING

A REPORT BY THE

NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

TITLED

"A STUDY OF MANAGEMENT AND ADMINISTRATION: THE BUREAU OF INDIAN AFFAIRS"

APRIL 12, 2000

INTRODUCTION

Mr. Chairman, and members of the committee, thank you for the opportunity to present findings and recommendations which appeared in the National Academy of Public Administration's (the Academy) 1999 report on management and administration in the Bureau of Indian Affairs.

For a number of years the Bureau of Indian Affairs (BIA) in the Department of the Interior (DOI) has experienced administrative and management problems that have constrained its ability to carry out its mission. To assist it in addressing these problems, BIA asked the National Academy of Public Administration (NAPA) to conduct a comprehensive study of its management, organizational structure, and administration. The intent was to identify and recommend remedies that would improve the quality, efficiency, and cost-effectiveness of BIA's operations.

My testimony will address first the problems with BIA's management and organizational structure and second, the problems with its administrative systems.

THE BUREAU'S MANAGEMENT AND ORGANIZATIONAL PROBLEMS

Managing for Success

The Academy believes the current management and administration of the BIA are not fully adequate to meet all of its trust responsibilities to American Indians and Alaska Natives, to carry out the numerous statutory responsibilities, and to operate an effective and efficient agency. Specifically, there is no existing capability to provide overarching budget, human resources, policy, and other types of management assistance to the Assistant Secretary-Indian Affairs and the Bureau. Neither the Office of the Assistant Secretary-Indian Affairs nor the Bureau has the internal staff capabilities that typically support managerial and administrative excellence.

The Academy panel determined that the foremost requirement is for the Assistant Secretary-Indian Affairs to have the staff support necessary to lead BIA, particularly in the areas of planning, budgeting, human resources management, and information resource management (IRM).

- The Academy panel recommended that the Assistant Secretary-Indian Affairs immediately establish a Policy, Management, and Budget Office that reports to him and provides him the following staff support:

    - a comptroller unit, consisting of three groups: (1) a program analysis group to analyze the appropriateness and effectiveness of programs and services designed to fulfill BIA's mission; (2) a budget development and execution group to prepare the budget and to track expenditures; and (3) an accounting group to operate BIA's financial accounting system

- a plans and policy unit, responsible for developing BIA management policies and directives, as well as strategic and annual plans, and for preparing manuals and operating handbooks

- a human resources unit, to handle development of policy and plans for managing BIA's workforce, including policy development and workforce planning, an employee development program, expertise in labor relations, and oversight of the delivery of personnel services

- an information resource management (IRM) unit, responsible for developing policy and plans and operation of Bureau-wide information systems, as well as guidance on useful information technologies and planning for the future

- an equal employment opportunity unit to manage BIA's equal employment opportunity (EEO) program.

As the primary federal advocate for Indians, the assistant secretary should be the focal point for assuring that potential new initiatives and existing programs are well coordinated and that resources are used to the maximum advantage.

- The Academy panel recommended that the assistant secretary utilize the working group of the Domestic Policy Council in a more strategically integrated way to coordinate and harmonize programs for American Indians and Alaska Natives, thus creating the possibility of more effective and efficient delivery of services.

Organizational Interaction

The Academy panel found that the three service organizations in BIA (Office of Indian Programs, Office of Indian Education Programs and Office of Law Enforcement Services) operate semi-independently through their own field organizations, which function largely separately, except that OIP provides some administrative support to OIEP and OLES. If the three service-providing organizations are to be held accountable for performing their missions, they need to have responsibility for providing their own administrative support.

- The Academy panel recommended that the Assistant Secretary-Indian Affairs recognize the three service-providing organizations as independent operating entities, with each reporting directly to the Assistant Secretary and each having responsibility and authority for providing programs and services and for handling its own administrative functions.

A Need for More Managerial Discipline

BIA has had difficulty fully satisfying the government's requirements for strategic planning and annual performance planning. Top leadership needs to embrace the intent of the Government Performance and Results Act (GPRA) and to develop comprehensive,

outcome-oriented strategic and annual performance plans that are focused on results that make a difference in the lives of Native Americans, and use those plans to drive the Bureau's decision-making.

To gain discipline in the workforce, individual employees need to understand the requirements of their job. Now, they lack guidance in the form of up-to-date policy and implementation manuals. To achieve managerial discipline, the Academy panel recommended that:

- The Assistant Secretary-Indian Affairs should continue to strengthen BIA's strategic plan and companion annual performance plan to meet GPRA requirements. These plans should be supplemented with goals and performance measures in administrative and management arenas. The deputy commissioner, education and law enforcement directors, and area and agency managers need to participate in preparing the plans and should be held accountable for executing them.

- The Assistant Secretary-Indian Affairs should establish a system of management reviews, performance measures, and regular reviews of BIA's performance. To provide better guidance to employees, the plans and policy unit of the proposed Policy, Management and Budget Office should develop and maintain manuals and handbooks that can be available to all employees through desktop computers.

- The BIA manual should be updated and kept current. Operating handbooks that clearly define the authorities and responsibilities of field personnel also should be developed. Modern information technology should be used to support interactive development of policy manuals and directives and their distribution to the field.

Management and Administrative Staffing Requirements

The study estimates that when fully implemented, the Academy panel's recommendations could require 40-50 administrative personnel in the new Policy, Management and Budget Office, in addition to those in the existing IRM and accounting units. The exact number of administrative staff positions in the 12 area and 83 agency offices will have to be determined by a careful workforce analysis. The study estimates that it will be on the order of 150 to 200 when the recommendations are fully implemented. A rough estimate of the total annual personnel cost once the recommendations are operational is expected to be in the range of $10 million to $15 million.

THE BUREAU'S ADMINISTRATIVE PROBLEMS

BIA has been unable to meet the basic requirements for administrative systems within the federal government. BIA does not, for example, have a unified approach to human resources management. The budget structure and process do not provide the information necessary to estimate or justify actual needs. The financial management

systems do not permit matching funding to changing requirements, and the BIA has been unable to obtain an unqualified audit. Since 1991 DOI has declared the procurement system a material weakness, but there has been little improvement.

Human Resources Management

Because of National Performance Review (NPR) streamlining efforts in 1994, BIA no longer has a human resource policy-making unit, and even its personnel experts are not sure what policies are in effect. BIA gives employee development almost no organized attention, nor does it systematically invest in staff training. Although BIA selects almost all its managers from inside, it has no succession plan or management development program. Many field staff are given significant collateral duties without training and support. To overcome the above-outlined deficiencies, the Academy panel recommended:

- The Assistant Secretary-Indian Affairs should re-establish a human resources management unit of four to six people, headed by a human resources manager, in the proposed Policy, Management, and Budget Office. This unit should be responsible for establishing and maintaining a consistent approach to human resources management throughout BIA. The manager should have access to and participate with top management in decisions that affect BIA employees; should develop a strategic human resources management plan; and should identify the policies BIA is following and establish a mechanism for assuring they are applied consistently throughout the Bureau. This unit should ensure that:

  - BIA makes employee development one of its primary management objectives and provides the planning and resources to support training and development

  - BIA begins succession planning and development to meet its managerial and executive needs

  - BIA automates its personnel record-keeping so that summary information about employees is readily available and accessible

  - BIA's qualification requirements for its jobs are sufficiently stringent that candidates who meet them will be able to do the job

  - The units providing BIA personnel operations support are performing effectively.

Budget System

The basis for the allocation of BIA resources across the areas and tribes is a complex set of historical, demographic, political, and other factors. The distribution of funds has been a source of dissatisfaction because it does not seem equitable – it does not

encompass the results of a needs assessment or priority-based allocation across tribes. However, because of the complexities involved and a general belief that changing the distribution of funds would do little to better Indian welfare, BIA and the tribes have concluded that the existing TPA system should not be modified. The basis for the distribution of Indian Student Equalization Program (ISEP) funds is a complex formula driven by the number of students and the services they require (expressed as Weighted Student Units). Because TPA and ISEP are formula-driven, BIA has little discretion to direct funding to resolve problems or satisfy pressing needs. The Academy panel recommended that:

- The Assistant Secretary-Indian Affairs should develop a budgeting system that has sufficient flexibility to support the equitable allocation of funds

- The budget development and execution group in the comptroller unit of the proposed Policy, Management and Budget Office should work with the BIA and the tribes to develop the budget and document appropriate standards (or benchmarks) that can be used consistently in support of budget requests and in measuring performance in the delivery of programs

Financial Management

DOI's Office of Inspector General has for several years provided a qualified audit opinion on BIA's financial statements because BIA could not provide adequate documentation or reliable accounting information to support the financial report balances. In addition, BIA had material weaknesses (insufficient internal control procedures) in several major accounts. BIA also was not in compliance with a number of laws and regulations. BIA has taken a number of corrective actions in the areas of accounting, prompt payments, financial documentation, property management, and information technology that may resolve many of the problems. The Academy panel recommended:

- The Assistant Secretary-Indian Affairs should establish an accounting group in the comptroller unit of the proposed Policy, Management and Budget Office to work hand-in-hand with BIA management to (1) continue the drive towards a clean audit, (2) prevent the reoccurrence of material weaknesses, and (3) correct possible problems that go deeper than the issue of a clean audit (establish long-term solutions). Toward those ends the new office would be responsible for:

    - finalizing and improving a series of implementation plans for corrective actions on all audit issues and material weaknesses, supporting coordination and monitoring implementation using a report card system, maintaining important administrative processes and improving documentation of policy and procedures in tandem with that effort

    - upon project completion, holding detailed retrospective meetings of management and accountable staff to discuss/document what went right and what went wrong (planned versus actual outputs and outcomes)

- Increasing current efforts to document all financial policy and procedures (with hands-on involvement by the area and agency offices) and get those documents out into the field

- Correcting the serious shortage of administrative staff needed to perform financial duties (so many functions are collateral duties of overworked staff who lack adequate knowledge or training)

- Involving field offices more in the development of policy and procedures

- Providing up-to-date computer software versions that are consistent across BIA

- Increasing the level of coordination, follow-through, and communication among the different field offices.

Information Resource Management

BIA uses information technology far less than other government organizations and needs to aggressively pursue the development of information systems to increase the efficiency of its operations. BIA would benefit from a formal IRM user group to facilitate the management of IRM systems by establishing priorities and helping ensure that potential system applications are identified. While overall BIA seems to be moving forward effectively to address its IRM needs, there are "missed opportunities" it needs to address. One is that BIA management does not generate plans with performance measures. It is not using standard IRM techniques and activities to help with planning and control. There is little organizational participation in IRM planning or new product development. BIA has not consistently followed through on implementation of plans. Needed policies, procedures, and standards do not exist. The Academy panel recommended:

- The Assistant Secretary-Indian Affairs should establish a full-time chief information officer (CIO) in the proposed Policy, Management, and Budget Office to work hand-in-hand with management to bring the full benefits of information technology to BIA. The CIO would direct the activities of the Office of Information Resource Management (OIRM) and would be responsible for:

  - Creating an IRM users group with representatives of BIA management and operators to provide guidance in identifying potential information technology applications. Likewise, the CIO can use the users group to communicate new technologies that may be applicable to BIA

  - Establishing a BIA-wide communication strategy to link the Bureau together

  - Developing the requirements for information technology training

Records Management

BIA depends upon records for virtually all aspects of its mission and is responsible for many historical documents. Here, too, BIA has major, long-standing problems. For example, widespread use of original documents for day-to-day reference places them at extreme risk. The environmental conditions for stored records range from passable to unacceptable. Records management is almost always a collateral, low-priority duty.

In recent years records management has become a particularly pressing issue at BIA because of the litigation over Indian trust fund management. The litigation has led BIA to make extensive efforts to resolve the problems with trust management records. The Academy panel recommended:

- The CIO in the new Policy, Management and Budget Office should be responsible for BIA non-trust fund records management and should ensure that systems are up-to-date and reliable. The CIO should carry out the following recommendations:
  - establish records management policy and oversee the preparation of a records management policy implementation manual.
  - develop a BIA-wide plan to upgrade records management, building on the Trust Management Improvement Project.
  - establish accountability for records management in each major organizational element.
  - conduct an examination of the retention schedules for all types of documents and records to determine if they are still current and being applied consistently.
  - ensure that all its records management is integrated with the OST and is reviewed annually to determine that the integration is still valid.

Procurement Management

Attempts to improve BIA's procurement management have been ongoing for 25 years without success. In 1991 DOI declared the whole procurement system a material weakness. A survey of customers revealed considerable dissatisfaction with the procurement services being provided. Frustration with BIA's procurement organization runs high within DOI and among BIA customers. The long-standing nature of the problems and the organizational discord raise concerns about BIA's ability to correct the problems without dramatic action. Prompt resolution of these problems is essential. The Academy panel recommended:

- The assistant secretary should establish a procurement policy and quality assurance function within the proposed Policy, Management and Budget Office.

  - The assistant secretary should consider abolishing BIA's central procurement organization and contracting for procurement services from other sources within the government. If BIA contracts for these services, it should maintain the field's capability to meet procurement needs up to a reasonable limit (say, $100,000).

  - If central procurement is retained, the deputy commissioner should develop an action plan to correct the deficiencies identified in the recent DOI Acquisition Management Review. The assistant secretary and his staff should closely monitor implementation of the action plan and hold the deputy commissioner responsible for its implementation.

CONCLUSION

Mr. Chairman, the Academy thanks you for the opportunity to prepare this testimony on the BIA study, which is intended to result in more effective public management and to chart a path to meeting the needs and aspirations of Native Americans. BIA will experience some pain in facing up to its problems, but the Academy panel believes progress will be made if the Congress and administration are willing to invest in the recommendations in the report.

W. RON ALLEN, FIRST VICE PRESIDENT
NATIONAL CONGRESS OF AMERICAN INDIANS
TESTIMONY ON THE NATIONAL ACADEMY OF PUBLIC ADMINISTRATION REPORT ENTITLED: "A STUDY OF MANAGEMENT AND ADMINISTRATION ON THE BUREAU OF INDIAN AFFAIRS"
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, D.C.
MARCH 1, 2000

I. INTRODUCTION

Good morning Chairman Campbell, Vice Chairman Inouye and distinguished members of the Senate Committee on Indian Affairs. My name is W. Ron Allen. I am First Vice President of the National Congress of American Indians (NCAI) and Chairman of the Jamestown S'Klallam Tribe located in Washington State. On behalf of NCAI, the oldest, largest and most representative Indian organization in the nation, I would like to thank you for the opportunity to discuss the National Academy of Public Administration (NAPA) report on the Management and Administration of the BIA.

NCAI was organized in 1944 in response to termination and assimilation policies promulgated by the federal government which proved to be devastating to Indian Nations and Indian people throughout the country. NCAI remains dedicated to advocating on behalf of the interests of our 260 member tribes on a myriad of issues including whether the Bureau of Indians Affairs (BIA) is fulfilling its responsibility to administer federal Indian policy and to discharge the federal Indian trust responsibility for American Indian and Alaska Natives.

On April 28, 1999, NCAI had the opportunity to provide testimony to this Committee on the mission and capacity of the Bureau of Indian Affairs (BIA). In that testimony, we provided numerous recommendations regarding re-organization of the BIA consistent with its responsibility to administer federal Indian policy and to discharge the federal Indian trust responsibility for American Indian tribes, Alaska Native villages and tribal organizations. Tribal governmental self-sufficiency has increased throughout Indian Country, due in large part to the enactment of self-determination and self-governance initiatives. Increased tribally-controlled government functions, however, have fostered a natural tendency for tribes to begin critically analyzing the effectiveness of the BIA.

At the NCAI 55th Annual Session in Myrtle Beach, South Carolina. Assistant Secretary Kevin Gover reported to the tribes, *"...the Bureau must be accountable to Congress, the Department and the tribes for its management and administration of federal funds. To this end, a systematic management review of all BIA operations is being undertaken. When this process is completed, we will bring to the tribes our proposal for reorganizing BIA*

management and administration internal of affairs in matters of accounting, property management, records management, personnel, etc." To meet this objective, the BIA requested the National Academy of Public Administration (NAPA) to conduct this comprehensive study. Their study was completed in August 1999.

Mr. Chairman, I am pleased that you have provided this opportunity for tribes to voice their opinions on the NAPA report regarding the management and administration of the BIA. While the NAPA study identifies a number of recommended remedies that would improve the quality, efficiency and cost effectiveness of the BIA's operations, we are concerned over the BIA's proposal to implement these recommendations as they affect the Bureau's mission of empowering the tribal governments. NCAI's testimony will highlight these concerns, problems areas, conflicting goals and outline specific suggested actions.

II. IMPACT OF TRIBAL SELF-DETERMINATION & SELF-GOVERNANCE ON BIA MANAGEMENT CAPABILITIES

One of the most important precepts in the Indian Self-Determination and Self-Governance Policy was that each tribe exercised its government-to-government relationship with the Federal government based on its unique community needs. Due to the success of the implementation of the Self-Determination and Self-Governance legislation, the BIA has experienced great pressure to transfer all non-inherent federal programs over to the tribes and reorganize its operations to carry out those functions and duties it cannot transfer because they are inherently federal.

In recent years, as an essential phase of these initiatives, the BIA (along with tribal participation) has been engaged in a "tribal shares process" which includes an agency-wide identification of: (1) inherent federal functions and responsibilities; (2) programs and services which are eligible for contracting or compacting by tribes; and (3) associated funding levels. Although implementation of this process has varied across BIA areas and has met with some resistance, this process will continue to be the method to downsize the Bureau– at the desire of the tribes.

The BIA Central and Regional office budgets (after determination of tribal shares) is the "residual". The identification of BIA residual funding is essential in order for the Bureau to carry out its inherent federal functions and/or trust responsibility for all tribes. However, we strongly believe that adequate funding for a minimum BIA base to carry out its trust responsibility must be kept in balance with adequate funding for tribal programs.

The NAPA report recommends that the BIA immediately establish a Policy, Management and Budget Office. The report further recommends that the BIA conduct a "careful workforce analysis" of the Central, Area and Agency offices to determine the appropriate levels of staffing for these administrative functions. Over the past year, the

BIA has failed to complete the tribal shares process which includes the identification of inherent federal functions and associated residual funding levels. We believe that the NAPA study of conducting a workforce analysis of the BIA is consistent (and compliments) the tribal shares process. We strongly urge the BIA to complete its analysis and to involve tribes in the defining these administrative and management functions.

III. Self-Determination and Self-Governance Policy

There are several very disturbing statements included in the NAPA report regarding tribal self-determination and self-governance. In the Foreward, the report states, *"...**before** all of the tribes attain self-determination, it is necessary that the Bureau properly carry out its existing functions [emphasis added]."* Those interviewed for the study asserted that several factors appear to be impeding the movement toward self-determination and self-governance, thus thwarting implementing of federal Indian policy. The report states that *"BIA managers believe the statutory restrictions on the oversight of contracts, compacts and grants creates the potential for abuse".* Further, *"there were problems with some of the tribes that had graduated to self-governance; and.... that the single audit is not designed to monitor the adequacy of program performance."*

These statements are particularly offensive given the Administration's commitment to tribal self-determination and the empowerment of tribal governments. Specifically, it asserts that tribes are not accountable for those BIA programs they operate and that tribal self-determination cannot be achieved until the BIA demonstrates administrative competence. These statements and allegations fail to recognize the history and fundamental principles of self-determination. They also fail to recognize the countless success stories that exhibit the improved effectiveness of the tribes managing and prioritizing the use of these resources. These comments included in the NAPA report are more focused on the BIA's loss of control over the tribes than the success of the devolution movement in the Self-Governance initiative.

As Chairman of one of the original self-governance tribes, I have had the privilege of being able to participate in our effort to streamline the federal system based on what we refer to as tribally driven initiatives. Since 1988, there have been so many tribes who have enjoyed a great deal of success in implementing such tribal initiatives and feel that exhibiting their accomplishments shows the Congress and the Administration that tribes can take a bureaucratic system and reshape, modify and downsize it into an increasingly effective and efficient government. More important, those federal resources identified in the streamlining process can be transferred directly to the tribes to further increase program and service deliveries.

As this Committee is well aware, when the Self-Governance Demonstration Project was enacted in 1990, Congress was addressing a bloated BIA bureaucracy who under the

aegis of assuring compliance with federal requirements used up precious, limited federal funds overseeing every tribal move, leaving far too little for direct services level. Congress wisely decided to remove most of the federal oversight and authority in favor of transferring funds and the discretion about how best to use them to the tribes, to the local level where accountability is swift. Today, following 10 years of successful implementation of tribal self-governance, we see return to the re-entrenchment of this bureaucracy.

We, therefore, view the NAPA recommendations to increase BIA administrative and management capacity with mixed feelings and some degree of skepticism and concern. Yet, we recognize the need to improve some critical functions, e.g. data collection and improve the efficiency of the system. We are aware that funding has been appropriated to the BIA to begin implementation of these recommendations and that this implementation will require substantial changes in the role of the Office of Assistant Secretary and in all units of the BIA. NCAI believes that these decisions regarding any re-organization of the BIA must be developed in consultation with tribal governments and consistent with the fundamental principles of self-determination.

IV. Funding & Budget Considerations

Over the last several years, the BIA has been the subject of an onslaught of reorganization, devolution, transfers, downsizing, buy-outs, early retirements, and Reductions In Forces (RIFs). In February 1996, through the acceptance of 864 buy-outs, by not filling those positions as required by law, and by leaving vacant another nearly 1,000 vacant positions that had been funded during fiscal year 1995, the BIA executed a reduction in force. Even after these extreme measures, BIA still either reassigned, downgraded, or separated nearly 700 people.

The majority of the actual "job losses" were in Central Office East (D.C.) and Central Office West (Albuquerque). About 30 to 40 percent of these losses were administrative, clerical or analytical. The first targets were management and elimination of duplication. The most protected programs were basic programs such as law enforcement, social services and education. Among the least protected were positions in the Office of Trust Responsibilities. Personnel for the management of agriculture and rangelands was reduced by 80 percent in the Central Office and 40 percent at the Agency and Area Offices.

To the extent that the Assistant Secretary and BIA personnel are still permitted to participate in policy formulation within the Department, they now lack the technical advice and expertise to advocate for tribes against the other interests of the Department which are in conflict with Indian tribal interests.

In FY2000, $5.0 million was appropriated to begin implementation of the NAPA recommendations. Let me say that we support this funding increase to initiate the process of addressing the Bureau's administrative problems and weaknesses.

However, we must emphasize that tribal input on the improvement in these Bureau systems (e.g. financial management issues, budget operations and information resource development) is essential. Following are some specific suggested actions:

- Establish a comprehensive database system in 2000 and maintain current statistical information about tribally-specific unmet needs on an on-going basis.

There is an inadequate data collection system within the BIA to provide for comprehensive reporting regarding the expenditure of tribal program funding and identification of unmet needs. In May 1999, the Tribal Report on Tribal Needs Assessments including Tribal Priority Allocations (TPA) concluded that current base TPA funding levels are wholly inadequate to provide tribes with even basic programs and services. This was demonstrated by the comparison of TPA funding to relevant national standards. The NAPA report acknowledges that tribal funding is far below national standards for comparable programs and that the BIA's TPA system provides funds to partially fulfill the federal trust responsibility through supporting critical and essential tribal governmental services.

The tribes do not agree with the Bureau assertions that these funds cannot be identified or quantified to account for their use. NCAI believes that a reporting system can be structured to be useful, but not unduly burdensome to tribal staff. We recognize and support the need for program measures baseline data to be submitted for budget formulation and justification to increase funding to address tribal unmet needs.

The BIA and tribal reports on TPA developed a format that would identify and gather tribal-specific unmet program and service needs. The tribes believe that this system would address provide for the accountability issue raised by the Bureau and identified in the NAPA report. We recommend that the BIA develop and implement, in consultation with tribes, a comprehensive database system and maintain current statistical information about tribally-specific unmet needs on an on-going basis.

- Provide additional staff to the Office of Self-Governance for financial management functions.

In FY2000, a total of $240 million in funding has been obligated and transferred from the BIA to 216 Self-Governance tribes. The financial management functions assumed by the Office of Self-Governance (OSG) include budget execution and formulation activities, accounting and reporting, management of contract awards and contract support costs related to self-governance agreements and information system technology. In FY2001, the Office of Self-Governance will be assuming additional functions related to expansion of its telecommunications and information technology.

Approximately 50 percent of all tribes are operating their programs under self-governance annual funding agreements. However, the OSG currently has a total of 3

FTE's for all financial and budget activities. In comparison, the Bureau's system for the remaining 340 tribes include a significant higher number in the central, regional and agency offices. In FY1992, the OSG financial staff assisted in the design of a sophisticated database system which tracks all program funding, by line item for every self-governance tribe. Since that time, OSG has implemented this financial database system which accounts for every dollar transferred to the self-governance tribes. In many respects, the OSG has demonstrated and implemented a streamlined financial system in comparison to other BIA budget operating units. However, the OSG should not be penalized for these efficiencies. We recommend that the OSG be included in the BIA's overall workload analysis and that appropriate funding be identified for this Office.

V. Need for Adequate Tribal Consultation on BIA Re-Organization Issues

As we have noted several times in this testimony, we strongly believe that tribal input and active participation regarding BIA re-organization issues is essential. While certainly the NAPA report provides some constructive recommended actions, many tribes are concerned that greater emphasis has been placed on the NAPA report which has had limited tribal input.

In August 1994, the Joint Tribal/BIA/DOI Task Force on the Reorganization of the Bureau of Indian Affairs[1] released its final report. This 43-member task force consisted of three DOI representatives, five BIA representatives and 36 tribal representatives (three from each of the twelve BIA Areas) nominated by the tribes and appointed by the Secretary of Interior. The task force spent four years gathering information, developing ideas and concepts, and conducting 22 task force meetings throughout Indian Country, all in an effort to generate a report to the Secretary and the Congress that highlighted the collective recommendations from Indian tribes, the BIA and the DOI on how best to reorganize the BIA. The task force created four leading themes in the reorganization plan – organizational reform, regulatory reform, educational reform and budgetary reform.

Six years later, the BIA has failed to implement many of the recommendations regarding "Organizational Design" section of the BIA. In fact, the BIA has ignored most of these recommendations which were developed with significant tribal involvement. We believe that the recommended reforms included in the Joint Tribal/BIA/DOI Final Report must be considered along with the recommendations included in the NAPA report;

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[1] Report of the Joint Tribal/BIA/DOI Advisory Task Force on Reorganization of the Bureau of Indian Affairs to the Secretary of the Interior and the Appropriations Committees of the United States Congress, Executive Summary, ES-3, (August 1994) (The task force was chartered by the Secretary of the Interior to develop baseline goals and plans for reorganization to strengthen the BIA's administration of Indian programs as called for by Congress in response to tribal concerns that the Department of the Interior was planning to move forward with a reorganization of the BIA prior to an appropriate participation and consultation with Indian tribes).

and that tribal leaders be actively involved in this process.

VI. Conclusion

Mr. Chairman, thank you for the opportunity to present this statement on the NAPA Report on the management and administration of the BIA. The BIA is the primary Federal agency whose sole responsibility is to advocate and advance the empowerment of tribal governments to serve their members. It is critically important that the implementation of these NAPA recommendations are conducted with respect to the Congressional devolution goals to empower all governments, including tribal governments.

We are now in the 21st century. Tribes firmly believe they should be in control of our future— not the BIA and the old paternal system. The strengthening of the BIA system based on the NAPA report must be an opportunity to refine the Bureau's capacity and capability to assist the tribes' in achieving their goals, not to resurrect the old bureaucratic obstructions.

We are optimistic about their opportunity. We look forward to working with the Committee and appreciate your leadership regarding the sensitive federal-tribal relationship. I would be happy to respond to any questions you may have.

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TESTIMONY
OF
EDDIE F. BROWN
ON
THE REPORT OF THE NATIONAL ACADEMY OF PUBLIC ADMINISTRATON TITLED, "A STUDY OF MANAGEMENT AND ADMINISTRATION: THE BUREAU OF INDIAN AFFAIRS"
BEFORE THE
SENTATE COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, D.C.
APRIL 12, 2000

Good morning, Mr. Chairman and members of the Committee. My name is Eddie Brown and I currently serve as the Associate Dean and Director of the Kathryn M. Buder Center for American Indian Studies at the George Warren Brown School of Social Work, Washington University, St. Louis, Missouri. As a panel member of the National Academy of Public Administration (NAPA) I would like to thank the Committee for the opportunity to discuss the proposed recommendations outlined in our report titled, "A Study of Management and Administration: The Bureau of Indian Affairs."

I commend Assistant Secretary Gover for his leadership and insistence that such a study be conducted. I also want to thank the other members of the NAPA Panel and members of the Study Team for their efforts to ensure an independent, nonpartisan report.

The objective of the NAPA study was to identify and recommend actions that would improve the quality, efficiency and cost effectiveness of the Bureau of Indian Affair's internal operations.

My comments this morning will address three areas of concern: (1) first, management and administrative weaknesses of the Bureau of Indian Affairs; (2) the need to provide the office of Assistant Secretary-Indian Affairs with the necessary administrative support to oversee the Bureau's programs; and (3) the need for collaboration and coordination of all stakeholders.

First, as a member of the NAPA study panel, I strongly concur with the overall findings of the report, which stated that:

> ...the current management and administration of the BIA are not fully adequate to meet all of its trust responsibilities to American Indian and Alaska Natives, to carry out the numerous statutory responsibilities, and to operate an effective and efficient agency. Specifically, there is no existing capability to provide budget, human resources, policy, and other types of management assistance to the Assistant Secretary-Indian Affairs and the Bureau. Staff do not receive adequate training in management and administrative skills and techniques, and BIA does not have adequate

> standards by which to determine its management and administrative requirements for resources and staffing. Strategic planning, yearly performance planning, and program analysis are not institutionalized. Important policy manuals and implementation handbooks are out of date. In short, neither the Office of the Assistant Secretary-Indian Affairs nor the Bureau has the internal staff capabilities that typically support managerial and administrative excellence (p. viii).

These findings coincide with the earlier external and internal evaluations of the Bureau of Indian Affairs, which have consistently pointed to the need for administrative and management reforms. As a result, the inability of the Bureau of Indian Affairs to correct these weaknesses has made it difficult for the Bureau to obtain the administrative and congressional support needed to address the funding needs of tribal programs.

Early in my term as Assistant Secretary-Indian Affairs in 1991, I was confronted by a representative of the administration and told that the BIA was bankrupt and needed to be taken into receivership. I strongly disagreed with the statement and proceeded to work with the administration and tribal governments to reorganize the Bureau to more effectively execute its trust responsibilities and to ensure the facilitation of tribal self-determination and self-governance. While some success was achieved, the overall reorganization of the Bureau was minimal at best. In 1996, major reductions in the central administration of the Bureau were made, further eroding its administrative capability. Today, however, I believe these reductions and the failure to the address the need for reorganization have brought the Bureau of Indian Affairs to the brink of bankruptcy.

The seriousness of the Bureau's administrative and management weaknesses can no longer be avoided, ignored or supported through half-hearted attempts to rectify theses major problems. The Bureau of Indian Affairs is an agency under siege. We have reached the point where all stakeholders must make a concerted effort to invest in the Bureau to ensure that it can effectively carry out its trust obligations and the facilitation of tribal self-determination. To this end, the NAPA study has recommended a strategy that, if properly funded and executed, would over time assist the Office of the Assistant Secretary and the BIA to:

> ...build a performance based organization that establishes realistic goals, matches resources to the accomplishment of those goals, assesses performance, and ultimately reduces the role of the U.S. government in Indian affairs while retaining its trust responsibility (p. v).

If Congress, the Administration and tribal governments choose not to support the investment necessary to correct these administrative and managerial weaknesses, then we must be prepared to accept the eventual dismantling of the Bureau of Indian Affairs.

Second, although the Assistant Secretary-Indian Affairs is the primary federal

advocate for American Indians and Alaska Natives and is responsible to see that existing Bureau programs are well coordinated, new initiatives effectively integrated, and resources efficiently distributed, the NAPA study concluded that the Office of the Assistant Secretary:

> ...does not have the internal staff capabilities necessary to support achievement of managerial and administrative excellence. His small staff focuses primarily on administering the self-governance program and resolving audit findings. It does not provide the specialized knowledge and skills the assistant secretary needs to plan, organize, control, and direct the work of the Bureau, to integrate BIA's activities, or to lead the Bureau in achieving its goals and objectives (p. 33).

Based on these findings, members of the NAPA Panel recommended that the first step should be to provide the Assistant Secretary-Indian Affairs with the necessary administrative and managerial structures and sufficient staff to lead the Bureau in planning, budgeting, human resources and information resource management. These resources would allow the Assistant Secretary to effectively consult with the tribal governments and Congress in implementing its trust obligations and facilitation of tribal self-determination and self-governance.

The appropriation of $5 million in the FY 2000 budget for the establishment of the Office of Policy and Planning within the Office of the Assistant Secretary-Indian Affairs marked the first step toward reinvesting in the Bureau of Indian Affairs. The staffing of this office is essential to the future success of the proposed NAPA recommendations and provides the base for the further implementation of the proposed NAPA strategy. The Assistant Secretary will need the continued assistance of NAPA staff and the cooperation and support of all stakeholders to guarantee the recruitment of senior managers who possess demonstrated competencies in the areas of policy development, management and budget.

Once the Office of Policy and Planning is established, a thorough review of field offices will be necessary to determine staff requirements for the improvement of identified management weaknesses. The Assistant Secretary's request for $9.2 million in the FY 2001 budget would then be used for additional field positions staffed with well-trained and qualified individuals. The Panel suggested that these funds not be released until the new Office of Policy and Planning verify that additional funds are necessary for effective implementation of the managerial improvements identified in the NAPA report.

Third, successfully implementing the NAPA recommendations for improving the internal management and administration of the Bureau will require considerable work, time and resources. This will necessitate: strong creative leadership within the Office of the Assistant Secretary and BIA administration; the support of the Department of Interior *and* the Office of Management and Budget; and allocation of necessary funds from Congress. It will also require the consultation, support and cooperation of the Bureau of Indian Affair's major

stakeholders - tribal governments. While the NAPA report speaks to the needs of ensuring tribal self-determination through consultation and partnership with tribes, it does not provide any specific recommendations to ensure that this occurs. Previous and current BIA/Tribal initiatives that are directly related to the internal administration and management of the Bureau, such as the Joint Tribal/BIA/DOI reorganization recommendations and the determination of tribal and residual shares, must be considered in implementing the proposed NAPA plan. A process must be developed to allow the Assistant Secretary's office and tribes to jointly consider these initiatives in the Bureau's restructuring efforts. There must be reassurance that on-going collaboration with tribes regarding how changes to the internal structure and addition of staff will further promote tribal self-determination efforts and fulfill BIA's trust obligations.

In conclusion, I concur with the statement:

> In this report, the Academy panel recommends a series of reforms. None is new. But together they constitute an agenda that is critical and ambitious, yet achievable. (p. v)

Thank you and I would be happy to respond to any questions you may have.

TESTIMONY

OF

JOHN L. O'DONNELL, Jr.

SUBMITTED TO

The Committee on Indian Affairs
Of the United States Senate
9:30 a.m., April 12, 2000

In a Hearing on
National Academy of Public Administration Report on
BIA Management Reforms

Mr. Chairman and Members of the Committee,

My name is John L. O'Donnell, Jr. I am an attorney representing the affected Indian federal employees of the Office of Information Resources Management (OIRM), Bureau of Indian Affairs (BIA) who are concerned about their jobs and the hundreds of thousands of Indian trust beneficiaries who are adversely affected by the actions of the Department of Interior and its Bureau of Indian Affairs.

I appreciate the opportunity to testify today concerning the arbitrary dismantling of the OIRM in Albuquerque, New Mexico and its relocation to Reston, Virginia. By its actions, the BIA is effectively terminating scores of highly trained, long term Indian employees and replacing them with non-Indian labor supplied by an outside contractor with little or no experience in OIRM policies or procedures.

The BIA sought to justify the dismantling of the Albuquerque OIRM office by a dishonest and distorted reading of the August 1999 National Academy of Public Administrators (NAPA) management study. Shutting down the Albuquerque OIRM office is contrary to both the letter and the spirit of the NAPA report. The NAPA Report recommended the establishment of a full-time Chief Information Officer in the office of Policy, Management and Budget to bring the benefits of information technology to the BIA; the Report makes no recommendation concerning dismantling and moving the OIRM operations and data center. Moreover, it should be noted that the NAPA Report does not criticize the operations division of OIRM. Further, in Declarations given before Judge Lamberth's court, the BIA has declared that the decision to move OIRM was an executive committee decision and not a specific NAPA recommendation.

This forced and precipitous relocation of the OIRM operations office adversely impacts the federal government's ability to fulfill its trust duties owed to Indians, and is contrary to law in the following respects:

1. The Relocation Is Adverse to Trust Reform and Impairs Indian Trust Management.

As this Committee is aware, on December 21, 1999, Judge Royce Lamberth of the district court for the District of Columbia issued his opinion in *Cobell vs. Babbitt, et. al.* in which he held that the federal government had breached its fiduciary duties owed to individual Indians by its failure to properly administer Indian trust assets. Primary among the deficiencies found by Judge Lamberth is the government's failure to keep adequate records as to trust assets and the proceeds therefrom. Moreover, in a separate decision, Judge Lamberth held Secretaries Babbitt and Rubin in civil contempt of court for their failure to produce trust documents, their misrepresentations to the Court, their cover-up of their misrepresentations, and their repeated refusal to obey court orders.

As set forth more fully in the filed Declaration of Mona Infield, a Supervisory Computer Specialist at OIRM, the relocation of the OIRM operations functions from Albuquerque exacerbates the federal government's continuing breach of its trust duties owed to Indian trust beneficiaries by significantly increasing the risk that key documents will continue to be destroyed, and that Indian trust funds are lost, rendered inaccessible or outright embezzled. By way of example, the relocation is so inept and poorly planned that Judge Lamberth stated "BIA has now placed itself in the incredible position that it cannot now create such a [security] plan with its own employees.... This entire fiasco is vivid proof to this Court that Secretary Babbitt and Assistant Secretary Gover have still failed to make the kind of efforts that are going to be required to ever make trust reform a reality." (See Exhibit A, transcript of hearing dated April 4, 2000.)

The centerpiece of the government's promise for trust reform is the implementation of the Trust Asset and Accounting Management System ("TAAMS"). This is a system that was purchased by the Department of Interior without the benefit of an integrated architecture. As a result of the Department of Interior's refusal to properly plan and design an integrated architecture for TAAMS, and trust reform in general, TAAMS does not work and it is not known

if TAAMS will ever work. OIRM employees have made it known to BIA senior management that the TAAMS application is a sham and will not work.

In a mismanaged and escalating crisis situation, the employees of OIRM represent the last bastion of hope for more than five hundred thousand Indians who depend on OIRM's consistent and expeditious handling of trust funds – specifically getting checks to the Indian trust beneficiaries who rely on trust funds to feed, clothe and shelter themselves.

Following are examples of the relocation's impact on trust management:

1.1 As we speak, the dismantling of the OIRM office has resulted in a rash of telephone calls from trust beneficiaries who have begun to feel the effects of this illogical and irreparable destruction of data and services.

1.2 The Treasury department cannot fulfill its trust obligations in identifying checks that have been issued to individual Indian trust beneficiaries nor can Treasury identify the source of that income since ISSDA reporting is deficient.

1.3 The BIA has hired outside contracting groups to assist in the relocation. Contracted employees have publicly stated that they may not have the required institutional knowledge...but they will eventually get it figured out...even if it takes them two or more months. OIRM employees react within hours, sometimes minutes, to address problems that threaten to come between the trust fund beneficiaries and their often sole-sources of income.

1.4 The Gila River Tribe has requested and received an electronic copy of their tribe's data because they do not trust the contractors to preserve their data. Additionally, numerous other trust beneficiaries have notified the OIRM help desk (currently manned by one temporary employee) that they too would prefer to have a copy of their data electronically sent to them for safe-keeping.

This committee represents the best hope for hundreds of thousands of Indian trust beneficiaries to ensure that no further irreparable damage will occur to the trust fund data or to the operations which provide compensation for property and lands belonging to the Indians.

2. The Relocation Is Contrary to Governing Labor Laws and Regulations as Well as the Indian Preference Act.

In addition to affecting the capacity to distribute trust funds, the relocation violates the law. An unfair labor practice claim has been filed with the United States Federal Labor Relations Authority (FLRA) on behalf of the bargaining unit members of OIRM and the Division of Accounting Management. The FLRA found in favor of the bargaining unit members and has proposed a settlement agreement to close the matter. If BIA continues to ignore this overture, as it has others, the FLRA is prepared to prefer charges against the agency on behalf of the injured employees. This finding shows that the claim has merit and that the conduct alleged by the charge violates Articles 16 and 22 of the Collective Bargaining Agreement and 5 U.S.C. Section 7116 A(7).

A report of possible prohibited personnel practices or other prohibited activity was also filed with the Office of Special Counsel requesting an immediate stay of the forced transfer. The Office of Special Counsel was informed that the BIA was and is retaliating against the OIRM employees because of their whistle-blowing activities regarding the failures of TAAMS. Prior to the forced transfer of OIRM, employees who questioned the software engineering practices, data quality and data management, were reassigned to tasks other than TAAMS.

Lastly, the Office of Special Counsel was informed that the BIA's forced transfer of OIRM prevents compliance with the Indian Preference Act. The Bureau knows that most Native American employees would not relocate due to family, religious and tribal responsibilities. The forced transfer rips Indian federal employees from their families, their native populations whom they serve and protect, their culture and their mission.

3. The Relocation Is In Violation of Law Because It Involves a Misappropriation of Funds.

Congress appropriated funds for the sole and explicit purpose of implementing BIA management improvement recommendations of NAPA. However, NAPA did not recommend dismantling OIRM operations; nor did it recommend the transfer of its functions to Reston, VA. One can search all 130 pages of the NAPA Report in vain and find no such suggestion. In fact, NAPA recommends the use OIRM operations in Albuquerque to assist weaker divisions of BIA to facilitate the improvement of operations throughout the BIA. It is a black letter law that the use of appropriations for purposes other than those expressly authorized by Congress constitutes a violation of the Antideficiency Act, 31 U.S.C. 1301(a). Where an appropriation specifies the purpose for which the funds are to be used as Congress has here mandated through H.R. 3423 Sec. 137(a), the Antideficiency Act restricts the use of the funds to that specified purpose. Thus, no funds so appropriated can be used lawfully by the Interior or its contractors to transfer OIRM operations functions to Reston or to delegate the functions of OIRM to a government contractor. Accordingly, not only are the statements of the Assistant Secretary or other Interior personnel to the Senate Committee on Indian Affairs that NAPA made this recommendation materially incorrect, but Interior's misuse of funds appropriated through the rider to H.R. 3423 to dismantle OIRM is expressly prohibited.

Potential violations of law:

Conspicuously, Congress through H.R. 3423 did not see fit to provide Interior with a waiver of certain laws by its inclusion in the rider the common statutory waiver language "notwithstanding any law to the contrary." Thus, even if the appropriations language were otherwise sufficient to permit the use of funds for such purposes – which it is not- compliance with all other applicable laws is absolutely necessary. And this Interior has failed to do. Unfortunately, Interior has left a trail of violations of law in its path in its desperate effort to create dual illusions for Congress, that it is in fact improving BIA management; and for the Court

in Cobell v. Babbitt that it is doing that to which Secretary Babbitt and Assistant Secretary Gover testified in court to avoid more severe contempt sanctions or possibly the appointment of a receiver.

The contrary is true. If Congress allows the dismantling of OIRM operations, it will enable the Secretary to destroy one of the few BIA divisions that has functioned well. Consequently, the harm to the employees and those who the operations division serve, Indian trust beneficiaries constitutes a violation of the Trade Secrets Act and the Indian Minerals Development Act which carry criminal penalties. See letter dated February 29, 2000, from Dennis M. Gingold to Alan L. Balaran, Special Master, confirming the Justice Department position that dissemination of trust information without a waiver or consent of the trust beneficiaries is a violation of federal criminal law.

Impact on Indian OIRM Employees

The negative impact on American Indian OIRM employees of the forced relocation is breathtaking. The BIA's relocation of OIRM forces my clients to choose between keeping their jobs and continuing to reside in the heartland of their Indian culture, heritage, communities and families.

As you are aware, it is an integral part of Indian culture and heritage to live in tribal communities and in areas where tribal customs can be observed.

The forced relocation ensures that many BIA American Indian employees will lose their jobs because they cannot bear to abandon their culture. The relocation also ensures that other Indian employees will feel they have no choice but move to Virginia and, therefore, suffer the loss of their culture. Further, OIRM employees are involved in the medical care of family members. OIRM employees have tribal responsibilities and spouses. These jobs are critical to family stability and this forced relocation devastates OIRM employees' tribes, culture and families.

The impact on OIRM Indian employees of the forced relocation is elucidated by the following statements from affected employees:

By Charlene Lattier

"As for the transfer of function to Reston, VA, the move was not an option for my family. My husband works for a major international corporation which does not have operations near Reston, VA. Living in Albuquerque, NM also allows me to be near my parents, which is very important. My parents only have one set of grandchildren to whom they are close – my children. Moving to Virginia would not allow easy access to the grandchildren. Further, growing up in a culturally diverse environment is important to both my husband and myself. It allows my three children the opportunity to know and appreciate their cultural heritage."

By Evelyn Riggs

"I am a single person with a home in Albuquerque and I cannot be without a job since I am the person responsible for all bills and payments. The only reason I am transferring is that all Computer Specialist positions for which I may apply are not being open for application until 3/13/00, which is after the last working day with OIRM."

"My family – brothers and sisters are also affected by the move. As Indian people we are very strongly tied to the land and our culture. The Reston or Washington, DC, area has less than 1% Indian population. 99.99% of the Indian people and reservations are west of the Mississippi River. This is an infringement on my cultural, religious and heritage rights which I enjoy now in my native homeland."

"I lost my mother less than a year ago and there are legal matters which still need to be settled for which I need to be present. I am the person that represents my family for these issues...I am currently in the process of transferring my mother's homesite lease into my name, I have to constantly monitor with telephone calls and personal visits to

tribal offices and BIA offices. I also am the holder of the grazing permit for my family. Because of family obligations and my mother's trust I have these responsibilities which I feel I owe my mother and siblings."

By Jennifer Suina

"I have declined the offer to relocate with my job because New Mexico has been my home since birth and where my family and relatives reside. I'm a Native American woman from the Pueblo of Cochiti and a single parent. As you are aware, as a Native American our cultural activities are a major part of our way of life. Leaving New Mexico would mean giving up my unique cultural traditions. My family's lifetime traditional commitments and my own beliefs outweighed every reason I could think of in transferring with my job. This move does not only cause hardship for me my child but will greatly impact the economy of the City of Albuquerque, surrounding counties and tribal communities, and the State of New Mexico. Three years ago I purchased my first home and I pray that I don't loose it because I cannot find a job that pays me enough to make the mortgage plus provide for my child."

"I have about 4 months of severance pay and hope I'm back in federal service before it runs out. I have been federal service close to 15 years and I'm proud of my accomplishments. During this time I have been given the opportunity to advance in my position as a computer specialist and more importantly provide technical service to BIA employees nationwide."

"It makes no sense to move the Albuquerque office to Washington, D.C. when the majority of the Native American tribes we service are located in the southwestern states. We're centralized and it is cost effective for both our "trust beneficiaries" and our office in conducting business. We work in conjunction with the Office of trust Funds Management (OTFM) and the Office of Indian Education Programs (OIEP) located in

Albuquerque, N.M. to provide technical assistance and telecommunications service to their respective regional offices and schools, and tribes across the nation."

By Judy Duncan

"I feel the beneficiary trustees are ones who will suffer because they rely on these checks. They know when their checks should be in the mail and if one day passes, they are at the agency offices inquiring about them. The majority of the Indian people are populated west of the Mississippi. The employees who work here are from this area and can answer questions in their own native tongue. We have deep roots and a strong culture here. My mother is up in years and I make trips almost every other weekend to see her because we lost my stepfather last May after being together for 30 years so my mother is by herself. Although my sister is there, I still make trips to help my sister."

"Not only that, my family is very affected by this move. I am a single parent with four daughters. Although they are grown, I need them and they need me. One of my daughters is legally blind and who just had a baby on February 9th. She has been in the hospital for 2 weeks from complications from c-section childbirth and still having problems at home with her health. I cannot afford to move to Reston, Virginia and expect to pay rent and still keep my house. I just purchased a house in October and am not about to sell it."

The NAPA report did not have as a recommendation the transfer of OIRM to Reston, Virginia. The appropriations bill provided funding to implement the recommendations of the NAPA Report. The BIA's improper forced transfer is a tragedy for the OIRM employees, a tragedy for Indian trust beneficiaries and violates the law. This is a travesty you have the power to stop. For the benefit of Indian OIRM employees and the Indian trust beneficiaries, I implore you use your power and call a halt to the relocation using your appropriations power.

Indian OIRM employees must not have their lives and communities devastated by an unauthorized, forced BIA relocation which was neither recommended by the NAPA Report nor, as a result, appropriately funded.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,	:	Civil Action 96-1285
Plaintiffs,	:	
v.	:	Washington, D.C.
	:	Tuesday, March 7, 2000
BRUCE BABBITT, Secretary of the Interior, et al.,	:	2:23 p.m.
Defendants.	:	

TRANSCRIPT OF TEMPORARY RESTRAINING ORDER
BEFORE THE HONORABLE ROYCE C. LAMBERTH
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs:

DENNIS GINGOLD, ESQUIRE
AUKAMP & GINGOLD
1275 Pennsylvania Avenue, N.W.
Ninth Floor
Washington, D.C. 20004
(202) 662-6775

ELLIOTT H. LEVITAS, ESQUIRE
1100 Peachtree Street
Suite 2800
Atlanta, Georgia 30309-4530
(404) 815-6450

KEITH HARPER, ESQUIRE
LORNA BABBY, ESQUIRE
NATIVE AMERICAN RIGHTS FUND
2025 I Street, N.W.
Washington, D.C. 20006
(202) 785-4166

Pages 1 through 43

THERESA M. SORENSEN,
OFFICIAL COURT REPORTER

APPEARANCES (Continued):

For the Defendants: CHARLES W. FINDLAY, ESQUIRE
U.S. DEPARTMENT OF JUSTICE
Environmental & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7761
Washington, D.C. 20044-7611
(202) 514-3553
BRIAN L. FERRELL, ESQUIRE
U.S. DEPARTMENT OF JUSTICE
General Litigation Section
Environmental & Natural Resources Division
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 305-0428

Court Reporter: THERESA M. SORENSEN, CVR-CM
Official Court Reporter
Room 4808-B, U.S. Courthouse
Washington, D.C. 20001
(202) 273-0745

THERESA M. SORENSEN,
OFFICIAL COURT REPORTER

PROCEEDINGS

THE DEPUTY CLERK: Civil Action Number 96-1285, Cobell, et al, v. Bruce Babbitt, et al. Mr. Gingold, Ms. Babby, Mr. Levitas, and Mr. Harper for the plaintiffs. Mr. Findlay, Mr. Ferrell, Mr. Shuey & Ms. Blackwell for the defendants.

THE COURT: The plaintiffs may proceed on your motion for a temporary restraining order.

MR. GINGOLD: Thank you, Your Honor. Good afternoon.

I would like to make one correction, and we've been in a deposition all morning deposing Mr. Ken Rossman, who has principal responsibility for document and records management for both the Office of the Special Trustee and the Bureau of Indian Affairs. He pointed out in response to a question that LRIS and IRMS are not legacy systems; they are the systems. In fact, as of right now there is no other system, Your Honor. So any reference to legacy systems should be considered as the only system that exists within the BIA today, which makes it even more important, Your Honor.

We were fortunate during the course to have the deposition of Mr. Rossman today because during the course of his deposition he pointed out to us that it was only on Thursday of last week that he tasked one of the members of

his staff to the Office of Information Resources Management to assess the document security issues relative to the protection of the electronic data, and relative to the protection of the hard copy information. At this point in time he has no idea what the situation is, but he specifically stated the relocation of a data center is very difficult.

Mr. Rossman also testified that he was first informed about the relocation in December of 1999, and he was not asked to do anything with regard to assessing the document management issues. We raised several questions with Mr. Rossman concerning the different type of applications, software applications that are in place. Mr. Rossman did not know whether or not the person he assigned to do the assessment has the skill or experience in the areas that are necessary to provide a proper assessment. He further did not know whether the new acting director of the Office of Information Resources Management has the skill or experience to be able to assess whether or not things are being done properly.

You may note in paragraph six of Mona Infield's affidavit there was a reference to senior OIRM personnel requesting assistance for management of records.

We asked Mr. Rossman a question as to whether or not he was ever asked for assistance, and he responded that

he did not recollect. During the course of the examination of --

THE COURT: Let me go back one step now.

MR. GINGOLD: Sure.

THE COURT: OIRM is in the Bureau of Indian Affairs, but is located in Albuquerque, and who does the director of that office report to currently?

MR. GINGOLD: My understanding, the reporting authority goes to the Deputy Commission, who I believe is Hilda Manuel.

THE COURT: Now, who held that position -- who holds that position currently as the director?

MR. GINGOLD: An individual by the name of Ken Pacquin, who was the, as I understand it, until this assignment, was the Special Assistant to the Assistant Secretary for Indiana Affairs, and his principal responsibility was the area of alcohol and substance abuse.

THE COURT: Right. He's in Washington?

MR. GINGOLD: That's my understanding, Your Honor.

THE COURT: Okay. And then he was sent down to Albuquerque?

MR. GINGOLD: Yes, to replace -- as I understand it, this is the sequence of events. Up until recent George Gover was the Director of the Office of Information Resources Management. George Gover happens to be the uncle

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of the Assistant Secretary. George Gover was one of those who was relocated to Washington and placed in a different position. We heard in a short interim that Dominic Nessi assumed the position of Acting Director of OIRM, and then shortly after that Mr. Pacquin was named the Acting Director, all within the last week or so, Your Honor, as we understand it.

THE COURT: When Pacquin was named?

MR. GINGOLD: Last week.

THE COURT: Right.

MR. GINGOLD: I think the middle of last week.

THE COURT: Okay.

MR. GINGOLD: No experience in the Office of Information Resource Management Systems at all, based on what has been reported to us, Your Honor.

THE COURT: And Infield was there all throughout this period?

MR. GINGOLD: Yes. She's --

THE COURT: She's being terminated Thursday; right?

MR. GINGOLD: Well, she's -- she's one of those who have been given the option to leave or relocate.

THE COURT: And she's opted to leave?

MR. GINGOLD: I've never asked her the question, Your Honor.

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THE COURT: Oh, okay. All right. Who is the next senior person below Pacquin; Infield?

MR. GINGOLD: I don't know the answer to that question.

THE COURT: Okay.

MR. GINGOLD: We have Charlene Lattier, who is a senior person with regard to information technology security. As I understand it, a level of senior people who have important positions with regard to this: Ms. Lattier, who has already been stripped of her responsibilities as a security officer because she refused to grant the access to the systems that was demanded of the contractor.

We have Ms. Infield, who not only had responsibilities with regard to this particular issue, but she was a key person in the TAAMS implementation, Your Honor. Issues with regard to that, I understand, may be before the Office of Special Counsel because there are retaliation questions that have been brought to bear relative to TAAMS.

THE COURT: Infield, you mean?

MR. GINGOLD: Yes. Our concern in this, Your Honor, on behalf of the plaintiffs is to protect the documents.

THE COURT: Right.

MR. GINGOLD: As you know, we've had a tremendous

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amount of difficulty in the last three and a-half years of even getting documents, and as recently as week more documents were burned in a facility in Suitland, Maryland. We've had e-mail destruction We've had Treasury destruction. Because these are not just legacy systems, this is the data base of the BIA, any risk, and based on what's been described by the most knowledgeable people that we've ever talked to, Your Honor, within the BIA, these are not just at risk, these are at substantial risk.

I asked Mr. Rossman a series of questions concerning what he knows, if anything, as to action that has been taken to protect the electronic records because he explicitly acknowledged relocation of a data center is not just relocation of an administrative office. It is the -- it is the cornerstone of the operations of the Bureau of Indian Affairs. He said it's very difficult, and I'm not aware of anything that's been taken to -- he said, "I haven't been asked to come into it."

So we have a situation where it appears as though he corroborated, unbeknownst to him, but he did say he read Ms. Infield's affidavit this morning, and he did not -- his initial reaction was, he was never asked. But when we presented him with Rossman Exhibit 2, which is an e-mail from Charlene Lattier, which is dated February 4, 2000, and it says to Mr. Rossman -- I did show this to counsel. I

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have one copy. The Justice Department does have another copy, and the lawyers who were in the deposition.

It says, as follows, Your Honor -- again, this is February 4, 2000, 4:58 p.m., from Charlene Lattier to Ken Rossman, with a copy to Ron Toya. I think ron Toya might have been the Deputy Director, but I'm not sure he's Deputy Director of OIRM right now.

Subject: Electronic records. Mr. Rossman, I am requesting guidance on how the electronic records kept in OIRM's office need to be handled. PRT, the company handling the move of the data center, will soon be laying out the plan for the records transfer to rest in Virginia. I would like to build in safeguards to ensure proper handling given the current litigation. I would appreciate any help and/or references your office can offer. If you or another representative from your office has time to review the plan once it has been completed, I would appreciate the input. Charlene Lattier."

Your Honor, no plan was ever put together. The Office of Information Resource Management was told to stop working on a plan. The contractor never did put a plan together, and there was no response from Mr. Rossman to Ms. Lattier or anyone else. As a matter of fact, I think it was an honest recollection of Mr. Rossman when he saw this and said, "Now I remember this, and I don't remember that we did

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anything about it."
What we have here, without regard to other issues regarding the National Academy of Public Administrators, and that issue is not going to be tried in this courtroom. It's going to be dealt with, I believe, between the Interior Department and Congress because that's their problem, not ours at this point in time.
It is another problem though with regard to the Office of Special Counsel, as I understand it, because the notices of separation were explicitly based on that report. And, in fact, the evidence is to the contrary, that's -- that's the reason this is being done, especially from the NAPA people who denied making the recommendation. And I presume if we have an evidentiary hearing --
THE COURT: Well, they recommending consolidating functions in Washington, I take it?
MR. GINGOLD: No, Your Honor. They recommended consolidating the policy, and management administrative functions. This is the operations and data center. That is not the same thing.
THE COURT: What does this organization do, then?
MR. GINGOLD: They administer the computer systems for the Bureau of Indian Affairs. The computer center is in Albuquerque. This is not an administrative office. This is -- this is the brain of the Bureau of Indian Affairs.

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That's why Mr. Rossman characterized any relocation of the data center very difficult. It is very difficult and potentially risky to transfer data to other computers. It's very risky to transfer computers. There has already been an interrupt in service as a result of what's been done. Reporting to Treasury is now three months behind. Just for the individual Indian Trust beneficiaries 50,000 checks haven't been reported. How many other checks, Your Honor, we don't know because that's not our concern in this litigation.
We were told that for the first time ever the checks to the Osage Tribe did not go out last week. It's because as a result of this relocation, with whatever the wisdom of the relocation is, Your Honor. Qualified, experienced people were forced into early retirement, or they would have to sustain financial penalties. Other individuals left because they didn't want to go to Reston. There is a bleeding and hemorrhaging in this division which, as we understand it, is clearly recoverable, and there may be a proper way of relocating it, but relocating a data center in weeks is unheard of. Relocating a data center at all, based on what Mr. Keene stated to me, is unprecedented, especially a relocation to Washington, D.C.
So without regard to whatever Chevron deference the Interior Department, or whatever expertise they've been

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able to demonstrate with regard to management of anything in three and a-half years, they certainly did not spell out for Congress that they were taking an unprecedented action. That might have raised some questions, which was never raised. In discussions we've had with the Hill, Your Honor, they didn't know. But, again, this is all hearsay.
But I would like to point out what's going on here. What we see here is another Joe Christie situation, Your Honor. It's a Joe Christie situation because we have exactly the type of public employees that everybody in this country would like to have. People who are actually looking out for the people they're trying to serve, and take the risk of their own jobs because, Your Honor, their jobs are at risk, and retaliation has already occurred with regard to Ms. Lattier.
Mr. Brooks acknowledged in the November hearing we had in '99, if you will recall, Your Honor, that Mr. Christie was right. It was too late, though. Ms. Infield is right. Ms. Lattier is right. A lot of employees who know the systems better than anybody else in this room or in Washington know it's right, and, in fact, one of the things that Mr. King said to me on the telephone was that all they really needed was a GS-15 in Washington who understood the computer systems who could coordinate the systems in Washington. You can't relocate a data center for that. By

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the way, a GS-15 is far less than millions of dollars, at least based on my recollection of the government scale.
I would also like to point out that the affidavit submitted by --
THE COURT: What's your source of that remark?
MR. GINGOLD: The income of the government employee?
THE COURT: No, who said that?
MR. GINGOLD: Mr. King.
THE COURT: Who is he?
MR. GINGOLD: Mr. King is the subcontractor for the National Academy of Public Administrators who actually drafted the report which is the basis of the 130-page NAPA report that was deposited in the laps of the senior officials in Washington. He's the one he told me -- I don't want to mention the person's name because he mentioned the name to me, but it's not necessary. He said that the person who has been occupying that position is not qualified to do it, and all you have to do is replace that person with a GS-15, and that's the only thing that needed to be done because this was a sound division that would be able to provide assistance to the other weaker divisions of the Bureau of Indiana Affairs. Now it can't be done. So what other rippling effect, we don't know, Your Honor.
We do know, Your Honor, that it's a lot more

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difficult to hire qualified computer people in Washington, where there is a significant employment shortage, than there is in Albuquerque where these people are back home where they live. But, again, whatever wisdom is involved in those type of issues, that's not for us to look at right now. We do know that the rationale for the move is not consistent with the people who made the recommendation. We do know that the affidavits don't deal with the Trade Secrets Act that were submitted by the government. We do know the affidavits don't deal with the Indian Minerals Development Act, Your Honor, and, again, fortuitously, at a hearing before the special master last week we were given the benefit of the Justice Department lawyers' interpretation of those two statutes. And, Your Honor, that's precisely the reason we still don't have the documents for the five named plaintiffs. And in that particular case, the only documents they're supposed to be turning over to us are Mildred Cleghorn's, not her predecessor's, because she was -- she lived long enough to be her own predecessor. And we still don't have that three -- more than three years after your order was issued. In October, if you will recall, an Interior Department lawyer told you in chambers, "We will have the documents by the end of October." In open court, and representations in submissions, we were told that we would have these documents by year end. And then we're hit

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with a Trade Secrets' issue, which had never been raised before, and, by the way, we believe the special master properly resolved that issue.

Then in a reply brief we were hit with the Indian Minerals Development Act. Your Honor, if the lawyers for the plaintiffs, their own lawyers are not permitted to review the information which is critical to this litigation, why is a third-party contractor permitted to have this information, full access, without the criminal issues that were raised by Mr. Brooks and Mr. Findlay? There may be some logic there, Your Honor, but we don't understand it if there is. There may be some more intelligent people than us who can understand that. We don't.

But as of today, we don't have the documents. As of today, contractors have access to all the material we're trying to get, Your Honor. And, to my knowledge, and, again, certain things happened in chambers, there's no Court order that's been issued with regard to the Trade Secrets Act. There's no evidence of cognitive process with regard to the Trade Secrets Act. I might add, there's not a lot of evidence of cognitive process in general.

But I would like to go on. We have a situation where, based on what we heard today from Mr. Rossman, no action has been taken to gather the documents physically, or intellectually, for the accounting in this case. Your Honor

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at least put everybody on notice in November an accounting was going to be going forward, in November of '98 that is.

I would like to point out that every day that we go forward and we lose documents, it's not just an idle, speculative, hyperbolic statement of irreparable harm. There is no way this can be replaced. All we're asking here is that the Secretary and the Assistant Secretary, like everybody in this country, follow the law. We're not questioning whether or not their decisions are good or bad, or there's a better way of doing it. We don't believe our client's privacy, or our client's trade secrets, or our client's Indian minerals information is -- can be ignored or waived by a contract which, by the Interior Department's own analyst, is materially defective in a variety of different respects, Your Honor.

As we understand it again, the person who drafted the contract didn't even know she was drafting a contract for access to trust information or for the records in this case. There's no cognitive process evidence which shows that's the case, Your Honor. We have a situation where nobody knows where the risks are, and, again, as of last night, when I was told again, as you can see, I think paragraph nine of my affidavit, I pointed out that the vice president of ISI actually stated to the OIRM personnel that if he continues to get resistance with regard to full access

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to the system, then he is going to clone the hard drive. Your Honor, that's the entire system of the BIA. I don't know of anyone that has that authority at this point in time in this country, Your Honor. But this is what we're dealing with. There's no supervision. There's no ability -- there's no plan. I asked Mr. Rossman, is he aware of a plan, just a plan to protect this information, protect the information during the breakdown in Albuquerque, and protect the information on the move, and protect the information when it's in Reston. He said, "I know of no plan." Nothing has been done, Your Honor.

You know, it's remarkable after three and a-half years they can't produce documents for one named plaintiff, but they can relocate the entire operations of the Bureau of Indian Affairs. The speed of this move and the failure to consider all the other laws, the appropriation even for the NAPA recommendation did not say "notwithstanding any law." It said, based upon the recommendations in NAPA you can do it. That means you've got the trade secrets. You got the privacy. You've got the Indian Minerals Development Act. You've got every other statute on the books.

Now, is there harm to the defendants in this situation, other than to their ego and maybe how they like to be perceived as doing business, Your Honor? I even think it's in their best interest. The United States, Your Honor,

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should have as much of an interest in protecting this information as our clients. The United States is the trustee. The Justice Department should be just as concerned about the violation of laws by agencies as they would be me or my colleagues. The double standard here just doesn't wash, Your Honor. You can't say: We can give the lawyers the documents, but we can give it to a third-party even though there's no protection whatsoever. Nobody knows.

Not even the rudimentary security clearance to determine whether or not temporary employees hired by the contractor may be inclined to take any of the information, change the data because they have financial problems has been done. That's the purpose of that security clearance, Your Honor. It's not top secret security clearance that there's going to be a spy. That's to make sure no one has the inclination. And, of course, notwithstanding all this, these people, of course, have been in for weeks without any contract at all, four laptop computers were stolen by one of the contractor's employees. Now, laptops are nice to have. Trust money is a hell of a lot nicer to have, Your Honor. There's a lot more there. And if you can delete, amend, and modify with no detection, it's a serious concern.

I would think Treasury would have an equal problem, Your Honor. Treasury has stated throughout this trial, and every time it made an effort to get out of this

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trial, that it is totally dependent upon the information provided by the Interior Department. On the record right now, and as a matter of fact they're getting no information, let alone bad information, with regard to checks printed on the United States Treasury. That should be a concern too. Why anyone would want to oppose this motion, Your Honor, is beyond me.

We're not saying don't move. We're not saying never move. We're saying doing it right. Don't violate the law. Our clients are going to be harmed irreparably. The United States is going to be harmed if it continues to do this. Our interests should be the same. We shouldn't be opposed to each other, Your Honor. And I think there has to be a lot more going on than we know or this doesn't happen like this. The government doesn't move this quickly without something else. Now, it may be a little bit paranoid in that regard, but from our experience in this case, the slough-like movement of the government's on documents and protection of documents is notable, is a notable contrast as to how quickly they're trying to break down this system.

I would also like to point out I was told last night, Your Honor, late last night, that when the individuals who are relocating to Reston are showing up for work on Monday, they're going to be told they're going to be immediately detailed back to Albuquerque, New Mexico,

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because of certain problems with regard to the absence of personnel.

I've also been told that an e-mail was sent out by the Deputy Commissioner to the field to request that various people in agencies or area offices come in to help operate the system because they expect to have very few people there, I guess, on Monday the 13th. As I was told last night, those people have had no experience, or if they've had experience in this system, it's years ago. How much these people know, what they're going to be able to do, what consequences are going to be caused by this, I don't know. We already have interruptions. They are going to be continued interruptions as a result of this failure. There is no interface with the Office of Trust Fund Management. The checks that some of these people depend upon for their food and clothing, their housing in the winter in the Northern Plains are going to be cut off not because we're stopping this move, but because the move is going forward with no plans, Your Honor.

Again, I would like to close by saying we think all the tests have been met. We filed a motion. We think there is sufficient time for the special trustee to go to Albuquerque to examine the situation, to make recommendations of what needs to be done, and once those recommendations are made, if in everyone's good judgment

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they want to go forward -- Your Honor, we don't want to stop it. We want to make sure irreparable harm doesn't occur in the interim.

Thank you.

THE COURT: All right.

MR. FINDLAY: Good afternoon, Your Honor. I have also with me, in addition to Mr. Ferrell, Ms. Blackwell, who is with the Solicitor's Office, Department of the Interior, and Mr. Shuey, who is also with the Department of Justice.

Your Honor, we were first given the papers for this motion this morning, so as you can imagine, it's been a bit of a scramble to get here this afternoon and assemble a number of declarations and exhibits, but we have delivered those to chambers, and I will be referring to them during my argument.

As Your Honor knows --

THE COURT: I was hoping one of the exhibits would be "the plan." I take it he's right, that there is no plan?

MR. FINDLAY: Your Honor, there is a specific enumeration of how this move is going to be conducted in the contract, and the contract is one of the documents that you have before you. It's attached as an exhibit. I think it's Exhibit A to the Infield declaration, Your Honor.

THE COURT: Okay.

MR. FINDLAY: And on page 13 of the contract.

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THE COURT: Okay.
MR. FINDLAY: You'll see it starts at the top of the page, "Background"?
THE COURT: Right.
MR. FINDLAY: That is a general description of how the move will be conducted. The contractor, with the assistance of approximately employees who remain in this office, will keep the system operating in Albuquerque, create a mirror system in Reston, and the system in Albuquerque will not be shut down until they are satisfied that things are up and running and reliable in Reston. So there is a fail safe system, a method of making this move.
You will see also in the paragraphs that follow under "Statement of Work," it goes through step-by-step measures that will be taken to conduct this move from Albuquerque to Reston.
Your Honor, as the Court is aware, the plaintiffs are --
THE COURT: Where does it say what you just said? I didn't see that language there.
MR. FINDLAY: Well, first of all, in the --
THE COURT: It says they'll build up a mirror image, but it doesn't say here that they won't discontinue the other system until this one is fully operational, does it?

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MR. FINDLAY: Yes, Your Honor, you're correct. It doesn't -- it does not address shutting down the system in Albuquerque. We've also submitted the declaration of a Mr. Marshall, and I believe that may talk about the shutdown of the Albuquerque system.
Your Honor, looking through the declaration, I don't think he talks about the -- about the closing down of the Albuquerque system, but the point is that it's -- a dual system will be created so that there won't be a loss of electronic data.
Your Honor, as the Court knows, in order to obtain preliminary injunctive relief the plaintiffs must satisfy all four parts of the test for such relief, that is: the balancing of the equities must tip sharply in their favor; injunctive relief must be in the public interest; and there must be a likelihood of success on the merits.
This is an effort, of course, to stop the move of the Office of Information Resource Management from Albuquerque to Reston. This office houses the legacy systems. It's responsible for telecommunication of BIA, and it has various other management and administrative responsibilities. The move, importantly, is part of trust reform. Specifically, in this case the movement of this office is being conducted in order to bring it under closer supervision by management in Washington, and also to address

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particular deficiencies in the office, and improving those by consolidating them with other functions and giving them much more attention. That is spelled out in Mr. Gover's declaration which we delivered to the Court.
Importantly, this move is consistent with a recommendation of the National Academy of Public Administration, contrary to what counsel says. NAPA, as it's also called, is an independent, non-profit, non-partisan organization that assists governments in making management recommendations. The Interior Department contracted with NAPA and asked for an assessment of the management of the Bureau of Indian Affairs. In August of '99, they issued their report. That is before the Court as Exhibit D to the Gingold declaration.
At page 45 of the NAPA report, just to give one example of a recommendation, and, actually, this is the best example, but there are other references to this move, and a recommendation to consolidate the operations of this office in Washington. On page 45 it says, "Implementation of the recommendations in this report will result in substantial changes in the role of the Office of the Assistant Secretary and in all units of the BIA. With these changes it is likely that geographical consolidation of the planning, policy, and valuative elements of some organizations, such as, accounting, and in this case information resource

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management, procurement, transportation, and safety in Washington, D.C."
So this move is part of what NAPA envisioned in its recommendations.
Now, importantly, the Interior Department has worked closely with Congress in following up on these August recommendations. And very recently Congress enacted -- in the recent appropriations for the Interior Department, FY-2000 appropriations, as I understand it, Congress specifically directed the Secretary to quote the provision, and this is 113 Stat 1501A-169, or Public Law 106-113, Appendix C, and Section 137 in that compilation. We delivered this to chambers, Your Honor.
Section 137 says, "The Secretary of the Interior shall, during the fiscal year 2000, reorganize and consolidate the Bureau of Indian Affairs management and administrative functions based on the recommendations of NAPA."
So the Bureau of Indian Affairs is conducting this move as part of the recommendations, and in accordance with the FY-2000 appropriations. In addition, of course, BIA is conducting trust reform and any necessary reorganizations under its general authorities to reorganize as necessary of course within appropriation limits.
The Assistant Secretary Gover first announced this

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move in November. The employees of the office were notified through a December 6 memorandum from Mr. Gover. We've also presented that to the Court.

The move has already begun. It began at the beginning of this week. Employees will be leaving the Albuquerque office by the end of this week, and those who are moving to Washington, about 20 out of 60, are to report to work in Reston on Monday. Some have already begun to arrive.

As Your Honor knows, this move is being conducted with the assistance of a contractor. I pointed out the contract. The contractor has extensive experience in moving information systems. As Mr. Rose's declaration points out, this contractor has already made a move for the Department of Accounting Management. It's also -- which is part of BIA. It has also made similar kinds of moves involving information systems for the Inspector General IRS, NIH, National Parks Service, the Defense Intelligence Agency, and the Defense and State Departments. So this is an experienced contractor with considerable -- that has undertaken projects of this nature in the past.

Your Honor, defendants would be injured, irreparably injured if this move were delayed. The delay would, of course -- if an injunction were entered, it would delay the improvements that Secretary Gover is trying to

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accomplish by moving this office to Washington so that it can be under closer supervision, and reorganized as necessary. It would also delay improvements in the computer systems that this contractor is also contracted to make. Those improvements are also specified in the Marshall declaration. Further --

THE COURT: Has the BIA office's security approved each of these contract employees based on their having completed their security forms?

MR. FINDLAY: The -- my understanding is that the contracting officer, and that's Mr. Nyce -- you have a declaration from Mr. Nyce -- he has -- he or his subordinants are responsible for making sure that the contractor meets the terms of the contract, and as I'm going to address, there are extensive requirements in the contract for maintaining confidentiality and security.

THE COURT: But what was the answer to my question?

MR. FINDLAY: Yes, Your Honor. The answer is, yes. This is in the Marshall declaration. In paragraph four he indicates that there are 14 employees who are working on this, and they have --

THE COURT: Have passed the necessary security clearances?

MR. FINDLAY: That's right.

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THE COURT: Okay.

MR. FINDLAY: In addition -- if an injunction were entered, Your Honor, in addition to delaying the improvements which are planned, improvements by both Secretary Gover and by the contractor, of course it would prolong the move and increase the cost substantially. That's also addressed in Secretary Gover's declaration.

Finally, if this move were prolonged by injunction, it would increase the risk, it would create, essentially, a risk of a disruption of service. Now, this office and the contractor will do everything possible to avoid any disruption in service if an injunction were entered.

But as Mr. Gingold has indicated through the papers that he's filed, there are disgruntled employees in this office. They are not cooperating with the move, and the long this move is prolonged, the longer those kinds of difficulties will persist.

The BIA has a back-up plan in case this Court were to enjoin this move. The BIA would pull in other employees, former employees in this office who are skilled. They also have the option of relying on the 20 employees moving here. They would do everything possible to avoid any kind of disruption, but it's important that that be pointed out to the Court, that that risk would be created by any

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injunction.

On the other hand, plaintiffs would suffer no injury if the Court rejected the motion, and, indeed, the plaintiffs -- the burden on plaintiffs here is to show immediate and irreparable injury. They cannot do that. As I indicated, the contractor that has been hired to do this move has extensive experience in moving information systems like this with numerous other agencies, including BIA. Each of the contractor's employees have the necessary security clearances in order to conduct this move.

The move will be made to a state-of-the-art facility in Reston, where the Interior Department has its most up-to-date computer systems. This is a logical and ideal move for an office such as this.

Finally, if the move is allowed to go forward, it would be conducted without an interruption of service.

There is no likelihood of success on the merits here, Your Honor. The Bureau of Indian Affairs is mindful of its responsibility to protect documents. This contract has been designed with the intention of making sure that there is no loss of documents. Every prudent measure is being taken to ensure that setting up this dual system, for example.

Plaintiffs have indicated fears that there will be a breach of privacy, or information could somehow leak out

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beyond the contractor. The contractor is fully subject to the Privacy Act. That's set out in pages 21 and 22 of the contract, which, again, is Exhibit A to the Infield declaration.

The contractor has a separate responsibility here called "data integrity and security obligation." This involves getting the security clearances, which we just spoke of a moment ago. Under that separate obligation, the contractor cannot divulge information to anyone outside of the Bureau personnel that it is working with. That's on page 15 of the contract.

Actually, I have erred here. The data integrity and security obligation is simply -- is an obligation not to divulge information. As I said, that's on page 15 of the contract. There is a separate provision for security clearances. That's on page 20.

In conclusion, Your Honor --

THE COURT: How do you square your position on the Trade Secrets Act and the Minerals Development Act with what you were arguing to the special master?

MR. FINDLAY: Your Honor, the obligation not to divulge information outside of the Bureau squares with those responsibilities of the government. The Trade Secrets Act forbids a government employee from divulging information, namely, confidential business information. That obligation

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is extended to the contractor. The contractor is an extension of the government, and that obligation -- the obligation in the contract not to divulge information is a precaution under the Trade Secrets Act. That would apply also to the Indian Minerals Development Act, which has a similar responsibility to protect information, mineral and financial information from public disclosure.

Your Honor, before concluding here, I would like to point out that the last paragraph of the Marshall declaration which describes some of the work under the contract, sets out the status quo, which is unfavorable. Mr. Marshall identifies deficiencies in these computer systems, which will be addressed when the systems are moved to Reston. So here it is important to change the status quo, which is unsatisfactory. As I indicated, this is a part of trust reform. This is one component of what BIA is trying to accomplish in the near term.

THE COURT: Well, I understand you're trying to save yourself from the current TRO with what you've filed with me today, but I must say, looking at this picture in the long range, which I look at it at, I was dumbfounded to read paragraph seven of this Marshall affidavit to say this whole critical system has no existing published standards or procedures, has no application codes, no existing runs books, never been updated, no existing written operating

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procedures, no security manuals in the current work environment. I mean, to be this far down the road in trust reform, and I know you're trying to save yourself from this TRO, but this is the most shocking information I've seen yet, I think, since my whole trial here.

MR. FINDLAY: This -- this needs correcting.

THE COURT: It's very disappointing to read this kind of stuff. We have nothing now. You know, we have no safeguards now so we can't be any worse off, is what you're telling me. I mean, it's shocking what he has in that last paragraph, isn't it?

MR. FINDLAY: It is discouraging, Your Honor, I agree.

THE COURT: Discouraging, to say the least.

MR. FINDLAY: I agree, and it is all the more reason to get on with this. Make the move, get it under the thumb of management here in Washington, improve these systems.

THE COURT: We have no written operating procedures, no security manuals in the current environment. We have nothing. Boy, I just don't know how that squares with the trial we had, all the great plans Interior had. And you find the most critical system, the heart of everything we're operating now, and this is what you come in and tell me: We have nothing to protect any of this?

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MR. FINDLAY: Your Honor, we're on the verge of correcting this, Your Honor. This is -- this is one reason that this step in trust reform is coming early in the process. Congress has directed the department to move with it quickly.

Your Honor, in conclusion, the plaintiffs have not satisfied any of the four prongs for a temporary injunctive relief. What this really amounts to is obstruction of the move, obstruction of one component of trust reform, and we request that the Court deny the motion. This is an essential part of the Department's executive functions, and it's important that they be able to carry these out, both for this small -- this part of trust reform and the future changes which are in the offing. The Department is constantly criticized of moving, in some instances, too slow. Now they're moving promptly and the plaintiffs are complaining again. This is too fast. They're complaining it's too fast. The Department can't win in the plaintiff's eyes. But what is important is that BIA be allowed to complete this step in trust reform.

Thank you, Your Honor.

MR. GINGOLD: Your Honor, plaintiffs aren't complaining this is too fast, albeit there's not much evidence of cognitive process involved in this move; we're arguing it's a violation of the law. We're arguing it's in

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wilful violation of the law, and none of the affidavits that have been submitted address that particular issue. And it's just not the distribution or dissemination of information to the public, it's the distribution of that information to the contractors, Your Honor. They have no right to that information, and what they argued today, as you know, is directly contrary to what they argued to the special master in support of a motion which has prevented us still from getting the documents we're trying to obtain. They argued, as a matter of fact, that the Privacy Act and the Trade Secrets Act overlap in the front of spheres. They're not coextensive with each other. The Privacy Act covers some issues, many issues not covered by Trade Secrets. By the way, if they are, Your Honor, then the motion that was filed by the government to block our access to the documents is a bad faith, frivolous motion.

Now, we would also like to point out -- you've pointed out there are certain problems acknowledged with regard to the data systems. We've always said there are problems with the data systems. That's one of the reasons this litigation has been brought. I think it really stands to the credit of the qualified BIA employees in the field to be able to operate the way they do with such terrible systems, Your Honor. To the extent that there is any distribution of money, even if it's 50 percent accurate, is

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probably to the credit of individuals who are laboring with equipment and with senior management that should be replaced. As a matter of fact, the NAPA was a criticism of senior management; it wasn't a criticism of the management in data operations. Nothing that Mr. Findlay said to you today from anything that he cited mentioned a relocation of the data center. Nothing mentioned relocation of data operations. These aren't clerks in the back room; these are the computers that operate the Bureau of Indian Affairs. I dare say that the Internal Revenue Service hasn't had its data center relocated. I dare say that none of the other operations that were listed by Mr. Findlay, as done by this contractor, had their data center relocated. It is that difficult, that complex, and that important a task.

Your Honor, you may recall, we are saying trust reform is slow. We are saying that with regard to TAAMS, if you may recall, that it was risky to go forward without an architecture. As a matter of fact, what was submitted to Your Honor is an admission that our witnesses were correct because it's not working, Your Honor, because there's no architecture. Your Honor, there's no architecture in this move either. Now, without an architecture who knows what's going to happen? If you don't have a plan, you don't have contingencies. That's not a plan that's contained in the contract. And I might add, a contract that was heavily

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criticized in the March 2nd e-mail from Liz Wells to Jim Weiner. Service of protest is missing. Changes, time and materials is missing. Inspection, time and materials missing. Payment procedures for time and materials missing. All the BIA and DOI special contract requirements are missing. Release of claims, examination of records, Indian preference. The last paragraph, perhaps, is the most conspicuous as it falls on the heels of the motion filed before the special master, again which has kept us from reviewing the documents of our clients. The last paragraph is, finally: can you find out if we need to address any rights in data? Trade Secrets or anything under the Indian Minerals Development Act. The litigants in Cobell argued against third-party access to data and cited the above authority.

Your Honor, the litigants in Cobell include the defendants. They argued we are not entitled to the data. Now, is that a good contract? If that is a contract that reflects the capabilities of the contractor with regard to the complexity of relocating a data center, we are in much worse trouble than we ever anticipated, Your Honor.

I would like to point out one last note on something that Mr. Findlay said. He talked about an announcement in November of the relocation and the press release that was issued by, I guess, the Assistant

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Secretary. As a matter of fact, that announcement talks about the relocation of the Division of Accounting Management. It doesn't talk about a relocation of the Office of Information Resource Management Services. One of the problems we've had in this case, Your Honor, is very that's ever told to you is accurate or complete. And the fact of the matter is, you've been told for three and a-half years that documents were being produced. You were told for three and a-half years that documents were being protected. During the exact time that we had a contempt trial, because of the failure to produce, Treasury documents were being destroyed. During this entire period of time e-mail of the Solicitor was destroyed, and now we are supposed to believe "you can trust us," even through the person who is brought in to save the day, Mr. Rossman, in that tragic elimination of Joe Christie in this area, he hasn't even been told about this. He has no involvement in this. I dare say, Your Honor, the whole story in this case has yet to come out, but if this is such a material improvement and necessary part of the trust reform that the defendants are trying to demonstrate to you, Your Honor, how come it wasn't discussed in the quarterly report filed with you on March 1st? This is such an important issue, that's the guts and the nervous system of the BIA, and it wasn't even discussed. Why is that? A lot of after-the-fact rationale is being created to

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justify something that they are doing, notwithstanding the law. They've never followed your orders. They're not following the Trade Secrets Act. They're not following the Indian Minerals Development Act, and Your Honor, they don't even follow the requirements of the Privacy Act.

A handwritten memorandum from a regional solicitor specifically warns the people in the Office of Information Resource Management not to let the contractor who is in without a contract access to the materials, and, Your Honor, they had access to the materials. And, Your Honor, notwithstanding what you heard from Mr. Findlay, these people did not receive proper security clearance. There are several levels of security clearance. The clearance that was necessary to review this data was not completed. And as I understand it right now, Your Honor, is not completed. There are certain -- if this was not IIM trust data, if this was not data subject to the legislation that we've talked about -- they had adequate security clearance. This is a different level -- you ought to know that because you rarely get complete and accurate information from the defendants.

I have one last point, Your Honor. There is irreparable harm here. There's irreparable harm and the laws are being broken. There's irreparable harm when the full story isn't presented to Your Honor. There's irreparable harm when good, hard-working employees that are

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probably gum and string to keep its computer center together to make it work are being forced out of the government. They're not going to be able to be replaced, and it's a shame. None of us have ever met them, Your Honor, but we owe them a great deal for our clients because they've kept our clients at least getting something over these years.

One last point. Mr. Findlay's statement of what is necessary to get a TRO, we believe, is flatly wrong. As a matter of fact, it doesn't talk about sharply balanced; it talks about balanced. And I still believe, Your Honor, it should be, and it is astounding to us that the Department of Justice is not as concerned about enforcing the laws in this country as they should be. It is profound to us that they dismiss without any affidavit to the contrary the serious requirements of the Trade Secrets and the Indian Minerals Development Act at the same time they argued to the special master we're not entitled to the information. Your Honor, we need this done right. We are not going to attempt to implant wisdom in Interior at this point in time that at least we could do it right according to the law, like everyone in this country must be required to do.

The likelihood of success, Your Honor, we believe the likelihood of success is high. We believe the Trust Reform Act, we believe the various statutes and orders issued in this particular case demand that things be done

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right for a change. That's why Congress enacted the Trust Reform Act. That's why Congress enacted a special trustee, and, as you know, we don't have one. This is strikingly similar, Your Honor, to the fire drill that we saw on approximately June 5th of a year ago -- January 5th of a year ago when there was a re-organization of the Office of Special Trustee that came out of left field in order to deal with the document problems, that the Office of Special Trustee so grossly failed to handle, specifically, Mr. Christie himself. We learned, Your Honor, that wasn't true, but it was done -- that was the only thing that was done quickly in this litigation, Your Honor. What do we have? We have it again. And what do we have? We have more Joe Christies. I don't think the Interior Department can afford to lose more Joe Christics, and I know the plaintiffs can't afford to lose more Joe Christies, and I know it's a compelling interest of the government to make sure what they do is done right, and in this case it would be the first time in three and a-half years.

Thank you.

MR. FINDLAY: Your Honor, if I could just clear up a couple of points.

THE COURT: Go ahead.

MR. FINDLAY: First of all, I would like to point out that up till now the contractor has not had access to

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the information in these legacy systems. In paragraph five of the Marshall declaration Mr. Marshall says that as of March 7th there has been no access.

THE COURT: Right.

MR. FINDLAY: Finally, I would just like to emphasize that precautions have been taken here under the Privacy Act. As these declarations show, each employee with access to this information has to exercise a Privacy Act acknowledgement, has to execute it. There are separate confidentiality requirements, and there are security clearance requirements. Finally, this contractor must protect and honor the confidentiality of all the information that he is seeing. This is not a matter of distinguishing between some or other information as we went through in the motion for protective order with the special master.

Thank you very much, Your Honor.

MR. GINGOLD: Your Honor, one last point. It was pointed out in the government's brief in the oral argument before the special master that with regard to the Trade Secrets Act there must be a specific authorization by law.w With regard to disclosure and the Trade Secrets Act, there is none here. They argued privacy wasn't good enough. They ordered the protective orders issued by this Court weren't good enough. Apparently an agreement with the contractor was --

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THE COURT: Weren't you arguing the opposite to the special master? I assume you were, so I don't know how far you get with that.

MR. GINGOLD: Your Honor, our authorization to see the information is through the Federal Rules of Civil Procedure. That wasn't good enough, but this is good enough.

THE COURT: I understand. I understand. But I don't know how far you can ride that horse because I assume you're telling the special master they're wrong all along.

MR. GINGOLD: No. As a matter of fact, the special master -- well, we do with the privacy. The special master has required us, and we have complied to sign waivers for our clients to obtain the information because of the Indian Minerals Development Act. That was part of his order. We have complied. We are waiving. Our clients did, and our clients are not going to waive in this case, Your Honor.

THE COURT: All right. I haven't read any of that material yet.

Upon consideration of the motion for a temporary restraining order, the papers filed by the parties in the hearing hereon, the motion for a temporary restraining order is granted. The defendants are enjoined. The only change I will make in the proposed order the plaintiffs submitted is

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they demonstrate to the satisfaction of the Court that they're in compliance, not to the special master's satisfaction. But otherwise, I've signed the plaintiff's proposed order. I'll schedule further proceedings after I see the government's written opposition, and I'll schedule a hearing on the motion for a preliminary injunction as soon as I can after I see the papers.

The Court will be in recess.

(Whereupon, the proceedings in the above-entitled matter were concluded at 3:27 p.m.)

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Theresa M. Sorensen, CVR-CM
Official Court Reporter

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TESTIMONY OF ELOUISE PEPION COBELL

SENATE COMMITTEE ON INDIAN AFFAIRS OVERSIGHT HEARING ON THE NATIONAL ACADEMY OF PUBLIC ADMINISTRATION'S REPORT ON BIA MANAGEMENT REFORMS

9:30 a.m., April 12, 2000

Mr. Chairman and Members of the Senate Committee on Indian Affairs.

My name is Elouise Pepion Cobell. I am a member of the Blackfeet Tribe, the Chairperson of the Board of Blackfeet National Bank, and the lead named plaintiff in the class action lawsuit concerning mismanagement of individual Indian trust funds: Cobell v. Babbitt.

I appreciate the opportunity to provide testimony concerning the recent study performed by the National Academy of Public Administration (NAPA) on the management and administration of the Bureau of Indian Affairs (BIA). We agree with NAPA's conclusion that the current management and administration of the BIA are not adequate to meet its trust responsibilities to Native Americans, including its trust management responsibilities to the plaintiff class comprised of hundreds of thousands of individual Indian beneficiaries in Cobell v. Babbitt.

It is beyond question that the long-standing management and administrative problems identified by NAPA are largely responsible for the government's continuing failure to properly discharge its trust duties to its Indian trust beneficiaries. These same problems led to a series of oversight hearings in the late 1980's and early 1990's, culminating in the passage of the American Indian Trust Fund Management Reform Act of 1994. We hoped meaningful and comprehensive trust reform would finally occur as a result of this legislation, but were forced to file our lawsuit

in the Federal District Court for the District of Columbia two years later, when it became apparent that the hopelessly broken trust fund management system would not be fixed without judicial intervention.

As you may know, the defendants in this lawsuit, including Assistant Secretary for Indian Affairs Kevin Gover, have fought from the beginning to have our case thrown out of court. They have stonewalled our efforts to bring the case to trial, and were held in contempt last February for violating the document production orders of the Court. A trial was finally held last summer to resolve issues relating to fixing the Indian trust fund management system. We hope to resolve the outstanding matter of an accounting in a second trial before the end of the year.

On December 21, 1999, in an opinion noting many of the same management and administrative deficiencies documented in NAPA's study, U.S. District Court Judge Royce C. Lamberth held that the defendants, including Assistant Secretary Gover, are in breach of their trust responsibilities to individual Indian trust beneficiaries. The Judge ordered the government to bring itself into compliance with its fiduciary obligations, and to submit quarterly reports on trust reform progress, with the first of those reports due today, March 1, 2000. Based on the trust reform promises and plans to which defendants testified at trial, Judge Lamberth declined at this time to appoint a Special Master or receiver to oversee trust reform. But he did promise to retain jurisdiction over the case for at least five years, and to take more drastic action if the defendants fail to carry out the plans to which they testified at trial.

NAPA's findings and recommendations – especially those relating to human resources and records management – are entirely consistent with Judge Lamberth's decision. We were encouraged by NAPA's recognition that the Indian trust fund litigation has finally forced the

BIA to address its long-standing record management problems. Unfortunately, we do not believe that the defendants, including Assistant Secretary Gover, have any intention of complying with either the Court's Orders or NAPA's recommendations. Not only have the defendants decided to appeal Judge Lamberth's December 21, 1999 decision, but as their initial report on trust reform progress will confirm today, the promises and plans presented during trial have already proven to be empty. Furthermore, Assistant Secretary Gover is currently taking action which undermines trust reform – action which he falsely claims is recommended by NAPA.

Late last year and with little warning, a decision was made by BIA senior management to transfer the functions of two offices – the Division of Accounting and the Office of Information Resources Management (OIRM) – from BIA's Central Office West in Albuquerque, New Mexico, to Reston, Virginia. The Division of Accounting manages the BIA's financial program. OIRM is the BIA's data and telecommunications center, and is responsible for developing and implementing Bureau-wide technology solutions. As such, OIRM plays a key roll in the deployment of the automated trust asset accounting and management system (TAAMS) which is intended to completely replace the BIA's outdated and inconsistently operated legacy systems, and which is the centerpiece of the overall trust reform initiative. In addition, OIRM prints and distributes checks and statements to over 300,000 current Indian trust fund beneficiaries.

A total of nearly 150 Albuquerque employees, most of whom are Native American, have been affected by this decision. They have not, in our opinion, been given an honest or rational explanation for the relocation of their offices – a decision in which they were allowed no input whatsoever and which appears to have been made with little or no forethought. The sole justification for the move was the NAPA study. But NAPA simply does not recommend the

relocation of OIRM. Indeed, while NAPA does suggest that consolidation of the planning, policy and evaluative components of BIA in Washington D.C. may be desirable, it does not recommend the centralization of program operations. Moreover, it certainly does not recommend actions which result in the loss of an entire staff of experienced Indian employees.

In addition to the hardship imposed on these employees, we believe the relocation is counterproductive from a trust reform perspective and creates a significant risk that critical trust services will be disrupted. There is no indication that BIA upper management considered these risks at all in making its decision. In this regard, the decision bears a striking resemblance to the Department of Interior's decision to proceed with the acquisition of TAAMS without first defining its trust management business requirements, developing a risk management plan, and adequately considering the interests and needs of Indians.

We suspect that the real motive behind BIA's decision to relocate OIRM was retaliation against certain employees who have questioned the decisions of BIA senior management with respect to TAAMS, including, specifically, the decisions of TAAMS project manager Dominic Nessi, who has now been named the acting Chief Information Officer and director of OIRM. We believe the purported need to centralize OIRM functions is an attempt on the part Mr. Nessi, with the support of Assistant Secretary Gover, to hide the continuing failure of BIA senior management to develop policies, procedures and standards necessary to guide both the general trust reform initiative and the implementation of TAAMS.

The Albuquerque OIRM staff, only a handful of whom have elected to transfer to Reston, represent the vast majority of BIA's Information Resource Management expertise. Without this expertise, we fear that data management and information security will be seriously compromised,

with potentially severe consequences for Indian trust fund beneficiaries – many of whose trust funds represent their sole source of income. We believe that at a minimum, BIA should be required to demonstrate to the satisfaction of this Committee and the Court that it 1) has carefully considered the full impact this relocation will have on the trust reform program of the Department of Interior, 2) has taken all appropriate steps to protect the records of Indian trust fund beneficiaries during and after the move, and 3) has taken all appropriate steps to avoid any disruption in trust services. The BIA has already requested and received an appropriation of millions of taxpayer dollars to carry out this utterly illogical relocation. To prevent any more taxpayer dollars from being wasted on ill-conceived and counterproductive actions, we strongly urge this Committee to closely monitor all future BIA management reform efforts purportedly carried out in response to NAPA recommendations.

INITIAL TESTIMONY

OF

MONA INFIELD

SUBMITTED TO

The Committee on Indian Affairs
Of the United States Senate
9:30 a.m., April 12, 2000

In a Hearing on
National Academy of Public Administration Report on
BIA Management Reforms

Mr. Chairman and Members of the Committee,

My name is Mona Infield. I am a citizen of the Potawatamie Nation Tribe, Supervisory Computer Specialist GS 334, Department of the Interior, Office of Information Resource Management ("OIRM") in Albuquerque, New Mexico

I appreciate the opportunity of presenting testimony today concerning the forced relocation of the Office of Information Resource Management ("OIRM") from Albuquerque, New Mexico to Reston, Virginia as it relates to the impact on the Indian trust beneficiaries.

The OIRM is the Office of Informational Resources. It is located in Albuquerque, New Mexico.

In November of 1999, the decision was made by senior executives of the Bureau of Indian Affairs ("BIA") to relocate OIRM from Albuquerque, New Mexico to Reston, Virginia. The separation notice was issued by Deborah Maddox and is attached as Exhibit 1 to this declaration.

As a result of this notification, the employees of OIRM were faced with the decision to lose their jobs or to relocate to Reston, Virginia. The hardship on the affected employees includes, but is not limited to, catastrophic destruction of family relationships, and an inability to perform religious and tribal responsibilities. The impact on these employees, their families and their tribes is explained in another declaration that will accompany this one.

The purpose of this declaration is to explain the impact of the imminent relocation on the Trust Beneficiaries.

The OIRM maintains the legacy trust applications and other BIA applications used nationwide. Attached as Exhibit 2 is a table of BIA systems and OIRM Operations carried out in FY 1999. The OIRM operates the nationwide systems and staff the nationwide help desk and tele-communications infrastructure. In short, the OIRM is the BIA's operations, data and telecommunications center.

The primary multiple missions and functions of this facility is to manage the applications and data that results in payment to the Indian trust beneficiaries and to ensure that checks are

printed and sent to the Indian trust beneficiaries who own these funds and in many cases, rely on these funds to feed, clothe and house themselves. Last year OIRM issued 435,000 checks and 321,000 Indian trust beneficiaries received funds of $212 million as a direct result of the experienced, effective and diligent work of the 70 employees of OIRM.

It is a veritable certainty based on the circumstances surrounding the transfer of OIRM that Trust Beneficiaries will not receive their funds in a timely manner, **if at all**. The safeguard of the Trust systems application, operations, and data has been and is now compromised. BIA management, since the inception of the execution of the transfer of function has recklessly put computer security, privacy rights and financial security of the trust beneficiaries at risk.

Non-Indian contractors have been hired by the DOI/BIA to supplant the OIRM operation and execute the transfer to Virginia. A contracting company named ISI has been retained to handle the relocation and ISI has sub-contracted with a company called PRT to handle applications, operations, telecommunications, data transfer and related computer issues.

As early as December 6, 1999, senior management of the BIA ordered a small group of OIRM employees and contractors to disband and stop work on a project plan aimed at determining the best approach to move the OIRM operation and data center. But BIA management instructed OIRM employees to stop work on the plan and told them that the contractors were going to "take care of everything."

The contracting firm informed senior BIA management that the time frame for transfer was unrealistic. Senior management refused to extend the date.

When the relocation was first announced, PRT, who will be running the OIRM operations and data center (including the legacy trust systems), came on the floor requesting "super-user" access to all systems. Deborah Maddox sent an e-mail to George Gover directing him to "allow the contractors to have access to your systems . . ." (At the time of this e-mail, the contractor did not have a task order in place to take over operations.) OIRM has been successful in delaying access until we received information that a task order had indeed been executed.

We also received a Solicitor's Opinion which stated, "When a third party asks for access to information covered by the Privacy Act, such as IIM records, people system, Social Services, he or she must comply with the Privacy Act. For a third party to gain access to such records, he, she or it must fit into one of the exceptions found in 5 U.S.C. §552(a) or must have a binding contract with the BIA which authorizes the third party to gain access to the covered records. See 5 U.S.C. §552(a)(m) . . . I am advising you that the failure to comply with the Privacy Act or failure to ascertain that the individual has a right to access is a violation of criminal law found at 5 U.S.C.§552(a)(i)(1).

On February 16, 2000, OIRM management met with the ISI movers to discuss taking inventory of hardcopy trust records. They informed us that they were using local temporary personnel to perform this function. We expressed serious concern about the use of temporary workers who have not been cleared through our security process, giving them unrestricted access to Privacy Act data without proper safeguards in place. ISI management was contacted and agreed that it would discontinue the use of temporary employees for this function. However, on Tuesday, February 21, 2000, ISI began taking inventory of the records using temporary employees. ISI management will not return our calls.

To date, there is no plan in place to inventory, safeguard or backup the electronic records in the BIA systems throughout the transfer. The contractor has stated that it will "wing it as issues arise." This is totally unacceptable. Our employees come to work every day to perform their respective functions with the intention to make life better for the Indian people we serve. Our clients are our families, neighbors and elders, as well as fellow tribesmen.

Additionally, in the new facility, there is no library to house backup tapes. These tapes must be housed in secure, environmentally controlled space to remain readable and secure. The transfer of the tape library must be done in a secure, redundant fashion to protect the data in case a catastrophe occurs during transfer. There is no plan to perform data verification that the data from the old machine has in fact made it to the new machine.

To confuse the issue even more, there is no resolution to the current record retention issues for electronic records in BIA Trust systems. Although LRIS is the system of record for ownership of trust lands and minerals, not all ownership data has been input into LRIS in all BIA regions. Some regions do not use LRIS. Some regions or agencies have other automated systems and some offices use no automated records keeping system at all. Paper records are still kept in unsecured space that is not fire protected. No assurances have been made to insure backups of records in non-national LRIS type systems are being performed. Tape retention policies are more operational-oriented than records retention oriented. In the current environment, all LRIS data is kept in perpetuity on disk, as are all IIM and Oil & Gas transactions. However, IRMS and RDRS ownership and lease records are not kept in perpetuity. These systems and related data may be changed every day and when the backup expires thirteen (13) months later, the tape is recycled. If the office that created the change did not print their edit and change reports every day, there is no audit trail for those changes. As such, even today -- more than three and one half years after the *Cobell* litigation was filed – one still cannot go back fourteen (14) months to see what address was on an account, or who had what portion of ownership in either surface or sub-surface. While some of these issues have been forwarded to the Office of the Special Trustee Director of Litigation Support and Records, **no direction has been provided**.

PRT has publicly admitted that they may not have the institutional knowledge of our applications, but they will eventually get things fixed, even if it takes them two (2) months or more. This is also totally unacceptable. Our employees react within hours to problems, sometimes in minutes, but definitely not months. Indian trust beneficiaries expect their checks for trust income to arrive timely because this is their sole income for many; Indian trust beneficiaries deserve their money now.

The PRT personnel currently assigned to the project do not have the requisite background to understand current OIRM operations. Although several of them have been training with OIRM personnel, it has become obvious that they do not have the experience or skills necessary

to complete the transfer. Two (2) OIRM personnel have been badgered for not providing enough information to where the contractor can perform their function, although OIRM has insisted that they have been given everything. For instance, one of the contractors assigned to learn the Lake Funds and Osage application, was not knowledgeable in Visual Basic, the language the application is written in. It is irrefutable that the contractor cannot successfully perform the contracted tasks without help from OIRM employees.

Problems have arisen with the Indian Services Special Disbursing Agent (ISSDA) System, starting in December 1999. The ISSDA is a Treasury Department-issued designation necessary to issue (and re-issue) federal checks. Normally, most checks issued by the federal government are issued directly by the Treasury Department. Issuance of Indian checks are an exception to this rule for historical reasons. Treasury will not allow government checks to be issued without certain safeguards that are provided by the ISSDA System. For example, Treasury check stock must be handled and stored (in a safe) by only ISSDA-certified individuals. Thus, checks cannot issue unless ISSDA-certified personnel are integrally involved in the process. Similarly, ISSDA-certified personnel must be involved in interfacing with Treasury and canceling and reissuing Treasury checks that have been lost or stolen. As discussed below, because of the relocation and the employment dislocations associated therewith, OIRM will not have sufficient ISSDA-certified employees to perform these key functions.

The programmer (Roe Paul) who provided support for this application was forced into retirement. Since his retirement, the problems have been largely unattended. OIRM received a waiver from the Department of the Interior to bring Mr. Paul back as a re-hired annuitant without penalty. Deborah Maddox only allowed OIRM to keep this employee on board until January 7, 2000.

I assigned this problem to another programmer who had no previous ISSDA application knowledge or experience. In order to correct the problems, the new programmer studied the application code and data for two weeks to become familiar with the inner workings of the application. This is an extremely short period of time to learn a computer application. And this

employee has since taken another position in BIA and will no longer support the ISSDA System after March 13, 2000.

In February, the contractor PRT Group, Inc. hired Roe Paul as a contract employee to attend to the ISSDA problems. While all of this was going on, OTFM has not reported to US Treasury for checks that have been written since November 1999. The treasury cannot reissue an outstanding check to a trust fund beneficiary. I was informed today by the Office of Trust Funds Management (OTFM) that they have outstanding requests from trust income recipients to cancel checks that were written but never received by them. These checks may have been lost in the mail or sent to the wrong address, etc. However, OTFM cannot ask Treasury to cancel checks Treasury has no record of having been written. Consequently, Treasury cannot reissue an outstanding check to an Indian beneficiary.

The end result is that OIRM's transfer of function is already impacting the Trust recipients

Last year, the United States District Court in the District of Columbia completed the first trial of a two-phase lawsuit, in the class action case of Cobell v. Babbitt.

It was held in that case that the United States is in breach of its trust responsibilities to the individual Indian trust beneficiaries. During the Phase One trial, Bruce Babbitt, Secretary of the Interior and principal trustee delegate of the United States, confessed on the witness stand that our government as trustee has not fulfilled and continues to breach its fiduciary duties to the Indian trust beneficiaries.

The Judge ordered the Government to get into compliance with its fiduciary obligations and he promised to retain jurisdiction over the case for at least five years to assure that the plans and promises made by the government to fix the system were actually being carried out and were working. Although the Judge withheld more direct judicial intervention at this time, he indicated that he was prepared to take further action if the Government squanders its last opportunity to achieve trust reform on its own.

The centerpiece of the Government's promise to fix the system is the implementation of a new "state of the art" trust accounting and asset management system called "TAAMS." TAAMS was designed and purchased by the DOI without the benefit of an integrated architecture for Indian Trust operations. In other words, DOI did not identify its specific business needs before soliciting bids for and selecting a system to carry out is trust management functions. To this day, DOI has not adequately defined its needs. **Therefore, no one can fullfill the need.** The TAAMS system is not working as represented to Congress and the Court.

At OIRM, we are all Indians. We are Indians who are committed to self-determination and the maintenance of the health and welfare of the Indian trust beneficiaries whom we serve. We are likewise committed to the Indian land and resource data we collect and maintain for the benefit of the Indian trust beneficiaries.

In a mismanaged and crumbling situation, the current employees of OIRM represent the last bastion of hope for the 321,000 Indians who depend on its consistent and expeditious handling of trust funds.

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20245

IN REPLY REFER TO:

December 1, 1999

Memorandum

To: Mona B. Infield
Supervisory Computer Specialist

From: Deborah J. Maddox
Acting Director of Management and Administration

Subject: Notice of Transfer of Function Rights

The National Academy of Public Administration (NAPA) conducted a comprehensive study of the management and administration of the Bureau of Indian Affairs (BIA). As a result of this study and the recommendations made by NAPA, BIA senior management has been tasked by the Department to take significant organizational and administrative steps. In response to the tasking and to promote the efficiency of the BIA, the Division of Information Resource Management (IRM) of the Bureau of Indian Affairs, Central Office West will be relocated as a transfer of function from its present location in Albuquerque, New Mexico to its new location in Central Office East in Washington, DC. The establishment of the new IRM will be effective no earlier than March 12, 2000.

You have the right to transfer with your function and your current position to Central Office East in Washington, DC. You are encouraged to exercise your transfer rights, as it is the desire of the Bureau of Indian Affairs to retain the skills of all our current employees. Please indicate whether or not you wish to exercise your transfer rights using the enclosed form.

If you accept your transfer, transportation expenses for yourself and your dependents, and costs for moving your household goods will be paid by the Bureau of Indian Affairs under the provisions of the Federal Travel Regulations. The servicing personnel office in Washington, D.C., Office of Surface Mining Personnel (OSM), will provide you with information regarding the new area to which you will be transferred.

You will have 35 calendar days from the date of this letter to decide whether you will accompany your function in this transfer. You should clearly understand that if you decline to exercise your right to transfer with your function, you will be separated by the Bureau of Indian Affairs under adverse action procedures, (5 CFR 752). Please indicate your decision on the enclosed form by checking one of the answers and signing your name. Failure to respond to this letter within 35 calendar days constitutes a declination of the offer to transfer with your function. Therefore, your response must be received by a member of the OSM personnel staff no later than close of business January 5, 2000.

EXHIBIT
1

You are faced with an important decision and should consider all aspects of the transfer very carefully. Staff from the Office of Surface Mining (OSM) Personnel will be available onsite during much of the time you have to make your decision. In addition, Allison Beard ((505) 248-7182 or (202) 208- 2074) and Kathy Haggerty ((202) 208-2988) will be available to answer any question you may have concerning this transfer. OSM Personnel will provide advice and information about the transfer; however, the final decision must be yours.

Your service with the Bureau of Indian Affairs is greatly appreciated, and we encourage you to give careful consideration to continuing your career by exercising your transfer right. If you decide not to transfer with your function, you will be counseled concerning your eligibility for placement assistance. We appreciate your contributions and hope that you decide to remain with the organization at its new location.

Enclosures

I acknowledge receipt of this letter:

_____ _____

Signature Date

EXHIBIT 2

Table 3. BIA Systems and OIRM Operations in FY1999

Application Name	Brief Description	Hardware Software	FY1999 OIRM Operation
Integrated Records Management System (IRMS)– Individual Indian Money (IIM)	A system to track funds due to individual Indians and Tribes from leasing, permits and other uses of Indian lands.	Unisys Clearpath NX, COBOL	Total Number of Checks Processed: 325,731 Total $ Amount of Checks: $177 million f Total Number of Account Holders: 321,000 Total Number of IIM Statements: 1,258,848 Total Number of 1099's Interest Tax Forms: 32,500 Overnight Balance Managed by OST/OTFM: approximately $350 million.
IRMS–Lease/Range	A system for managing payouts for leases on Indian lands.	Unisys Clearpath NX, COBOL	Total Number of Lease Records: 676,064 Total Number of Tracks: 79,831 tracks Total Number of Owners: 1,146,681
IRMS–Owner	A system that tracks ownership of Indian tribal and trust lands.	Unisys Clearpath NX, COBOL	Total of Owner Records: 8,286,134
IRMS–Lease Distribute	A payout system for leases on Indian trust lands.	Unisys Clearpath NX, COBOL	
IRMS–Oil and Gas	A tracking system for mineral and surface land ownership for oil and mineral leases.	Unisys Clearpath NX, COBOL	Total Number of Records Maintained: 3,758,836 Total of Checks Processed: 89,154 Total $ Amount of Checks: $13,768,797 Total Number of Owner: 221,112 Total Number of Lease: 5,262
IRMS–People	A tracking system for data on tribes and per capita payouts.	Unisys Clearpath NX, COBOL	Total Number of Records Maintained: 1,5047,821 Total Number of Percapita Runs: 20 Total Number of People Received Payment: 43,110 Total Payment Amount: $10,348,432.26

[illegible]	[illegible]	[illegible]	[illegible]
Land Records Information System (LRIS)	A land title system showing and tracking Indian ownership, including all rights conveyed or changed over time.	IBM Mainframe, Adabas, Natural, System 2000, COBOL	Total Number of Tracts: 178,992 Total Acres of Land: 61,489,887.192 Total Number of Owners: 477,601
Social Services Assistance System (SSAS)	A system that provides general assistance to individual Indians.	IBM Mainframe, Adabas, Natural	Total number of records: 172,202 Total number of checks: 48,192 Total money amount: $14,543,145.44
Loan Management and Accounting System (LOMAS)	A loan management and accounting system.	PC/NT, SmallTalk	
Osage–Annuity System	A system to pay out monies to members of the Osage Tribe who are descendents of the original Head Right owners.	PC: Visual Basic, Access, Unisys Clearpath NX Server: COBOL	Total Number of Checks for Oil: 20,960 Total $ Amount of Checks for Oil: $11,492,278 Total Lakefunds Checks: 310 checks Total Lakefund $ Amount of Checks: $22,592

SUPPLEMENTAL TESTIMONY

OF

MONA INFIELD

SUBMITTED TO

The Committee on Indian Affairs
Of the United States Senate
9.30 a.m., April 12, 2000

In a Hearing on
National Academy of Public Administration Report on
BIA Management Reforms

Mr. Chairman and Members of the Committee,

My name is Mona Infield. I am a citizen of the Potawatamie Nation Tribe, Supervisory Computer Specialist GS 334, Department of the Interior, Office of Information Resource Management in Albuquerque, New Mexico

I appreciate the opportunity of presenting testimony today concerning the forced relocation of the Office of Information Resource Management ("OIRM") from Albuquerque, New Mexico to Reston, Virginia as it relates to the impact on the Indian trust beneficiaries.

The OIRM is the Office of Informational Resources. It is located in Albuquerque, New Mexico.

In November of 1999, the decision was made by senior executives of the Bureau of Indian Affairs ("BIA") to relocate OIRM from Albuquerque, New Mexico to Reston, Virginia. The separation notice was issued by Deborah Maddox and is attached as Exhibit 1 to this declaration.

As a result of this notification, the employees of OIRM were faced with an impossible dilemma -- lose their jobs or relocate to Reston, Virginia. The hardship on the affected employees includes, but is not limited to, catastrophic destruction of family relationships, and resulting inabilities to perform religious and tribal responsibilities. The impact on these employees, their families and their tribes is explained in another declaration that will accompany this one.

The purpose of this declaration is to explain the impact of the relocation on the OIRM employees, their families and the Indian Nations they serve and are a part.

Attached are statements by Charlene Lattier, Supervisory Computer Specialist, David D. Cooley, Evelyn Riggs, Computer Specialist GS-12, Jerome Abear, Jennifer I. Suina, Computer Specialist, and Lorraine Jaramillo. As shown by the following exerpts, the impact of this forced

transfer of OIRM has individual consequences, along with the breaches of trust outlined in my concurrent filed declaration.

" As for the transfer of function to Reston, VA, the move was not an option for my family. My husband works for a major international corporation which does not have operations near Reston, VA. Living in Albuquerque, NM also allows me to be near my parents, which is very important. My parents only have one set of grandchildren to whom they are close – my children. Moving to Virginia would not allow easy access to the grandchildren. Further, growing up in a culturally diverse environment is important to both my husband and myself. It allows my three children the opportunity to know and appreciate their cultural heritage." Charlene Lattier

" You may wonder why I have stayed with the BIA for 10 years. Technically, at one-eighth Indian blood, I am more Indian than many of my co-workers, although my tribe, the White Mountain Apaches, demands one-quarter blood. My great grandmother, grandfather (an Indian trader at Cibique), two uncles, my dad (who was a BIA employee for 42 years), several cousins and aunts were and are members of the White Mountain Apache tribe. I spent much of my childhood on two Arizona reservations and living here, we've been able to renew family ties that mean a to us. Frankly, it's hard not to feel that federal employees don't get to live near their families – or tribes – if they want to maintain their careers, at least in New Mexico." David Cooley

1) I am a single person with a home in Albuquerque and I cannot be without a job since I am the person responsible for all bills and payments. The only reason I am transferring is all Computer Specialist positions which I may apply for are not

being open until 3/13/00, which is after the 3/10/00, the last working day before the 13th. See Attached e-mail.

2) My family – brothers and sisters are also affected by the move. As Indian people we are very strongly tied to the land and our culture. The Reston or Washington, DC area has less than 1% Indian population. 99.99% of the Indian people and reservations are west of the Mississippi River. This is an infringement on my cultural, religious and heritage rights which I enjoy now in my native homeland. I lost my mother less than a year ago and there are legal matters which still need to be settled for which I need to be present. I am the person that represents my family for these issues...I am currently in the process of transferring my mother's homesite lease into my name, I have to constantly monitor with telephone calls and personnal visits to tribal offices and BIA offices. I also am the holder of the grazing permit for my family. Because of family obligations and my mother's trust I have these responsibilities which I feel I owe my mother and siblings."
Evelyn Riggs

"I have declined the offer to relocate with my job because New Mexico has been my home since birth and where my family and relatives reside. I'm a Native American woman from the Pueblo of Cochiti and a single parent. As you are aware, as a Native American our cultural activities are a major part of our way of life. Leaving New Mexico would mean giving up my unique cultural traditions. My family's lifetime traditional commitments and my own beliefs outweighed every reason I could think of in transferring with my job. This move does not only cause hardship for me my child but will greatly impact the economy of the City of Albuquerque, surrounding counties and tribal communities, and the State of New Mexico. Three years ago I purchased my first home and I pray that I

don't loose it because I cannot find a job that pays me enough to make the mortgage plus provide for my child.

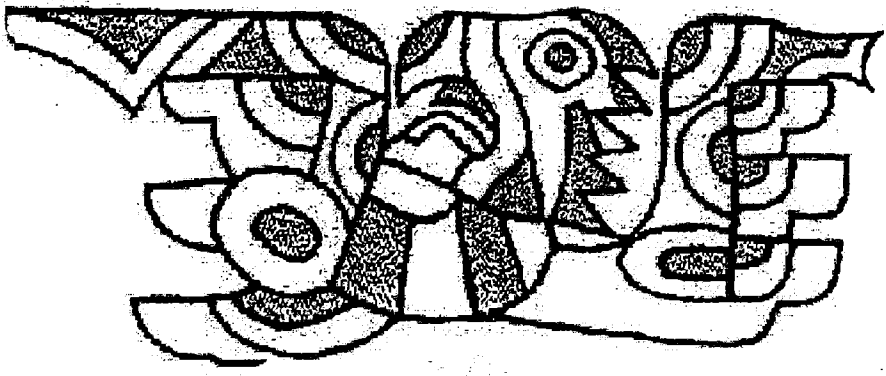
I have about 4 months of severance pay and hope I'm back in federal service before it runs out. I have been federal service close to 15 years and I'm proud of my accomplishments. During this time I have been given the opportunity to advance in my position as a computer specialist and more importantly provide technical service to BIA employees nationwide.

"It makes no sense to move the Albuquerque office to Washington, D.C. when the majority of the Native American tribes we service as located in the southwestern states. We're centralized and it is cost effective for both our "trust beneficiaries" and our office in conducting business. We work in conjunction with the Office of Trust Funds Management (OTFM) and the Office of Indian Education Programs (OIEP) located in Albuquerque, N.M. to provide technical assistance and telecommunications service to their respective regional offices and schools, and tribes across the nation. Jennifer Suina

"I'm writing this letter to protest the transfer of function to Reston, Virginia. I am from Isleta Pueblo; was born and raised as a Native American Indian. Isleta Pueblo is strongly religious, and our cultural society is so close knit and very active that some tribal members are not allowed to live outside the Isleta Pueblo reservation. My husband belongs to a society for the community of Isleta Pueblo and he is not allowed to live, nor leave the reservation for a long period of time. The society requires spouses to take part; so I also have a big responsibility. Relocating to Reston, Virginia, is not a viable choice for me and my family. I have no choice but to forfeit my position as a Computer Specialist because of traditional ceremonies and the society that my husband belongs to. Also my

husband recently had a heart attack and he has not been able to work. He is still under doctors' care. Now, if the relocation goes forward, yes I'll get severance pay for 4 months, but the health care I provide to my family will no longer be available. My income is the only source of income for my family."

As stated the forced transfer thwarts the goal of Indian self reliance and completely usurps the Indian preference by locating the ORIM office where Indian employees must choose between their family, their tribe, their culture and their federal employment.



A Study of Management and Administration: The Bureau of Indian Affairs

August 1999

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Royce Hanson, *Panel Chair*
Wilson H. Elkins Visiting Professor, University of Maryland, Baltimore County

Eddie Frank Brown
Associate Dean/Director, Buder Center for American Indian Studies, Washington University

Mark W. Cannon
Venture Capitalist

Bernard Martin
Consultant

Jacqueline Rogers
Senior Fellow, School of Public Affairs, University of Maryland, College Park

Study Team

Carole M.P. Neves, PhD
Project Director

William E. Lilly
Senior Project Officer

Thomas E. Utsman
Project Manager

Kathleen Ernst
Senior Research Associate

Wallace O. Keene
Senior Research Associate

Billie J. McGarvey, Major General, USAF (Ret.)
Senior Research Associate

Herbert R. McLure
Senior Research Associate

Whitney Watriss
Senior Research Associate

Jack Zickafoose
Senior Research Associate

Larry A. Patrizi
Research Associate

Mary Brown
Project Secretary

Jim Harlow
Senior Graphic Designer

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National Academy of Public Administration
1120 G. Street, N.W.
Suite 850
Washington, DC 20005

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A Study of Management and Administration: The Bureau of Indian Affairs

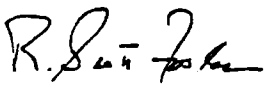
Foreword

Few government agencies are tasked with implementing the range of programs and services for which the Bureau of Indian Affairs (BIA) is responsible. The BIA addresses serious social and economic problems many of us do not see, and confronts sensitive political challenges rooted in a troubled historical relationship between the U.S. government and American Indian tribes and Alaska Natives. As Indians have struggled to find their place in the United States, a series of policies has failed. The government's most current attempt, stimulated by the social movement of the 1970s, is self-determination. Critical tools to that end are the turnover of programs and services under contracts, compacts, and grants to tribes so that tribes can regain a measure of control over their own destiny.

But before all of the tribes attain self-determination, it is necessary that the Bureau properly carry out its existing functions. A foremost challenge the Bureau faces is to build a performance based organization that establishes realistic goals, matches resources to the accomplishment of those goals, assesses performance, and ultimately reduces the role of the U.S. government in Indian affairs while retaining its trust responsibilities.

To handle its role, the Bureau needs to build credibility and trust through the development of strong and competent administrative and management processes, priorities, and structures. In this report, the Academy panel recommends a series of reforms. None is new. But together they constitute an agenda that is critical and ambitious, yet achievable. If instituted, the reforms are likely to result in additional positive changes in the program arenas, thus benefitting Indians more directly.

The Academy is pleased with the opportunity to assist the Bureau and the Department of the Interior and extends its gratitude to the many participants who provided valuable insights. It also thanks the Academy staff and panel for their contributions.



R. Scott Fosler, *President*
National Academy of Public Administration

Executive Summary

For a number of years the Bureau of Indian Affairs (BIA) in the Department of the Interior (DOI) has been experiencing administrative and management problems that have constrained its ability to carry out its mission. To assist it in addressing these problems, BIA asked the National Academy of Public Administration (Academy) to conduct a comprehensive study of its management, organizational structure, and administration. The intent was to identify and recommend remedies that would improve the quality, efficiency, and cost-effectiveness of the BIA's operations. This study is an effort to chart a path to meeting the needs and aspirations of Native Americans.

The mission of the BIA is to enhance the quality of life, promote economic opportunity, and carry out the federal government's responsibility to protect and improve the trust assets of Indian tribes and Alaska Natives. In carrying out this mission, BIA provides the kinds of services for which local, city, county, state, or tribal governments are responsible, among them education, social services, law enforcement, forestry development, and irrigation systems. BIA comes under the supervision of the Assistant Secretary–Indian Affairs of DOI. Two service components report directly to the assistant secretary. The Office of Indian Programs (OIP) under the BIA deputy commissioner is responsible for all non-education portions of the BIA. OIP program services to tribes and individual Indians are carried out through area offices and agencies at the field level. The Office of Indian Education Programs (OIEP) oversees BIA's educational programs, again with much of the work taking place at the field level. The Office of Law Enforcement Services (OLES), recently reorganized under its own line authority, continues to report to the deputy commissioner. Delivery of services is handled directly by the BIA field offices or through PL 93-638 contracts with tribes for specific programs, PL 93-638 compacts with tribes, which amount to block grants for multiple programs, and PL 100-297 grants, which principally support the operation of schools

by tribes. BIA has slowly been moving away from directly providing services and toward being a contract manager of programs contracted out to tribes. This change challenges the BIA's capacity to manage alternative means for carrying out public objectives. Over time an improvement in the management of alternative tools will require a reassessment of BIA's role, workforce, and training of BIA managers. Fifty-five percent of BIA programs are now run by tribes under contracts, compacts, and grants.

Managing for Success

The panel believes the current management and administration of the BIA are not fully adequate to meet all of its trust responsibilities to American Indians and Alaska Natives, to carry out the numerous statutory responsibilities, and to operate an effective and efficient agency. Specifically, there is no existing capability to provide budget, human resources, policy, and other types of management assistance to the Assistant Secretary–Indian Affairs and the Bureau. Staff do not receive adequate training in management and administrative skills and techniques, and BIA does not have adequate standards by which to determine its management and administrative requirements for resources and staffing. Strategic planning, yearly performance planning, and program analysis are not institutionalized. Important policy manuals and implementation handbooks are out of date. In short, neither the Office of the Assistant Secretary–Indian Affairs nor the Bureau has the internal staff capabilities that typically support managerial and administrative excellence.

The foremost requirement is for the Assistant Secretary–Indian Affairs to have the staff support necessary to lead BIA, particularly in the areas of planning, budgeting, human resources management, and information resource management (IRM). As the primary federal advocate for Indians, the assistant secretary should be the focal point for assuring that potential new initiatives and existing programs are well coordinated, and that resources are used to the maximum advantage. There will be some pain to facing up to the problems, but the Academy panel believes progress will be made if the Congress and administration are willing to invest in the recommendations in this report.

Encouraged by some recent internal changes and improvements, the Bureau appears eager to tackle problems and to position itself to respond to future opportunities. As it approaches the next millennium, it hopes to renew its commitment to improving the lives of Native Americans. Senior managers realize that in order to keep pace with the expanding needs and interests of the population it serves, it must first address its administrative and management shortcomings, enhance its effectiveness, and improve its efficiency. For this to happen the BIA requires inspired leadership, the support of the administration, the Congress, and the public, and the establishment of partnerships with the tribes. These partnerships should be built upon the ability to share ideas, disagree about them at times, confront differences, resolve them, and move on; upon learning from one another how to manage in a rapidly changing environment; and upon trust.

Recommendations

- *To address administrative and managerial deficiencies, the Academy panel recommends that the Assistant Secretary–Indian Affairs immediately establish a Policy, Management, and Budget Office that reports to him and provides him the following staff support:*

  - *a comptroller unit, consisting of three groups: (1) a program analysis group to analyze the appropriateness and effectiveness of programs and services designed to fulfill BIA's mission, (2) a budget development and execution group to prepare the budget and to track expenditures, and (3) an accounting group to operate BIA's financial accounting system*

  - *a plans and policy unit, responsible for developing BIA management policies and directives, as well as strategic and annual plans, and for preparing manuals and operating handbooks*

  - *a human resources unit, to handle development of policy and plans for managing BIA's workforce, including policy development and workforce planning, an employee development program, expertise in labor relations, and oversight of the delivery of personnel services*

- *an information resource management unit, responsible for developing policy and plans and operation of Bureau-wide information systems, as well as guidance on useful information technologies and planning for the future*

- *an equal employment opportunity unit to manage BIA's equal employment opportunity (EEO) program*

■ *The Academy panel also recommends that the assistant secretary utilize the working group of the Domestic Policy Council in a more strategically integrated way. The group should help to coordinate and to harmonize programs for American Indians and Alaska Natives, thus creating the possibility of more effective and efficient delivery of services.*

Organizational Interaction

The three service organizations in BIA operate semi-independently through their own field organizations, which function largely separately, except that OIP provides some administrative support to OIEP and OLES. If the three service-providing organizations are to be held accountable for performing their missions, they need to have responsibility for providing their own administrative support.

Recommendation

■ *The Academy panel recommends that the Assistant Secretary–Indian Affairs recognize the three service-providing organizations as independent operating entities, with each reporting directly to the assistant secretary and each having responsibility and authority for providing programs and services and for handling its own administrative functions. The deputy commissioner should continue as head of OIP, and OIEP and OLES should each be headed by a director.*

A Need for More Managerial Discipline

A structured approach is useful to communication of the organization's goals and objectives to employees, to the definition of roles, to measuring progress, and to establishing individual and organizational accountability. The strategic plan, a key element of such an approach, outlines goals and anticipated outcomes and drives annual performance planning, which should reflect budget resources realistically. BIA has had difficulty fully satisfying the government's requirements for strategic planning and annual performance planning. Given that the majority of BIA programs are operated independently by the tribes, the focus of the planning process should be on results that make a difference in the lives of Native Americans. Top leadership needs to embrace the intent of the Government Performance and Results Act (GPRA) to develop comprehensive, outcome-oriented strategic and annual performance plans, and to use those plans to drive the Bureau's decisionmaking. In addition, BIA's GPRA plan should be complemented by goals and performance measures for BIA's administration and management.

Finally, to gain discipline in the workforce, individual employees need to understand the requirements of their job. Now, they lack guidance in the form of up-to-date policy and implementation manuals. The establishment of policy manuals and implementation handbooks lays the groundwork for employee training and certification. Manuals and handbooks also provide the basis for personal accountability.

Recommendations

- *The Assistant Secretary–Indian Affairs should continue to strengthen its strategic plan and companion annual performance plan to meet GPRA requirements. These plans should be supplemented with goals and performance measures in administrative and management arenas. The deputy commissioner, education and law enforcement directors, and area and agency managers need to participate in preparing the plans and should be held accountable for executing them.*

- *The Assistant Secretary-Indian Affairs should establish a system of management reviews, performance measures, and regular reviews of BIA's performance. To provide better guidance to employees, the plans and policy unit of the proposed Policy, Management, and Budget Office should develop and maintain manuals and handbooks that can be available to all employees through desktop computers.*

- *The BIA manual should be updated and kept current. Operating handbooks that clearly define the authorities and responsibilities of field personnel also should be developed. Modern information technology should be used to support interactive development of policy manuals and directives and their distribution to the field.*

Management and Administrative Staffing Requirements

When fully implemented, the study team has estimated that the panel's recommendations could require 40–50 administrative personnel in the new Policy, Management, and Budget Office, in addition to those in the existing accounting unit. For new systems to work effectively, administrative personnel also will be required in area and agency offices. While the exact number of administrative staff positions in each of the 12 area and 83 agency offices will have to be determined by a careful workforce analysis, it will probably be on the order of 150–200 when these recommendations are fully implemented. Before creating any new positions in field offices, the Policy, Management, and Budget Office should require the field offices to prepare estimates of their requirements and what they could accomplish with well-qualified administrative staff. Some offices may need no new help; others may require substantial complements. Some may not be new positions or new employees, but as the requirements in each office are filled, it is essential that employees assigned administrative responsibilities be trained and well qualified to perform them. A rough estimate of the total annual personnel cost once all of the elements flowing from these recommendations are operational is expected to be in the range of $10 to $15 million. Funds should be released for the

field positions only after the new team has verified that they are required for effective implementation of the management improvements recommended in this report.

During its field interviews, the Academy study team heard many complaints of personnel and funding shortages in several program areas.[1] Analysis of specific resource issues was beyond the scope of the panel's charge, and the panel believes that whatever their merit, resource issues cannot be addressed effectively unless and until basic management and administrative system problems are addressed. The Bureau needs to establish credibility and prove it has the capacity to properly determine requirements and utilize the resources efficiently and effectively.

The Bureau's Administrative Problems

BIA has been unable to meet the basic requirements for administrative systems within the federal government. BIA does not, for example, have a unified approach to human resources management. The budget structure and process do not provide the information necessary to estimate or justify actual needs. The financial management systems do not permit matching funding to changing requirements, and the BIA has been unable to obtain an unqualified audit. Since 1991 DOI has declared the procurement system a material weakness, but there has been little improvement.

Human Resources Management

Because of National Performance Review (NPR) streamlining efforts in 1994, BIA no longer has a human resources policy-making unit, and even its personnel experts are not sure what policies are in effect. BIA gives employee development almost no organized attention, nor does it systematically invest in staff training. Although BIA selects almost all of its managers from inside, it has no succession plan or management development program. Many field staff are given significant collateral duties without training and support. The paperwork requirements are burdensome. BIA

[1] The first Appendix to this report contains the study team's report on individual programs.

has not done the analyses necessary to calculate the number of people needed and how they can best be deployed. By law BIA has to apply Indian preference in its hiring and promotions, and nearly 90 percent of its employees are Indians. Although some critics say Indian preference is a root cause of many of BIA's problems, the Academy study team found the majority of BIA staff to be well-qualified for their jobs. However, it also found some inadequately qualified nominees for managerial positions at headquarters, some managers who lacked the right expertise, and the lack of systematic development and succession processes.

Recommendations

- *The Assistant Secretary–Indian Affairs should reestablish a human resources management unit of four to six people, headed by a human resources manager, in the proposed Policy, Management, and Budget Office. This unit should be responsible for establishing and maintaining a consistent approach to human resources management throughout BIA. The manager should have access to and participate with top management in decisions that affect BIA employees; should develop a strategic human resources management plan; and should identify the policies BIA is following and establish a mechanism for assuring they are applied consistently throughout the Bureau. This unit should ensure that:*

  - *BIA makes employee development one of its primary management objectives and provides the planning and resources to support training and development*

  - *BIA begins succession planning and development to meet its managerial and executive needs*

  - *BIA automates its personnel record-keeping so that summary information about employees is readily available and accessible*

  - *BIA's qualification requirements for its jobs are sufficiently stringent that candidates who meet them will be able to do the job*

- *the units providing BIA personnel operations support are performing effectively*

Budget System

The basis for the allocation of BIA resources across the areas and tribes is a complex set of historical, demographic, political, and other factors. The distribution of funds has been a source of dissatisfaction because it does not seem equitable. However, the tribes believe that changing the current distribution of the Tribal Priority Allocations (TPA) base funding would make all tribes "equally poor." As a result of the complexities involved and a general belief that changing the distribution of funds would do little to better Indian welfare, BIA and the tribes have concluded that the existing TPA system should not be modified.

Budget categories have not changed for several years. BIA divides the TPA funds using a formula derived years ago that does not encompass the results of a needs assessment or a priority-based allocation across tribes. It does not have the capability or the authority to distribute TPA funds on the basis of a comprehensive needs assessment. The basis for the distribution of Indian Student Equalization Program (ISEP) funds is a complex formula driven by the number of students and the services they require (expressed as Weighted Student Units). Because TPA and ISEP are formula-driven, BIA has little discretion to direct funding to resolve problems or satisfy pressing needs.

Recommendations

- *The Assistant Secretary-Indian Affairs should develop a budgeting system that has sufficient flexibility to support the equitable allocation of funds.*

- *The budget development and execution group in the comptroller unit of the proposed Policy, Management, and Budget Office should work with the BIA and the tribes to develop the budget and*

document appropriate standards (or benchmarks) that can be used consistently in support of budget requests and in measuring performance in the delivery of programs.

Financial Management

DOI's Office of Inspector General has for several years provided a qualified audit opinion on BIA's financial statements because BIA could not provide adequate documentation or reliable accounting information to support the financial report balances. In addition, BIA had material weaknesses (insufficient internal control procedures) in several major accounts. BIA was also not in full compliance with a number of laws and regulations. BIA has taken a number of corrective actions in the areas of accounting, prompt payments, financial documentation, property management, and information technology that may resolve many of the problems.

Recommendations

- *The Assistant Secretary-Indian Affairs should establish an accounting group in the comptroller unit of the proposed Policy, Management, and Budget Office to work hand-in-hand with BIA management to (1) continue the drive towards a clean audit, (2) prevent the reoccurrence of material weaknesses, and (3) correct possible problems that go deeper than the issue of a clean audit (establish long-term solutions). Toward those ends, the new office would be responsible for:*

  - *finalizing and approving a series of implementation plans for corrective actions on all audit issues and material weaknesses, supporting coordination and monitoring implementation using a report card system, maintaining important administrative processes and improving documentation of policy and procedures in tandem with that effort*

- *upon project completion, holding detailed retrospective meetings of management and accountable staff to discuss/document what went right and what went wrong (planned versus actual outputs and outcomes)*

- *increasing current efforts to document all financial policy and procedures (with hands-on involvement by the area and agency offices) and getting those documents out into the field*

- *correcting the serious shortage of administrative staff needed to perform financial duties (currently many functions are collateral duties of overworked staff who lack adequate knowledge or training)*

- *involving field offices more in the development of policy and procedures*

- *providing up-to-date computer software versions that are consistent across BIA*

- *increasing the level of coordination, follow-through, and communication among the different field offices*

Information Resource Management

BIA uses information technology far less than other government organizations and needs to aggressively pursue the development of information systems to increase the efficiency of its operations. BIA would benefit from a formal IRM user group to facilitate the management of IRM systems by establishing priorities and helping ensure that potential system applications are identified. BIA has put plans in place to address concerns in this area. While overall BIA seems to be moving forward effectively to address its IRM needs, there are "missed opportunities" it needs to address. One is that BIA management does not generate plans with performance measures. It is not using standard IRM techniques and activities to help with planning and control. There is little organizational participation in IRM planning or new product development. BIA has not

consistently followed through on implementation of plans. Needed policies, procedures, and standards do not exist.

Recommendations

- *The Assistant Secretary–Indian Affairs should establish a full-time chief information officer (CIO) in the proposed Policy, Management, and Budget Office to work hand-in-hand with management to bring the full benefits of information technology to BIA. The CIO would direct the activities of the Office of Information Resource Management (OIRM) and would be responsible for:*

  - *creating an IRM users group with representatives of BIA management and operators to provide guidance in identifying potential information technology applications. Likewise, the CIO can use the users group to communicate new technologies that may be applicable to BIA*

  - *establishing a BIA-wide communication strategy to link the Bureau together*

  - *establishing the requirements for information technology training*

Records Management

BIA depends upon records for virtually all aspects of its mission and is responsible for many historical documents. Here, too, BIA has major, longstanding problems. For example, widespread use of original documents for day-to-day reference places them at extreme risk. The environmental conditions for stored records range from passable to unacceptable. Records management is almost always a collateral, low-priority duty.

In recent years records management has become a particularly pressing issue at BIA because of the litigation over Indian trust fund management. The litigation has led BIA to make extensive efforts to resolve the problems with trust management records.

Recommendations

- *The CIO in the new Policy, Management, and Budget Office should be responsible for BIA non-trust fund records management and should ensure that systems are up-to-date and reliable. The CIO should carry out the following recommendations:*

  - *establish records management policy and oversee the preparation of a records management policy implementation manual*

  - *develop a BIA-wide plan to upgrade records management, building on the Trust Management Improvement Project*

  - *establish accountability for records management in each major organizational element*

  - *conduct an examination of the retention schedules for all types of documents and records to determine if they are still current and being applied consistently*

  - *ensure that all its records management is integrated with the OST and is reviewed annually to determine that the integration is still valid*

Procurement Management

Attempts to improve BIA's procurement management have been ongoing for 25 years without success. In 1991 DOI declared the whole procurement system a material weakness. A survey of customers revealed considerable dissatisfaction with the procurement services being provided. Frustration with BIA's procurement organization runs high within DOI and among BIA customers. The longstanding nature of the problems and the organizational discord raise concerns about BIA's ability to correct the problems without dramatic action. Prompt resolution of these problems is essential.

Recommendations

- *The assistant secretary should establish a procurement policy and quality assurance function within the proposed Policy, Management, and Budget Office.*

  - *The assistant secretary should consider abolishing BIA's central procurement organization and contracting for procurement services from other sources within the government. If BIA contracts for these services, it should maintain the field's capability to meet procurement needs up to a reasonable limit (say, $100,000).*

  - *If central procurement is retained, the deputy commissioner should develop an action plan to correct the deficiencies identified in the recent DOI Acquisition Management Review. The assistant secretary and his staff should closely monitor implementation of the action plan and hold the deputy commissioner responsible for its implementation.*

Managing for Results

The Academy believes it is critical to strengthen management and administration prior to receiving additional program staff and funds. The Bureau needs to establish credibility and prove it has the capacity to properly determine requirements and utilize resources efficiently and effectively. The Academy's concern stems from the lack of a core capability in the administration and the management of the Bureau, and the lack of proactive, consistent, and committed leadership within the BIA as well as the DOI. Both the BIA and the DOI need to establish and adhere to higher performance standards and account for use of resources to both Congress and to the public.

The Academy panel recognizes that the basic management reforms and administrative systems recommended here may not conform to prevailing fashions for "performance-based management," as required by GPRA. They are, however, a prerequisite for results-based management.

BIA has been bereft of the fundamental management capacities, without which strategic planning, program assessment, reporting, and evaluation are empty exercises. The management and administrative reforms the panel has proposed, however, need not be taken on faith. The Congress, the DOI, the BIA, and the tribes should demand tangible results from their implementation. One of the first tasks of the new management staff should be to develop, under the direction of the assistant secretary, and in consultation with the deputy commissioner, education and law enforcement directors, other senior managers, and the tribes, a set of management milestones and specific plans for achievement of tangible results, including:

- a clean audit within a reasonable period of time, as agreed to by the DOI inspector general, in light of other urgent tasks that the Bureau must address

- well-documented estimates of program requirements and employee development that are accepted by the DOI, Office of Management and Budget (OMB), and the appropriations committees as credible, regardless of the funding levels ultimately achieved, (i.e., denial of resources on the basis of competing budget and fiscal priorities rather than concern that the estimates are unsound or that appropriations will not be well spent)

- reduced friction among the program and service units of the Bureau, and an end to perceptions among tribes that some central service units are unresponsive

- performance measures consistent with GPRA that allow the assistant secretary to hold program directors accountable for their performance as managers of the services and resources allocated to them

- clear policies and guidelines for employees to follow in the performance of their respective trust, program delivery, and oversight responsibility through current on-line manuals

- mechanisms for a far better coordinated Indian policy that involves all relevant U.S. government agencies

- increased confidence among the tribes that moving to self-determination and self-governance will not result in the neglect of federal responsibilities, an indicator of which may be the number of tribes electing to operate under compacts

As part of the departmental budget process, the assistant secretary should prepare an annual report to the secretary and the Congress on the implementation of the management and administrative changes made pursuant to these recommendations, the progress made toward achieving these and other planned results, the effect of management changes on the effectiveness and efficiency of the program delivery and oversight responsibilities of the Bureau, and reasons for the progress or lack thereof. An alternative to this approach would be to provide for an independent outside review of progress a year following initial implementation and at regular (perhaps biennial) periods thereafter until substantial progress has been achieved. If milestones have not been met and the results above have not been achieved in four to five years, the DOI and Congress should consider other strategies for resolving the Bureau's management problems.

Chapter 1
Introduction

Within the federal government, the Bureau of Indian Affairs of the U.S. Department of the Interior has primary responsibility for administering federal Indian policy and programs and for carrying out the government's trust obligation to American Indians and Alaska Natives. For some years, the Bureau has experienced a number of administrative and management problems that severely constrain its ability to carry out its mission. These problems are evident in, for example, the qualified audits issued by the DOI inspector general (IG) in recent years. BIA has consistently ranked lowest among the bureaus in DOI on almost every operational and administrative measure the department uses. There are significant backlogs in the delivery of many services at the field level. Tribes and individual Indians have sued BIA and DOI, alleging the Bureau has failed to carry out its trust responsibility. The potential liabilities amount to billions of dollars. In 1994, the American Indian Trust Fund Management Reform Act (Public Law 103-412) established a special trustee in the Office of the Secretary of DOI to take over management of the Indian trust funds, and the responsible office in BIA was moved to the Office of the Special Trustee.

To assist it in addressing the administrative and management problems, the BIA asked the National Academy of Public Administration to conduct a comprehensive study of its management, organizational structure, and administration. The Academy, a congressionally chartered nonprofit, nonpolitical institution, specializes in working with governments at all levels to understand and develop solutions to problems of public administration. The Academy was to review the entire range of BIA's administrative services, including human resources management, budgeting, accounting, information resource management, records management, procurement, and property management. The Academy was also to review the relationship among the Bureau's policies, programs, and management and to determine what organizational factors limit BIA's ability

to
effectively provide support services and ensure accountability for its operations. The study was to identify and recommend comprehensive remedies that would improve the quality, efficiency, and cost effectiveness of the Bureau's operations. The study was to take into account the external environment in which the BIA operates, including Indian communities, cultures, and politics; relations with Congress and with federal, state, and local governments; relations with key stakeholders; and the complex web of legislation and other authorities governing BIA operations. In developing recommendations, the Academy panel was to look at best practices in management and administration and to build upon the Bureau's recent reform efforts.

The Study Methodology

Given the wide range of topics to be covered, the Academy put together a study team with matching expertise. A review panel of Academy Fellows and experts in public administration, management, and Indian affairs oversaw the study team's work and formulated the findings and recommendations.

The study followed the principles of applied research. The study team began with an extensive review of literature on the BIA, of congressional legislation, and of federal policy and trust responsibilities, written from the perspectives of both the federal government and Indian tribes and governments. The study team then conducted approximately 200 interviews with BIA management and staff at all levels at both headquarters and field offices, and with DOI, other government agencies, tribal leaders, and Congress. During the research process the study team visited the BIA Central Offices (East and West), the Facilities Management and Construction Center, the Office of Law Enforcement Services, all 12 area offices, 34 of the 83 agencies, 18 of the 24 education line offices, and 16 tribal representatives. Study team members also attended the BIA fiscal year (FY) 2001 budget meeting.

Following data collection, the study team and panel analyzed the material and identified the strengths and weaknesses of the current approach to management and administration, the agency's needs, and the constraints and resources in the external environment. There were alternative approaches generated, with special attention to accountability,

incentives, and disincentives, and they were compared with best practices. The Academy panel then crafted the set of recommendations contained in this report.

The study benefited greatly from the high level of cooperation and openness of the people interviewed. The Academy extends its thanks to them and to the many people who compiled the documents and other information the study team requested.

Organization of the Report

Chapter 2 presents a brief history of the BIA and the relationship of the federal government and the Indian community, as well as a description of BIA's service population. The Bureau's organizational structure and programs, and the services Indians receive from other federal agencies, are the subjects of Chapter 3. A detailed examination of problems with the Bureau's management and organization is found in Chapter 4 and of its administration systems in Chapter 5; each chapter contains findings and recommendations. Chapter 6 offers final thoughts on implementation of the Academy panel's recommendations and on BIA's future.

Several appendices supplement the main report. Appendix A contains the study team's observations on the Bureau's programs and service delivery. A bibliography of documents reviewed is in Appendix B, and interviewees and sites visited are listed in Appendix C. Appendix D has biographies of Academy panel and study team members.

Chapter 2
Background

Evolution of Indian Policy and the Bureau of Indian Affairs

The concept of special federal power over Indian affairs has underlain Indian law and policy since the establishment of the U.S. Constitution. Article I, Section 8, Clause 3 empowers Congress to regulate commerce "with foreign Nations, and among the several States, and with the Indian Tribes." This power was initially exercised through treaties between the U.S. government and the tribes. Although treaties differed a great deal, they typically contained provisions that guaranteed peace, established the boundaries for a tribe's territory or reservation, guaranteed the tribe certain hunting and fishing rights, recognized the federal government's authority over and obligation to protect the tribe, regulated trade and travel across tribal lands by nonmembers, and established punishments for crimes. Some treaties entitled the tribes to certain federal services. Congress continued to recognize the notion of a federal trust responsibility in the federal laws it passed in the late eighteenth and early nineteenth centuries; once again, the intent was to protect Indian land transactions and regulate trade with the tribes. The Trade and Intercourse Act of 1790 prohibited the sale of Indian land without federal consent. Thus, the federal government, not the states, was to control the opening of Indian lands for non-Indian settlement. This law set the precedent for the current trust responsibility of the federal government over tribal land.[2]

There were a number of legal challenges to these federal laws. Two decisions by Chief Justice John Marshall—in *Cherokee Nation v. Georgia*

[2] Much of the history provided here draws from *The Bureau of Indian Affairs*, Theodore W. Taylor, Boulder, Col.: Westview Press, 1984; speeches of the Assistant Secretary for Indian Affairs Kevin Gover; and public documents of the Office of American Indian Trust of the U.S. Department of the Interior.

(1831) and in *Worcester v. Georgia* (1832)—established that the treaties and other federal laws protected the tribes' status as distinct political communities possessing self-governing authority within their boundaries. Despite this government status, however, the treaties expressly placed the tribes "under the protection of the United States." Chief Justice Marshall described the trust relationship between the tribes and the United States as resembling "that of a ward to his guardian."

In 1830, Congress, finding that regulation of trade was ineffective in "protecting" Indians from the incursions of the white man, passed the Indian Removal Act and thereby initiated a new policy of removal. Indians were moved, sometimes forcibly, from their traditional lands and settled at other locations of the government's choosing. Parallel with this policy of removal, Congress sought, through education and other resources, to acculturate the Indians so that they could compete successfully in the dominant white world.

In 1824, the War Department, which of all the federal agencies had the most extensive interaction with Indians, set up a Bureau of Indian Affairs and assigned agents to oversee its interests on the reservations. In 1832, Congress recognized the Bureau and established a Commissioner of Indian Affairs at its head. The Bureau grew rapidly, developing a specialized staff corresponding to congressional expansion of the federal government's responsibilities to the Indians. In 1849, the BIA was transferred to the newly formed U.S. Department of the Interior.

Typically the government established Indian reservations at locations where the land was poor and other natural resources limited. Such reservations did not permit Indians to eke out even a subsistence existence, let alone achieve self-sufficiency. The continued incursions of settlers onto the reservations, competing for what resources there were, exacerbated the situation. The government came to recognize that for many Indians to survive, it would have to provide food rations and other services. That responsibility fell to the BIA, but it provided little assistance, too often selling the supplies and cheating the Indians in commercial transactions.

By 1871, it was clear that the policy of removal and acculturation had failed. War, famine, and pestilence were decimating the Indian populations,

and most Indians were unwilling to abandon their traditional cultures. Recognizing that the tribes had not and could not become independent, Congress abandoned the approach of treaty-making and turned to legislation. With the passage of the General Allotment Act of 1887, Congress replaced the policy of removal with one of assimilation. The new policy was designed to address the twin problems of white citizens' desire for more land and Indians' hostility to further encroachment. Congress also hoped this new policy would end the extreme poverty of many Indians. The theory was that providing—allotting—individual Indians their own land would break up tribal relationships and lead to faster "Americanization" of Indians. However, the government would, by retaining a trust responsibility over the allotted plots of land for 25 years, protect the Indians from unscrupulous white men while they learned how to operate in a white world. During that 25-year period the owner could not sell land without permission of the government. At the end of the 25-year period the owner would receive clear title. Congress extended the original period indefinitely and it remains the root cause of the highly fractionalized land holdings of individual Indians. The allotment process required that the BIA develop expertise in real estate transactions. It had to develop membership roles for the tribes affected by the allotment policy, classify, value and subdivide the land; distribute it to the Indians on the membership rolls; and sell—typically to non-Indians—any surplus land and distribute the proceeds to members.

The legislation of this period added many government functions to the BIA. One of the most important was the operation of a comprehensive school system for Indians. Many Indian children were taken from their families and sent to boarding schools away from the reservations to learn the culture and ways of life of the whites.

BIA staff became increasingly specialized in other areas such as irrigation, forestry, law enforcement, health, construction, and education. BIA staff also took over many of the responsibilities of the Indian governments disbanded under the allotment process.

Between 1888 and 1911, the number of BIA employees rose from 1,725 to 6,000. In light of the growth of BIA and the need to define its role better, in 1921 Congress passed the Snyder Act. It called for BIA:

> ...to provide for the general support and civilization of the Indians and to be responsible for education, welfare, health, and industrial assistance; improvement in irrigation; administration of land; employment of superintendents, matrons, farmers, physicians, Indian police, Indian judges, and other employees; and the necessary buildings, grounds and incidental expenses connected with the administration of Indian affairs.[3]

Although the Snyder Act does not spell out specific programs or services for BIA to deliver, it is the basis for most of what the Bureau does.

Unaccustomed to individual ownership and the new economic order, few Indians worked the land they had been allotted, instead leasing or selling it to non-Indians. After 50 years of the allotment policy, the acreage held by Indians dropped from 136 million to less than 50 million. The Crow reservation in Montana, for example, originally had two and one half million acres, but today only 50 percent of that remains in trust. Many Indians faced poverty, yet few chose to be assimilated. By the 1920s, in keeping with a general shift in society toward a philosophy of social responsibility for the underprivileged and conservation of natural resources, the plight of the Indians was the subject of a number of studies. Of these, the one that carried the most weight was the Meriam report, released in 1928, which stated that the government's policy of assimilation was wrong and paternalistic.[4] Instead, the report said, the government needed to promote economic development, encourage Indians to use their land, support community life, and improve Indian health. The report added that the government should take advantage of the positive aspects of Indian culture and should also improve the quality and professionalism of BIA's services in specialty areas such as agriculture and forestry.

In response to the Meriam report and within the framework of the New Deal, Congress in 1934 passed the Indian Reorganization Act, which established a new policy based on a very different philosophy than assimi-

[3] *Ibid.*, 19-20.

[4] Institute for Government Research. *The Problem of Indian Administration* (L. Meriam ed.) Baltimore: The Johns Hopkins Press, 1928.

lation. The act prohibited further allotment of tribal land, provided for the purchase of more land for Indians, and extended the trust responsibility indefinitely. The act also called for the establishment of tribal organizations and governments to which BIA agents were to defer and which they were to help strengthen. It called for the conservation of forestry and grazing resources, provided funds for economic development, established the policy of Indian preference in hiring by BIA and in the award of educational grants, and allowed Indian communities to approve their own constitutions and bylaws and engage in business.

To meet the provisions of the legislation and improve communications within the Bureau, the BIA established its current three-level organizational structure. It set up Area Offices around the country that reported directly to headquarters, and assigned the local Agencies to the Area Offices. BIA remained far more directly involved in tribal affairs than the legislation envisioned, however, although the Indian Reorganization Act did prompt the beginnings of tribal self-government.

This new policy in turn gave way after World War II to the growing attitude that the government should end its responsibility to Indians. Between 1953 and 1964, Congress moved ahead with yet another policy, termination. The government was to end federal jurisdiction over tribes that were ready to be separated and put them under state jurisdiction. To the BIA fell the role of working with the tribes to end the federal government's special relationship and consequently to assimilate Indians into the social and economic mainstream. In the end it was the poorer, least prepared tribes, and not the most self-sufficient, that were to their great detriment terminated from federal jurisdiction. Although many of these tribes have since been returned to federal jurisdiction. some continue to struggle to regain lost land and funding.

Eventually the government reversed the clearly deleterious policy of termination. In a special message to the Congress in 1970, President Richard M. Nixon explicitly rejected the policy. He stated that the United States had a special relationship based on many treaties and legal obligations from which the government could not unilaterally withdraw whenever it chose. Previous efforts to remove the trust relationship had left the Indians far worse off than they had been previously. The constant threat

of removal of the special relationship created for Indians an untenable environment of fear. The President called on Congress to make a clear statement that the trust obligation could not be ended without the consent of the tribes.

In response to the special message and other forces, Congress moved forward with a policy of self-determination that continues to this day. It calls for Indian involvement in their own affairs, development of Indian leaders, transfer of federal government responsibilities to Indian governments, and continued federal responsibility for funding, services, and technical assistance. The new policy states that cultural minorities can live outside the mainstream and receive government support, and that tribes should be strengthened through economic, social, and governmental development on the reservations. The government now places greater emphasis on education, housing assistance, job training, and local business.

The number of federal programs and the amount of funding flowing to the reservations and other federally recognized Indian entities from various agencies, of which the BIA was but one, rose throughout the 1970s. Congress, as noted, reestablished federal recognition of a number of tribes that had been terminated in the 1950s.

In 1975, Congress formally established the new policy with the Indian Self-Determination and Education Assistance Act (Public Law 93-638, as amended). The act is the statutory authority behind the federal government's policy of the last 20 years to promote and support the self-determination and self-governance of federally recognized Indian tribes. It stated that Indian tribes should determine their relative program priorities and be involved in decisions affecting their well-being to the maximum extent possible. The act provided a mechanism whereby tribes could take over responsibility for BIA and Indian Health Service functions if they chose—it allowed tribal governments to contract with the BIA to deliver services or to receive grants to support service delivery. Tribes choosing to contract with BIA to take over the delivery of services were to receive the same level of funding that BIA itself would have required to deliver the same services. In this way the service delivery would be more responsive to Indian needs and desires. In the case of contracted services, BIA's role was to oversee tribal compliance with the terms of the contracts or

grants, based on an annual audit that each contractor or grantee was to provide. To further the transition to self-governance, Congress committed the government to support and assist the tribes in developing strong, stable governments. At the same time, the act specified that the trust responsibility of the U.S. government would remain undiminished.

In 1988 the Congress, not satisfied with the pace of the transition to self-determination, enacted amendments to PL 93-638. One amendment, which reinforced the shift toward self-determination, was Title III, Tribal Self-Governance Demonstration Project. Its purpose of which was to provide tribal governments with more flexibility in decisionmaking and in the administration of the programs for which they had contracted. That same year saw the passage of the Indian Education Amendments Act of April 28, as amended (PL 100-297), providing grants for Indian education, that both afforded greater control at the local level and that empowered Indian school boards to hire local teachers and staff, assuring maximum Indian participation in the education program formerly operated by the Bureau. In 1994, a further amendment to PL 93-638, Title IV, Tribal Self-Governance Program, allowed tribes, subject to certain conditions, to take over from BIA the delivery of all services, through a vehicle called a self-governance compact.

The new policy and legislation meant a significant shift in BIA's responsibilities from directly providing services to awarding and administrating contracts and grants for delivery of services by tribal governments. In addition to carrying out its programmatic and trust responsibilities, BIA came to see itself increasingly as an advocate for Indians. During the 1970s, BIA experienced a number of organizational changes that culminated in the structure it has today. There was a reduction in headquarters staff from 1,318 to 715, and there was a greater emphasis placed on the implementation of BIA functions at the area office and agency levels. Indian preference was extended to all BIA personnel actions, with the exception of the Assistant Secretary's Office.

Today, self determination continues to be the federal policy toward Indians. To some degree it has been successful—the tribes now run approximately 55 percent of BIA programs under PL 93-638 contracts and compacts and PL 100-297 school grants. Some tribal governments have become strong, stable entities, able to provide the leadership and direction needed

to move their citizens to self-sufficiency, and have effectively taken over BIA's function. Some have successfully entered the economic mainstream while holding onto their tribal identities. Other tribes, however, have performed poorly, and BIA has had to terminate their contracts or put them at high risk for termination. Still other tribes have chosen not to take on responsibility for the delivery of all or any BIA services, leaving BIA in the business of providing direct services. In still other instances, the very small size of a tribe precludes it from contracting/compacting programs.

BIA itself fared poorly in the 1990s. The management and administrative problems are well documented. During FY 1996 federal downsizing, Congress, angry at what it saw as widespread incompetence, cut BIA's appropriation far more than it did for most agencies. The resulting loss of staff further constrained BIA's operations by eroding its administrative capability.

Self-determination also resulted in a loss of BIA administrative and management staff. In addition, self-determination raised questions and created a number of issues for BIA. For example, what should BIA's role be, given the extent of contracting and compacting? How does it balance its trust responsibility with self-governance? What sort of BIA staff does self-determination call for? At the most fundamental level, what would successful implementation of the self-determination policy look like, and what would it mean to BIA's role and operations?

The tribes' response to self-determination highlights another important fact too often ignored. As described in the next section, BIA's service population is extremely diverse, and that diversity has important implications for BIA's operations. Too often Indians are considered a homogeneous group, and the approach to the provision of services does not address the differences across tribes. There is also a tendency to focus on the wealth of a few tribes and conclude that as a whole, Indians do not need the same level of support and services that they did in the past.

Diversity in Indian Country: The Bureau's Service Population

The American Indian and Alaska Native population now exceeds 2 million and represents one of the fastest growing minority populations in the United States. Of that population, the BIA serves 1.2 million Indians who are members of the 554 federally recognized Indian tribes in 31 states. At a yearly growth rate of 2.7 percent, it is estimated that the Native American population will double by the year 2050. Indians are younger than the general U.S. population, with a median age of 22.6 years compared to 30.[5]

American Indians lag behind the general U.S. population on almost all socioeconomic, health, and educational measures. Due to contributing factors such as poverty, geographic isolation, and substance abuse, the life expectancy of Indians living on reservations is 10 years less than the national average. Alcohol-related deaths are four times the national average. Indians suffer higher rates of diabetes, suicide, and child mortality than the rest of the population. Fewer Indians are high school graduates, and the percent completing four or more years of college (9 percent) is less than half the national average (20 percent). Thirty-one percent of Indians live below the national poverty level compared to 13 percent of the general population. Forty-nine percent of Indians living on reservations are unemployed compared to the national unemployment rate of 4.3 percent.

Some tribes have a legal relationship with the U.S. government going back to its inception. Other "new tribes" that may have existed as tribal groups for hundreds of years have only recently sought federal recognition. Those individual Indian nations that conducted treaty negotiations with the United States from 1777 to 1871 are called treaty tribes. Treaties were considered "contracts among nations" and contain unique sets of rights for the benefit of each of the treaty-making tribes. Treaty obligations represent "the supreme law of the land," and are protected as an integral part of the federal Indian trust relationship.

[5] Data are drawn from BIA, "Annual Report for Fiscal Year 1997," Washington D.C.; BIA, "TPA Report" (draft), Washington, D.C., May 20 1999; BIA "Indian Labor Force Report," Washington, D.C., 1997; and other BIA publications; speeches of the Assistant Secretary for Indian Affairs Kevin Gover; and public documents of the Office of American Indian Trust of the U.S. Department of the Interior.

Other Indian groups were recognized by the federal government, a process that established a government-to-government relationship. Such relationships were established when a reservation was created for the group or when the United States had established a continuing political relationship with the group. Beginning in 1978, DOI issued regulations for "Establishing that an American Indian Group Exists as an Indian Tribe," with criteria reflecting judicial definitions of the term "Indian tribe."

Each tribe determines its own criteria for tribal membership. For instance, Uintah and Ouray Utes in Utah require over 50 percent Indian blood, with at least 50 percent of that being Ute blood. Most "reservation" tribes require at least one-quarter Indian blood to be eligible for membership. Alternatively, the Cherokee in Oklahoma require only that persons be lineal descendants of tribal members; these persons may have just a small fraction of Indian blood. Tribal enrollment ranges from the six-member Native Village of Council in Kawerak, Alaska to the 234,786 enrolled members of the Navajo Nation.

Native Americans and Alaska Natives are proud of their cultural heritage and protective of their values, foremost of which is the universal value held by tribes that human beings are subject to nature, and not the reverse. Tribes continue to practice traditional ceremonies, religious rites, and customs. Many of the tribes have established cultural museums on their reservations. Approximately 250 tribal languages are spoken; many of which are also written. On the isolated Crow reservation in Montana, some members speak Crow 90 percent of the time. In many Alaska Native villages, no one speaks English. In an effort to maintain the Indian heritage, many tribally run schools include tribal culture and language in the school curricula. In Mississippi, the Choctaw tribal schools teach the Choctaw language for one hour a day.

Geographically diverse, almost half of the American Indian and Alaska Native populations reside on 300 Indian reservations, on Indian lands, and in Alaska villages that together comprise Indian Country. The 12 states with the highest Indian populations are Oklahoma, Arizona, New Mexico, Alaska, South Dakota, Montana, Minnesota, Wisconsin, North Dakota, Michigan, California, and Washington. For "reservation tribes," the service population is the number of Indians living on or near

the reservation who are eligible for tribal or BIA services. In Oklahoma, where there are no reservations, service areas are based on the tribe's last reservation. Reservations range in size from *rancherias* of a few acres in California to the 17.5 million acre Navajo reservation that extends over parts of New Mexico, Arizona, and Utah and is comparable in size to the state of West Virginia. In all, BIA administers over 43 million acres of tribally owned land, over 11 million acres of individually owned land held in trust, and 443,000 acres of federally owned land. Tribal trust land is held in trust forever. Individual Indian allotments can be sold by their owners, with the land going out of the trust. Reservations in the Aberdeen, Billings, and Minneapolis areas have the most acreage in allotments.

Some tribes have land that is rich in natural resources. For example, the Yakama Tribe on the Yakama Reservation in Washington enjoys abundant timber resources, rivers and streams, open rangeland, and more than 100,000 acres of irrigated cropland. The Southern Ute reservation in southern Colorado is the location of a large oil and gas production. In contrast, the Oglala and Rosebud Sioux tribes on the Pine Ridge and Rosebud reservations in South Dakota exist on land with scarce natural resources and little agricultural potential. Some tribes have experienced economic upturns in recent years. Those located near large urban centers have realized employment opportunities. Since the Indian Gaming Regulatory Act of 1988, casinos have been a boon for some tribes, depending on their proximity to population centers and state policy on gaming. In Connecticut, the approximately 450 members of the Mashantucket Pequot Tribe receive monthly distributions of approximately $40,000 from gaming. The 275 members of the Shakopee Mdewakanton Sioux Tribe who operate the Mystic Lake Casino outside Minneapolis each receive a yearly payout of about $840,000. The Oneida Tribe, which operates a resort outside Syracuse, New York, has turned down BIA funding and has channeled gaming profits into a center for the elderly, tutors, and schools. According to FY 1996 data collected from 166 gaming tribes, 54 tribes generated gaming revenues in excess of $10,000 per member.

The wealth of these tribes has led some to see Indians as a privileged and wealthy group. However, the story on the remote Western reservations, where the land is too rugged to eke out a living, is different. In the Billings Area, tribes have tried many different kinds of economic development, including a pencil factory. At the Fort Peck Indian Reservation the

tribe fabricated military supplies for a short while. Some tribes like the Blackfeet (located on the Canadian border) are very isolated and do not attract business; the Blackfeet Tribe has the highest unemployment rate in the Billings Area, at 70 percent. The Great Plains tribes in North and South Dakota face similar challenges.

Under Indian treaties and law, tribes have the inherent right to operate under their own forms of government. Many tribes have adopted constitutions while others operate under articles of association or other bodies of law. Some tribes have traditional "town hall" forms of government with a general council consisting of any adult tribal member. The chief executive of a tribe is referred to as the tribal chairperson, president, governor, or principal chief. She or he presides over a tribal council that performs the legislative function of the tribe, although some tribes require a referendum of the membership to enact laws.

The extent to which tribes have opted for PL 93-638 contracts and compacts and PL 100-297 school grants varies a great deal. In the Eastern and Minneapolis Areas, tribes contract or compact for 93 percent and 85 percent of BIA's programs, respectively. In comparison, the traditional treaty tribes in Montana and the Dakotas have not taken over many of the "trust"-related land programs. The Billings Area has the lowest level of PL 93-638 contracting—about 30 percent.

Indian tribes have different relationships with the states in which they live. As the western states were admitted to the Union, some saw the provision of services to Indians as solely a federal responsibility, while others assumed responsibility for providing education, welfare assistance, and law enforcement. States differ in their willingness to provide education. Minnesota and Michigan are committed to all citizens, Indians included, and count all children for state foundation funds. South Dakota, on the other hand, does not count BIA students. Under Public Law 280, some states—Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin—have jurisdiction for law enforcement on reservations. Tribes must negotiate gaming with the states. While most states have allowed casinos on trust lands, others have not. For example, Montana has not allowed the tribes to have gaming at a level higher than that of any commercial establishment, such as a bar or restaurant in the state, and Wyoming does not permit legal gambling.

Chapter 3
An Overview of the Bureau of Indian Affairs

As stated in its 1998 GPRA report, the mission of the BIA is to enhance the quality of life, promote economic opportunity, and carry out the federal government's responsibility to protect and improve the trust assets of Indian tribes and Alaska Natives. In carrying out this mission, the BIA provides most of the services for which local, city, county, state, and tribal governments are responsible: elementary, secondary, and post-secondary education; social services; law enforcement; tribal justice systems; adult and juvenile detention facilities; business loans; land and heirship records; tribal government support; forestry, agriculture, and rangeland development; water resources; fish, wildlife, and parks; roads; housing; and irrigation and power systems.[6]

The following sections describe how BIA is organized to carry out its mission and the roles of other federal organizations in providing services to Indians.

Organizational Structure

BIA comes under the supervision of the Assistant Secretary-Indian Affairs of DOI. It has two service components that report directly to the Assistant Secretary-Indian Affairs. The OIP, which is headed by a deputy commissioner, is responsible for all areas of operations except education, although even there it has a support role, as discussed later. The OIEP, headed by a director, oversees education. (See *Figure 1*—BIA's current organizational chart, at the end of this chapter.)

[6] Bureau of Indian Affairs, "TPA Report," draft, Washington, D.C., May 20, 1999.

Office of the Assistant Secretary

Originally a commissioner of Indian affairs headed the Bureau, but in 1977, a DOI secretarial order created the Office of the Assistant Secretary-Indian Affairs. Because it is located outside the Bureau, this position has greater political visibility and better access to the Secretary of the Interior. There has not been a commissioner of Indian affairs since that time. According to the departmental manual, the Assistant Secretary–Indian Affairs "has responsibility for planning, organizing, coordinating, controlling, and directing all activities, programs, and functions assigned to the Bureau of Indian Affairs." Staff positions in the assistant secretary's office include the deputy assistant secretary, chief of staff, director of communications, special assistant for education, special assistant for environmental issues, and director of alcohol and substance abuse prevention.

In the early nineties, the assistant secretary established three additional units: the Office of Self-Governance (OSG), the Office of American Indian Trust (OAIT), and the Office of [Indian] Audit and Evaluation (IAE). These three offices are discussed in more detail below.

Office of Self-Governance

OSG was established pursuant to Title III of PL 93-638 to administer the Tribal Self-Governance Demonstration Project and, subsequently, the Tribal Self-Governance Program under Title IV of PL 93-638. OSG establishes policy for, implements, and coordinates the Self-Governance Program and negotiates self-governance compacts, which are annual funding agreements.

When OSG opened in 1991, a staff of five administered seven compacts worth $27 million. After Title IV lifted the statutory limit on the number of tribes that could enter the program, the number of compacts rose from 29 in FY 1995 to 53 in FY 1996. In FY 1999, an OSG staff of 11 oversees 64 compacts, with estimated obligations of $210 million, covering 209 tribes.[7] Although Congress placed a moratorium on any new or expanded PL 93-638 contracts, compacts, or grants for FY 1999 because of questions concerning the funding for contract support, 10 tribes have applied to enter the self-governance program in FY 2000.

[7] The greater number of tribes than compacts is due to consortia of Alaska Native villages and entities.

Office of American Indian Trust

OAIT was created to ensure that the Secretary of the Interior's obligations under the federal Indian trust responsibility are performed in accordance with the standards required by U.S. laws and policies. Among its responsibilities, the office provides policy review and technical services to other federal agencies, and serves as a liaison to help ensure that the federal government is fulfilling its Indian trust responsibility. Furthermore, it prepares and monitors departmental trust protection policies and guidelines, and reviews significant departmental decisions affecting American Indian trust resources. OAIT conducts annual reviews of tribal performance of trust functions assumed under self-governance compacts.

Office of [Indian] Audit and Evaluation

IAE was established in the assistant secretary's office so that its activities could encompass both the education and non-education programs of BIA. IAE's primary objective is to enhance the management practices of BIA program managers and tribal governments, and to resolve audit findings of the U.S. General Accounting Office (GAO) and the DOI inspector general (IG) for fiscal integrity, management controls, and program performance. IAE evaluates programs and administrative procedures, and assists the assistant secretary both in resolving programmatic and management problems and in developing and monitoring goals and objectives, performance measures, quality assurance programs (total quality management or TQM), and systems for tracking actions. The Office also publishes the *Indian Affairs Manual.*

Bureau of Indian Affairs

Office of Indian Programs

Within the Bureau, the offices reporting to the deputy commissioner are referred to as "the balance of the Bureau." For purposes of this study the offices reporting to the deputy commissioner will be referred to as the OIP.

OIP has responsibility for all non-education portions of the BIA and for some administrative and management support for the Office of Indian Education Programs. OIP administers federal Indian policy; fulfills federal

trust responsibilities to American Indians, tribal governments, and Alaska Natives; and promotes tribal self-determination and self-governance. To accomplish its mission, OIP provides tribes with the resources needed for contracting or compacting for BIA programs; fosters strong and stable tribal governments; improves the quality of life in tribal communities by providing financial assistance to individual Indians residing on or near reservations who do not qualify for other financial assistance provided by the state; improves substandard housing for eligible needy Indians; provides investigative and police services and technical expertise in law enforcement to Indian tribes; provides tribes with resources to aid in developing a self-sustaining economic base; assists in developing conservation and management plans to protect and preserve natural resources on trust lands and shared off-reservation resources; and fulfills its trust responsibilities to protect and preserve trust lands.[8]

OIP Central Office

OIP has headquarters offices in Washington, D.C. (Central Office East) and Albuquerque, New Mexico (Central Office West).

OIP's Office of Management and Administration provides centralized BIA-wide administrative and management support for such administrative functions as accounting, IRM, and the budget. It is also charged with developing policies, procedures, standards, and systems for managing these and other BIA-wide administrative functions, such as property, safety, and commercial contracting.

Two organizations direct and oversee management of the Tribal Services and Trust Responsibilities Programs. The Office of Tribal Services includes programs designed to strengthen tribal government, improve the quality of life in tribal communities, and support Indian self-determination. It is charged with processing requests for tribal recognition by the federal government. The Office of Trust Responsibilities includes programs designed to protect trust lands, natural resources, and treaty and statutory rights of Indian tribes and individual Indians, and also includes programs to provide transportation, irrigation and power projects, and dam safety.

[8] DOI Departmental Manual, Part 130, Chapter 1, Washington, D.C., 1999.

The Facilities Management and Construction Office, located in Albuquerque, New Mexico, supports construction of new facilities, modification and rehabilitation of existing ones, and operation and maintenance of BIA facilities, including employee housing, school buildings, dormitories, and roads.

The Office of Indian Gaming Management is responsible for developing policies and procedures for review and approval of tribal/state compacts permitting Indian gaming, per capita distributions of gaming revenues, and requests to add land to the federal trust for the purpose of conducting gaming. The office coordinates its work with the National Indian Gaming Commission and with affected tribal, state, and local governments.

The Office of Economic Development works with other federal agencies and the private sector to help tribes develop stronger reservation economies.

Field Offices

BIA's delivery of program services to tribes and individual Indians is highly decentralized, with the bulk of these activities carried out through an extensive field organization that reports to the deputy commissioner. OIP delivers most of its programs and services through 12 area offices, 83 agency offices, three sub-agencies, six field stations and two irrigation project offices.

The 12 area offices—Aberdeen, Albuquerque, Anadarko, Billings, Eastern, Juneau, Minneapolis, Muskogee, Navajo, Phoenix, Portland, and Sacramento—manage the delivery of BIA services to the tribes in their respective areas. A director heads each area office, and a support staff provides programmatic and administrative services. The area offices also provide technical assistance to the agencies. The sizes of the area offices vary.

The agency offices, which are located in the heart of Indian Country, usually on the reservations they are serving, deliver services to the tribes directly and/or through PL 93-638 contracts. Whether through direct or contracted delivery, they are responsible for assuring that individual Indians receive appropriate services. The sizes of the agencies vary depending on the degree to which they provide services directly or administer contracted programs.

Office of Law Enforcement Services

The OLES, reporting to the deputy commissioner, provides law enforcement services through a central office in Albuquerque, five district offices in Aberdeen, Muskogee, Phoenix, Albuquerque, and Billings, and a Washington liaison office serving the Eastern Area. Approximately 175 chiefs of police or equivalents serve at the agency/tribal level and oversee some 2,000 sworn officers. Of the approximately 200 law enforcement programs in Indian country, 27 percent are operated by BIA, 66 percent by tribes under PL 93-638 contracts and compacts, and seven percent under original tribal agreements.

Office of Indian Education Programs

The OIEP oversees BIA's education programs. OIEP operates through a central office that establishes and manages Indian education policies and programs, and provides central administrative services and technical support to BIA schools. Twenty-four education line officers oversee policy implementation and provide technical assistance to the schools and school boards in their areas of operation (they are equivalent to school superintendents in other school systems). They also act as contract or grant officers for the BIA schools operated by tribes. Two college presidents manage the two post-secondary institutions operated by OIEP. The last level consists of the principals and teachers at individual schools. All BIA schools have tribal school boards, which usually are the grantee where a tribe operates the school through a grant.

During the 1997–1998 school year, OIEP supported 115 day schools, 56 boarding schools, 14 dormitories housing Indian children attending public schools and two post-secondary schools. OIEP actually operated 77 schools and dormitories, while tribes operated the other 108 through education grants.

OIEP provides some of its own administrative services, but also obtains administrative services from OIP, including contracting, procurement and facilities operations and maintenance in all but two areas.

The Workforce

The BIA employs approximately 10,200 persons, with about 3,200 employees in OIP, 5,000 in OIEP and 2,000 in OLES.

In its visits to BIA organizational units all over the United States, the Academy study team found well qualified, dedicated, hard-working federal employees that compare well with any agency in the federal government. Most BIA employees—just under 90 percent—are Indians, the result of the policy of using Indian preference in hiring and promotions (see discussion in Chapter 5.) Indian Preference only applies to the BIA and not to the assistant secretary's office.

While the cultural advantages of Indian preference in employee recruitment are evident, it does limit the candidate pool for some positions. The only significant numbers of non-Indian employees are in occupations such as teaching where BIA position qualification requirements have to conform to those of external accrediting bodies.

Contracts, Compacts, and Grants

As described in Chapter 2, the passage of Indian self-determination legislation began the BIA's transition from a role of direct service provider to one of contract administrator for programs contracted by tribes. Fifty-five percent of BIA programs are now run by tribes under PL 93-638 contracts and compacts and PL 100-297 school grants. As noted, the degree of contracting and compacting varies by region. Funding for contracts and compacts is obtained from the agency/area operating budget and funding for education grants is obtained from the ISEP. Both resulted in a reduction in BIA civil servants.

The three main vehicles for transferring funds to tribes for programs are PL 93-638 contracts, PL 93-638 compacts and PL 100-297 school grants. Title I of PL 93-638 covers "self-determination contracts" under which BIA and the tribes write individual agreements to execute BIA programs. These agreements include a scope of work, funding amount, and are for a specified length of time. The government oversight of these contracts

as stipulated in PL 93-638, is limited to a yearly performance review and a yearly financial audit. The law states that self-determination contracts shall include administrative functions supporting the programs.

Under Title IV of PL 93-638, tribes with demonstrated capability can negotiate self-governance compacts that combine all programs into an annual funding agreement akin to a block grant. The compacts are negotiated and administered by the Office of Self-Governance in the assistant secretary's office. Unlike PL 93-638 contracts that have a template for most programs, these annual funding agreements contain no details about the scope of work. There are no controls on funding except that tribes are still required to comply with the Single Audit Act. If it is revealed that a tribe misused funds, the tribe is put on a strict funding disbursement schedule.

Self-governance tribes have been characterized as falling into two basic categories: (1) Alaska Native villages and (2) tribes that historically have not had a close relationship with the BIA. The breakdown by Areas is shown in *Table 1* on the following page.

PL 100-297 school grants are specific to Indian education and specify controls at the local level. They empower Indian school boards, and provide for local hiring of teachers and staff and direct funding of schools. They allow for greater administrative cost recovery than PL 93-638 contracts.

Other Federal Agencies Serving Indians

A number of other federal agencies also provide services to Indians. In fact, of a total appropriation of about $7.5 billion for Indian-related federal programs in FY 1998, (*Table 2: Summary of Indian-Related Federal Appropriations FY 1998–1999*, page 31) BIA accounted for only 23 percent, or $1.7 billion.[9] The principal federal agencies other than BIA that have programs for Indians are described briefly below. While most federal agencies allocate funds directly to tribes or sometimes states, others such as the Department of Transportation, the Department of Education, and the

[9] Tribal Workgroup on Tribal Needs Assessments, "Empowerment of Tribal Governments," Washington, D.C., May 1999, and Bureau of Indian Affairs, "TPA Report," draft, Washington, D.C., May 20, 1999.

Area	Compacts
Aberdeen	0
Albuquerque	1
Anadarko	4
Billings	1
Eastern	0
Juneau	14*
Minneapolis	9
Muskogee	7
Navajo	0
Phoenix	4
Portland	18
Sacramento	6
TOTAL	64

*14 compacts represent 565 tribes

Table 1: Self-Governance Compacts Per Area

Department of Health and Human Services (HHS) use BIA as a passthrough for all or part of their Indian related program spending.

Department of the Interior

The DOI and its bureaus, acting in partnership, provide a significant array of services to American Indians. The Office of Special Trustee for American Indians, created in 1994, provides management and oversight of Indian trust asset reform efforts by establishing Department-wide policies and procedures and coordinating trust functions with the Bureau of Land Management, Minerals Management Service, and the BIA. The Bureau of Land Management carries out its responsibilities for tribes through cadastral survey and minerals management programs, including inspection and receipt collection of oil and gas and mineral resources; surveying tribal property boundaries; preparedness for wildland fire on tribal lands; and providing additional employment and training to tribal members. Also related to mineral resources on Indian lands, the Minerals Management Service performs royalty management functions, such as collecting and dispensing revenues, and the Office of Surface Mining provides tribal grants for reclamation of abandoned mines and restoration of water quality affected by acid mine drainage.

In addition to trust related activities, other bureaus provide a wide variety of technical assistance and comprehensive support for Indian tribes. For example, the Bureau of Reclamation provides financial and technical assistance to tribes in the planning, design, construction, and operation of water resource needs on reservations, training in water and natural resources, and negotiation and implementation of Indian water rights settlements. In the resource related arena, the U.S. Fish and Wildlife Service partners with tribes in restoring and improving fishery resources, training conservation law enforcement officers from Native American tribes, and providing technical assistance to Indian tribes for coordination on activities affecting tribal trust resources and tribal resource conservation and management plans. The U.S. Geological Survey conducts research on water and mineral resources of environmental, economic, or subsistence importance to Indians, and also provides technical assistance and cooperative training opportunities for students. Finally, the National Park Service provides technical assistance and oversight to tribes on preservation of their endangered heritage and sacred places, recruitment and hiring of Indian students, and consultation on matters related to the tribes and ancestral lands.

Department of Health and Human Services

Indian Health Service

The Indian Health Service (IHS) was separated from BIA in 1954. It operates a comprehensive national health service delivery system for some 1.5 million American Indians and Alaska Natives, and it has an annual appropriation of approximately $2.2 billion. It delivers its services both directly and through contracts with tribal health programs. As of 1996, the IHS health system consisted of 37 hospitals, 64 health centers, 50 health stations, five school health centers, and 34 urban Indian health projects. Tribes administered 12 hospitals, 116 health centers, 56 health stations, three school health centers, and 167 Alaska village clinics under PL 93-638 self-determination contracts.

Administration for Native Americans

The Administration for Native Americans (ANA) supports the goal of social and economic self-sufficiency for American Indians and Alaska Natives through competitive grants, training, and technical assistance. ANA funding to tribal governments focuses on the development of governmental

infrastructure, including code and policy development, economic planning, and tribal capacity-building. Additionally, ANA administers funds that have been appropriated for the mitigation of environmental damage on or near Indian lands resulting from Department of Defense activities.

Head Start

Head Start includes an Indian set-aside program for early development of children through skill-building and through social, cognitive, and physical development. In 1997, 21,019 Native American children were enrolled.

Office of Aging

This office awards competitive grants to tribes to provide home-delivered meals, transportation, and health and home care support services to Indian elders.

Tribal Temporary Assistance for Needy Families

Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, block grants to the states under the Temporary Assistance for Needy Families (TANF) program replaced Aid to Families with Dependent Children. The new block grant system provides federally recognized tribes the opportunity to administer their own TANF programs in a manner similar to the states. HHS funnels the money for tribal TANF and Child Support Programs through BIA, which makes grants to tribes at the agency level. Self-governance tribes receive the money through their annual funding agreements. There were 25 approved tribal TANF plans at the end of FY 1998.

Department of Education

The department's Office of Indian Education supports local education agencies and Indian tribes in meeting the special educational and culturally relevant academic needs of American Indians and Alaska Natives, primarily through Impact Aid and formula grants. The Office of Indian Education distributes the Impact Aid funds to public schools that educate children living on nontaxable land. Impact Aid affects an estimated 118,000 Indian children who attend local school districts. Formula grants include Title 1 financial aid, which is distributed to schools where at least

50 percent of the children come from households below the poverty level, as well as other programs such as Safe and Drug Free Schools, Goals 2000, and Migrant Families. It is estimated that formula grants to local educational agencies in 1999 are supporting services to 405,376 Indian students in public schools and 43,089 students in BIA schools. Additional funded programs include Special Education grants to states for Indian children with disabilities, and Vocational and Adult Education.

Department of Housing and Urban Development

Under the Native American Housing Assistance and Self-Determination Act of 1996, tribes have greater flexibility in designing and delivering housing assistance to tribal members. HUD delivers its funds under three primary programs. Native American Housing Block Grants (NAHBG) allocate funds to tribes or Tribally Designated Housing Entities (TDHE), using a needs-based formula, upon their submission of a one- and five-year Indian Housing Plan. Indian Community Block Grants (ICBG) are used for assistance with public infrastructure and tribal facilities. They are awarded competitively, based on the level of need demonstrated in the tribal application. The Indian Home Loan Guarantee Fund provides competitive loan guarantees to families and TDHEs to purchase, construct, and rehabilitate single-family homes on trust lands. HUD programs serve approximately 42 percent of low-income households in tribal areas. The current inventory is 65,000 units, of which 68 percent are owned and 32 percent rented. HUD estimates that over 90,000 low-income households in Indian Country remain unserved.

Department of Labor

The Native American Employment and Training Program supports the integration of employment, training, and related services provided by tribal governments. Two programs under the Job Training Partnership Act address unemployment and underemployment in Indian communities. The first, a year-round program for youth and adults, serves approximately 25,000 Native Americans. The second, a summer youth program, reaches approximately 11,000 to 12,000 youths. Funding is distributed through need-based formulae.

Department of Agriculture

Supplemental food programs, including Supplemental Nutrition for Women, Infants, and Children (WIC) and Food Distribution, are available to tribal organizations on Indian reservations. These programs provide commodity foods to low-income Indians in lieu of food stamps. Funding for both programs is formula-based. Indians also participate in several school-based food programs. Native American Institutions Endowment Funds are earmarked for tribally controlled colleges.

Department of Justice

The Department of Justice funds several programs to aid Indians in the criminal justice arena. Community Oriented Policing Services provide for new officers and related uniforms, vehicles, computers, radios, weapons, and training. Correctional Grants are available both for prison construction and for prison modernization and repair. Tribal Courts Grants support training and technical assistance to strengthen tribal courts. Juvenile Justice Grants fund preventive after-school and tutoring programs, and serve to combat the growing number of juvenile crimes and gangs. The Federal Bureau of Investigation and the U.S. Attorney's Office receive funds to serve field locations in Indian communities.

Department of Transportation

The Department of Transportation began financing road construction through the U.S. Highway Trust Fund in 1993. The allocation for Indian road systems in FY 1998 was $225 million. The Federal Lands Highway Office of DOT uses the BIA Division of Transportation as a pass-through for funds that are distributed on a relative-needs basis to the area offices and agencies.

Department of Commerce

The Economic Development Administration of the Commerce Department provides planning grants for business development to 65 Indian tribes nationwide.

Environmental Protection Agency

EPA funding for environmental activities by tribes is authorized by environmental legislation, including the Clean Water Act, Clear Air Act, Safe Drinking Water Act, Toxic Substance Control Act, and the Indian Environmental General Assistance Act. Tribes receive set-aside portions of these funds through competitive grants.

Veterans Administration

Under the Native American Veteran Direct Loan Pilot Program, the Veterans Administration makes direct home loans to Native American veterans living on reservations.

Department of Energy

The Department of Energy funds a variety of programs serving Indian communities, including extraction of coal, oil, uranium, and gas resources from reservations. The Native American Renewable Energy Education Project assists tribes with developing energy efficiency measures and renewable energy resources.

Smithsonian Institution

Smithsonian funding goes toward the completion of construction and the operation and maintenance of the National Museum of the American Indian. It also supports Indian related programs and activities of other Smithsonian museums.

Summary by Department	FY 1998 Estimates	FY 1998 Estimates
Health and Human Services	2,749,696	2,828,822
Interior	1,973,883	2,112,725
Education	1,379,200	1,398,200
Housing and Urban Development	672,000	678,000
Justice	94,829	253,315
Transportation	204,675	204,805
Agriculture	161,352	170,937
Environmental Protection Agency	139,135	161,191
Labor	69,655	69,655
Smithsonian Institution	49,000	46,000
Other independent agencies	19,250	15,188
Army Corps of Engineers	15,723	9,617
Commerce	4,602	4,605
Veterans Affairs	515	515
Defense	8,000	0
TOTAL	**7,841,716**	**7,946,598**

Source: Tribal Workgroup on Tribal Needs Assessments, "Empowerment of Tribal Governments," Washington, D.C., May 1999.

Table 2: Summary of Indian-Related Federal Appropriations FY 1998-1999 (Dollars in 000s)

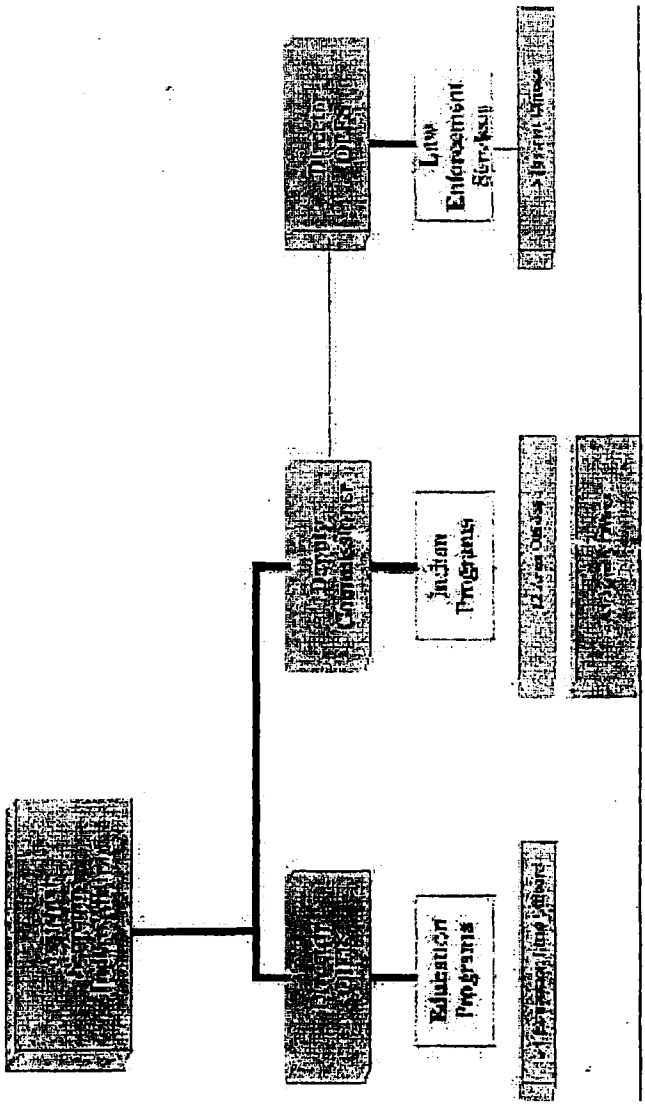


Figure 1: Current BIA Organization

Chapter 4
Managing for Success

Although the Assistant Secretary–Indian Affairs has responsibility for "planning, organizing, coordinating, controlling and directing all activities, programs and functions assigned to the BIA," that office is not organized to effectively carry out those duties. No office is charged with establishing and maintaining the fundamental systems needed to assure management discipline throughout the organization. Strategic planning and the related yearly performance planning, two processes of particular importance, do not play strong roles in BIA's management practices. Systems and processes to report progress against plans are lacking, so that performance measurement and review do not take place. Without plans and measurement of performance, it is difficult for any organization to be successful. For BIA, with its complex mission, it is impossible.

The Assistant Secretary–Indian Affairs does not have the internal staff capabilities necessary to support achievement of managerial and administrative excellence. His small staff focuses primarily on administering the self-governance program and resolving audit findings. It does not provide the specialized knowledge and skills the assistant secretary needs to plan, organize, control, and direct the work of the Bureau, to integrate BIA's activities, or to lead the Bureau in achieving its goals and objectives.

Cooperation among the three organizations—OIP, OIEP, and OLES—is limited. OIP, as noted, delivers administrative services to the other two through its field offices, where resources are scarce and service demands are great. OIEP complains that it gets poor service from OIP, while OIP is critical of the lack of cooperation it gets from OIEP in discharging its responsibilities for billing and prompt payments by providing certification of receipt of vendor delivery of services or material, as well as for other accounting issues. There is little interaction among the three organizations at the headquarters level or in the field around the execution of a large array of programs and the delivery of a wide range of services. The

members of each office identify with their own organizations rather than with the Bureau as a whole. OIEP and OLES are totally focused on carrying out their mission-oriented programs of education and law enforcement at the operational level. Meanwhile, the entire administrative burden falls completely on OIP.

The Office of Management and Administration at OIP headquarters develops policy, which the area offices and agencies implement. Both area offices and agencies criticize headquarters policy for being out of step with realities in the field. They view senior officials at headquarters as having minimal field experience and consequently little understanding of problems at the field level and their policy implications. OIEP employees say they receive little or no consideration in policy development.

BIA does not have a unified approach to administrative issues. Administrative leadership at headquarters has had a high rate of turnover, with the longest tenure being on the order of 24 months. Most leaders of administrative units lack sufficient experience in the administrative disciplines they oversee.

Organizational Requirements

The current management and administration of BIA are not fully adequate to meet all of its trust responsibilities to American Indians and Alaska Natives, to carry out its numerous statutory responsibilities, and to operate an effective and efficient agency. Specifically, there is no capacity to provide budget, human resources, policy, and other types of management assistance to the Assistant Secretary-Indian Affairs and the Bureau. Staff do not receive adequate training in management and administrative skills and techniques. BIA does not have adequate standards by which to determine its management and administrative requirements for resources and staffing.

The foremost requirement is to provide the Assistant Secretary-Indian Affairs with the staff support necessary to consistently manage the Bureau and oversee the programs it delivers. With three separate program elements, staff support at the assistant secretary level is needed to help develop the planning that will guide BIA in the future. Planning requires

balancing the needs of the three program elements against available resources, as well as assurance that BIA meets the federal government's administrative requirements. Planning also requires identifying the resource requirements necessary to accomplish BIA's goals. With planning and resource requirements in place, the three program elements can develop the necessary supporting plans. They should be developed in a collaborative manner under the guidance of an impartial staff.

The development of meaningful plans requires a strong tie to the budgeting process. This tie is critical for developing alternatives, since the alternatives selected must fit within the budget constraints. It is important to develop operating plans and corresponding budgets that have credibility.

While it is essential to have proper planning to achieve organizational goals, it is equally essential that the organization's workforce is capable of accomplishing these plans. Management of the workforce involves developing policies and procedures to ensure that: employees are well equipped to perform their jobs; adequate numbers of employees are available or can be rapidly recruited to meet changing needs in BIA; and there is compliance with the federal regulations governing civil service employees. Human resources management involves myriad activities, many of which are described in Chapter 5.

Once planning is in place and the organization is working toward the achievement of realistic goals, it is necessary to measure progress. An organization cannot assure progress without measuring performance, without which it runs a high risk of not reaching its desired goals. In addition, it is difficult (if not impossible) to achieve individual or organizational accountability. The Assistant Secretary–Indian Affairs needs staff support to oversee the development and utilization of performance measures, monitor program outputs and outcomes, and hold managers accountable for results.

Another essential area in which staff support is necessary is the development and management of BIA's information resources. Because information management is a strategic enabler to achieve organizations' goals, it is necessary to ensure that BIA develops and successfully applies information technology. This activity must be considered from the viewpoint of BIA as a whole and be used to integrate the Bureau's program elements.

Integrating policy and planning, financial management, human resources management, and information resource staffs into a cohesive group is essential to providing the assistant secretary with the administrative and program matic information required to manage BIA as a total institution. Without this staff support BIA does not have any staff that represent the entire Bureau, as opposed to individual program elements. A staff capability that is responsible and accountable for institutionalization of sound management policies and practices needs to be created.

To achieve these linkages, the Assistant Secretary–Indian Affairs requires a highly competent staff, directed by an individual who meets stringent qualification requirements, including previous experience with the federal government and an established record of achievement. He or she should possess a disciplined approach to getting the job done, a willingness to make decisions, a clear understanding of authority and its limits, and a comprehensive understanding of the federal government's organizational environment at the senior management level.

The new staff should include employees who possess demonstrated competencies in their areas of expertise. It is envisioned that the staff would be recruited from a large pool of candidates, including personnel from other agencies and other bureaus within DOI, from divisions within BIA, and from the private sector. While some of the staff can comprise existing BIA employees, it will be necessary to recruit additional staff to get the right people in the right places quickly.

As the primary federal advocate for Indians, the Assistant Secretary–Indian Affairs should be the focal point for assuring that potential new initiatives and existing programs are well coordinated. To help the assistant secretary maintain a view of how BIA fits into government-wide programs and initiatives, an advisory group made up of key officials from other federal government departments and agencies with significant Indian programs, such as the Departments of Justice, Health and Human Services, Education, and Transportation, is necessary. The assistant secretary should utilize the working group of the Domestic Policy Council to relate BIA's roles and responsibilities to those of other agencies and to provide advice on strengthening BIA's delivery of programs and services.

Recommendations

- *To address administrative and management deficiencies, the Academy panel recommends that the Assistant Secretary–Indian Affairs immediately establish a Policy, Management, and Budget Office that reports to him and provides him the following staff support:*

  - *a comptroller unit, consisting of three groups: (1) a program analysis group to analyze the appropriateness and effectiveness of programs and services designed to fulfill BIA's mission, (2) a budget development and execution group to prepare the budget and to track expenditures, and (3) an accounting group to operate BIA's financial accounting system*

  - *a plans and policy unit, responsible for developing BIA management policies and directives as well as strategic and annual plans, and for preparing manuals and operating handbooks*

  - *a human resources management unit, to handle development of policy and plans for managing BIA's workforce, including policy development and workforce planning, an employee development program, expertise in labor relations, and oversight of the delivery of personnel services*

  - *an information resource management unit, responsible for developing policy and plans and operation of Bureau-wide information systems, as well as guidance on useful information technologies and planning for the future*

  - *an equal employment opportunity unit, to manage BIA's EEO program*

- *The Academy panel also recommends that the Assistant Secretary–Indian Affairs utilize the working group of the Domestic Policy Council in a more strategically integrated way. The group should help to coordinate and to harmonize programs for American Indians and Alaska Natives, thus creating the possibility of more effective and efficient delivery of services*

Organizational Interaction

OIP, OIEP, and OLES, as noted, operate independently in performing their missions. Each has its own field organization that functions separately, except that OIEP and OLES get some administrative support from OIP. Currently, the only operational interaction is between the deputy commissioner, who heads OIP, and the director of OLES. Interaction in the field has been curtailed as a result of the recent reorganization of OLES, which has its own line of authority. In addition, this interaction is limited due to the large scope of each job. In the field the only interaction observed was informal and occasional if people were required to work a particular problem. In no instance, field or headquarters, was there any indication of a normal supervisor-employee relationship between OIP and OLES. The independent relationship between OIP and OIEP has been in place since the late 1970s when the OIEP was made a separate organization.

To hold the three service-providing organizations accountable for performing their missions, it is necessary to make them responsible for providing their own administrative support. OIEP has said that it cannot be totally accountable while it relies on OIP for support. Having the three organizations responsible for their own administrative support does not mean redundancy of efforts is inevitable. Each organization should be funded in the amount of the support necessary and allowed to provide its own support or to purchase the support wherever it chooses. BIA has several notable examples of area offices pooling their resources to buy common administrative support (notably, the personnel office in the Anadarko Area Office supports five area offices on a reimbursable basis). (See *Figure 2* for the proposed BIA organization.)

Recommendation

- *The Academy panel recommends that the Assistant Secretary-Indian Affairs recognize the three service-providing organizations as independent operating entities, with each reporting directly to the assistant secretary and each having responsibility and*

authority for providing programs and services and for handling its own administrative functions. The deputy commissioner should continue as head of OIP, and OIEP and OLES should each be headed by a director.

A Need for More Managerial Discipline

Large, decentralized organizations typically rely on structured approaches to policy development and planning, defining the work that must be accomplished and the processes and procedures necessary to accomplish it, and measuring progress against the plans. Management uses these structured approaches to communicate the organization's goals and objectives to employees, define individual roles in achieving the goals and objectives, and provide a mechanism for measuring progress. This process establishes individual and organizational accountability. To be effective, these structured approaches need to involve the workforce in a participative manner.

The federal government has recognized the importance of planning. The GPRA (PL 103-62) requires that BIA establish a planning system that includes strategic planning. The strategic plan outlines the outcomes expected from pursuing the Bureau's goals. Based upon the strategic plan, BIA must develop an annual performance plan that identifies the actions to be taken and the expected outcomes. These plans should reflect realistically the budget resources provided to the Bureau.

BIA has had difficulty satisfying the GPRA requirements. GAO reviews have found deficiencies with its strategic plan as well as the annual performance plans. According to GAO, the FY 1999 Performance Plan "falls well short of meeting the expectations set in the Results Act." GAO also said the FY 2000 Plan "is a modest improvement over the FY1999 plan...but that it only 'partially meets' the expectations in the Government Performance and Results Act."[9]

[9] U.S. General Accounting Office, *BIA FY 1999 and FY 2000 Annual Performance Plans*, RCED DCA #103342, Washington, D.C.:1999.

The GAO examiner who assessed the FY 1999 and FY 2000 performance plans offered some observations on BIA management: "My sense is that the overall commitment by upper BIA management is very poor." Further, "My sense is that the agency has NOT integrated performance and results management into their actual operations."[10]

Well-managed organizations integrate performance and results management into their operations. They set strategic goals and have implementing plans that spell out how they will reach those goals. To be successful and gain credibility, BIA must satisfy the GPRA requirements through the development of a sound performance management and accountability system that is linked to strategic choices and budgetary decisions.

The focus of the planning process should be on results that make a difference in the lives of Native Americans. This means that top leadership needs to embrace the intent of the GPRA, develop comprehensive, outcome-oriented strategic and annual performance plans, and use those plans to drive the Bureau's decision making. The move to strategic management envisioned in the GPRA is often difficult to implement. The Academy has done considerable work with other agencies to help implement strategic management in compliance with GPRA. A recent report for HUD and Congress is an excellent source that describes the steps taken to make significant improvements in HUD's implementation of GPRA.[11]

While planning is important, it is also essential to review progress against the plans. In the dynamics of everyday operations, organizations encounter unforeseen obstacles, or the plans prove overly optimistic. Any number of things can lead to progress not being accomplished as planned. Organizational leaders need to understand these deviations from the plan in order to act to correct or at least improve the situation. Without some system that periodically and systematically reviews progress and provides performance measures, management is "flying blind."

The Academy study team found no indication of a comprehensive management review system. Sporadic activities addressed performance narrowly, usually in response to current problems, but the team did not

[10] *Ibid.*

[11] National Academy of Public Administration. *GPRA in HUD.* Washington, D.C. July 1999.

find a top-to-bottom system that correlates the Bureau's activities to expected performance. One reason is the absence of operational planning, which is largely the result of management's inability to invest its energy in such an activity.

Management review systems vary greatly in the details of their implementation. However, common features are that the organization establishes performance measures to assess progress in executing plans and regularly holds reviews. The reviews are comprehensive and measure performance across the total spectrum of activities by comparing actual with planned performance. The system is managed to assure that the performance measures are accurate and represent the information senior management needs to understand the situation and take appropriate action. While the system should meet "top-down" requirements and needs, the data-gathering and review process should be "bottom-up" and involve the field.

A review system would look at actions being taken to correct problems with administrative systems. If corrective action cannot be implemented, then management should identify the reasons during the reviews. At this time management can either intensify its corrective measures or negotiate with outside officials to obtain relief. This process assures that problems do not stay in "limbo" and that everyone involved has a clear picture of the situation.

Management review systems are good communication mechanisms. The performance requirements that management establishes communicate to the field what is important. During the reviews management communicates how it sees various problems and values progress. Likewise, field organizations communicate to management their aptitude in managing problems and their operations. In addition, participants gain an insight into other organizations.

Finally, to gain discipline in the workforce, it is necessary that individual employees understand the requirements of their job and what is expected of them personally. The main source of this guidance in BIA is the Code of Federal Regulations (Section 25), which can be interpreted in a variety of ways. This is especially true regarding the field personnel's interpretation of trust responsibility (see Appendix A). Interviewees in the

field opined that the BIA Manual is out of date and provides inadequate guidance.

To preclude confusion at decentralized sites, other government organizations maintain current policy manuals and implementation handbooks on the various functions to guide employees. By effectively communicating policy definition and the methods to be used to carry it out, this documentation maintains consistency in policy implementation.

Policy manuals clarify ambiguity so that field personnel should not have to interpret the extent of BIA's trust responsibility or any other BIA policy. The policy manuals and implementation handbooks also should clearly define employees' jobs and responsibilities.

The development of policy manuals and implementation handbooks lays the groundwork for employee training and certification. Without a clear definition of job requirements it is impossible to develop meaningful job training or to certify employees as qualified to perform a job. The policy manuals and implementing handbooks are the major elements that define the job.

Manuals and handbooks also provide the basis for personal accountability. It is difficult to hold employees accountable if they don't have a clear understanding of a job's requirements. Individual BIA employees may believe they are accountable for their actions, but that belief does not assure that their actions meet the objectives of BIA management. Without clear guidance individual employees will choose their own directions.

The ability for those using the manuals and handbooks and the individuals responsible for developing them to interact is important for creating and updating guidance rapidly, and electronic updating relieves field personnel from the onerous job of ensuring that they are using the "latest" guidance. Information technology will enhance the usefulness of the manuals and handbooks as well as facilitate their development.

Having said all that, the panel also recognizes the federal government has been attempting to reduce layers of bureaucracy and that detailed policy manuals symbolize bureaucracy for many. Guidance can be ade-

quate without being either voluminous or overly restrictive, and BIA should seek a balance between the need for communicating policy, consistency of application, and managerial flexibility.

Recommendations

- *The Assistant Secretary–Indian Affairs should continue to strengthen its strategic plan and companion annual performance plan that meet GPRA requirements. These plans should be supplemented with goals and performance measures in administrative and management arenas. The deputy commissioner, education and law enforcement program directors, and area and agency managers need to participate in preparing the plans and should be held accountable for executing them.*

- *The Assistant Secretary–Indian Affairs should establish a system of management reviews, performance measures, and regular reviews of BIA's performance.*

- *To provide better guidance to employees, the plans and policy unit of the proposed Policy, Management, and Budget Office should develop and maintain manuals and handbooks that can be available to all BIA employees through desktop computers. The BIA Manual should be updated and kept current, and operating handbooks that clearly define the authorities and responsibilities of field personnel should be developed. Modern information technology should be used to support interactive development of policy manuals and directives and their distribution to the field.*

Management and Administrative Staffing Requirements

Adoption of the recommendations in this chapter will result in some shifts of personnel within BIA and the addition of some administrative personnel to carry out the recommended policy and planning, financial

management, budget, information and human resource functions at the central and field offices. The Academy panel anticipates that the staff of the Policy, Management, and Budget Office will be recruited from personnel within as well as outside the Bureau.

The basic reason the panel believes that additional personnel may be required is that the current practice of collateral assignment of administrative duties to personnel whose main functions involve program delivery has resulted in neglect or ineffective performance of critical management tasks. Moreover, to the extent that untrained program personnel have attempted to perform their collateral administrative duties, it has drained attention from their primary responsibilities. The result is both inadequate management and impairment of program delivery. In several areas, reliance on "collateral duty" assignments for the performance of administrative functions has resulted in reduced employee morale. It was noted that administrative funding was significantly reduced throughout the field organization in 1996.

When fully implemented, the study team estimates that the panel's recommendations could require 40–50 administrative personnel in the new Policy, Management, and Budget Office, in addition to those in the existing accounting unit. For new systems to work effectively, administrative personnel will also be required in area and agency offices. While the exact number of administrative staff positions in each of the 12 area and 83 agency offices will have to be determined by conducting a careful workforce analysis, it will probably be on the order of 150-200 when these recommendations are fully implemented. Any new staff deployed to the field should not (at least immediately) be subject to PL 93-638 contracting/compacting or tribal shares, but should be viewed as staff that are necessary for BIA to carry out the federal trust responsibility.

Before creating any new positions in field offices, the Policy, Management, and Budget Office should require the field offices to prepare estimates of their requirements and what they could accomplish with well-qualified administrative staff. Some offices may need no new help; others may require a substantial complement. Some may not be new positions or new employees, but as the requirements in each office are filled, it is essential that employees assigned administrative responsibilities be

trained and well-qualified to perform them. Staff should be deployed based on the Policy, Management, and Budget Office's judgment of the highest priorities, and the receiving field organizations should then be held accountable for achieving their estimated accomplishments. This process would be a first step toward better planning and accountability in BIA.

A rough estimate of the total annual personnel cost once all of the elements flowing from these recommendations are operational is expected to be in the range of $10 million to $15 million. Funds should be released for the field positions only after the new team has verified that they are required for effective implementation of the management improvements recommended in this report.

Implementation of the recommendations in this report will result in substantial changes in the role of the Office of the Assistant Secretary and in all units of the BIA. With these changes it is likely that geographical consolidation of the planning, policy, and evaluative elements of some organizations, such as accounting, information resource management, procurement, transportation, and safety in Washington, D.C., will be desirable. With modern communications a geographically dispersed organization is not unusual. However, in a rapidly changing environment it is often desirable, if not necessary, to consolidate the planning, policy, and evaluative elements of staff. E-mail and other tools do not compensate for time differences, do not measure up to face-to-face communications, and do not ensure the necessary degrees of responsiveness and followup. The study made no estimates of the cost of a consolidation of central offices, should BIA leadership decide it is desirable.

Managing for Results

The Academy panel believes it is critical for BIA to strengthen its management and administration before it is provided additional program staff and funds. The Bureau needs to establish credibility and prove it has the capacity to properly determine requirements and use resources efficiently and effectively. The Academy panel's concern stems from the lack of a core capability in the administration and the management of the Bureau, and the lack of proactive, consistent, and committed leadership

within the Bureau as well as the Department of the Interior. Both the BIA and the DOI need to establish and adhere to higher performance standards and account for use of resources to both Congress and to the public.

The Academy panel recognizes that the basic management reforms and administrative systems recommended here may not conform to prevailing fashions for "performance-based management," as required by GPRA. They are, however, a prerequisite for results-based management. BIA has been bereft of the fundamental management capacities, without which strategic planning, program assessment, reporting, and evaluation are empty exercises. The management and administrative reforms the panel has proposed need not, however, be taken on faith. The Congress, the DOI, the BIA, and the tribes should demand tangible results from the implementation of the management and administrative systems. One of the first tasks of the new management staff should be to develop, with the participation of the assistant secretary, the deputy commissioner and education and law enforcement directors, and other senior managers and the tribes, a set of management milestones for achievement of tangible results and specific plans for achieving them. These results should include:

- a clean audit within a reasonable period of time, as agreed to by the DOI inspector general, in light of other urgent tasks that the Bureau must address

- well-documented estimates of program requirements and employee development that are accepted by the Department, OMB, and the Appropriations Committees as credible, regardless of the funding levels ultimately achieved (in other words, denial of resources on the basis of competing budget and fiscal priorities rather than concern that the estimates are unsound or that appropriations will not be well-spent)

- reduced friction among the program and service units of the Bureau, and an end to perceptions among tribes that some central service units are unresponsive

- performance standards and measures consistent with GPRA that allow the assistant secretary to hold program directors accountable for their performance as managers of the services and resources allocated to them

- clear policies and guidelines and current online manuals for employees to follow in the performance of their respective trust, program delivery, and oversight responsibilities

- mechanisms for a better coordinated Indian policy that involves all relevant U.S. government agencies

- increased confidence among the tribes that moving to self-determination and self-governance will not result in the neglect of federal responsibilities, an indicator of which may be the number of tribes electing to operate under compacts

As part of the departmental budget process, the assistant secretary should prepare an annual report to the Secretary of the Interior and the Congress on the implementation of the management and administrative changes made pursuant to these recommendations, the progress made toward achieving these and other planned results, the effect of management changes on the effectiveness and efficiency of the program delivery and oversight responsibilities of the Bureau, and reasons for the progress or lack thereof. An alternative to this approach would be to provide for an independent outside review of progress a year following initial implementation and at regular (perhaps biennial) periods thereafter until substantial progress has been achieved. If milestones have not been met and the results above have not been achieved in four to five years, the department and Congress should consider other strategies for resolving the Bureau's management problems.

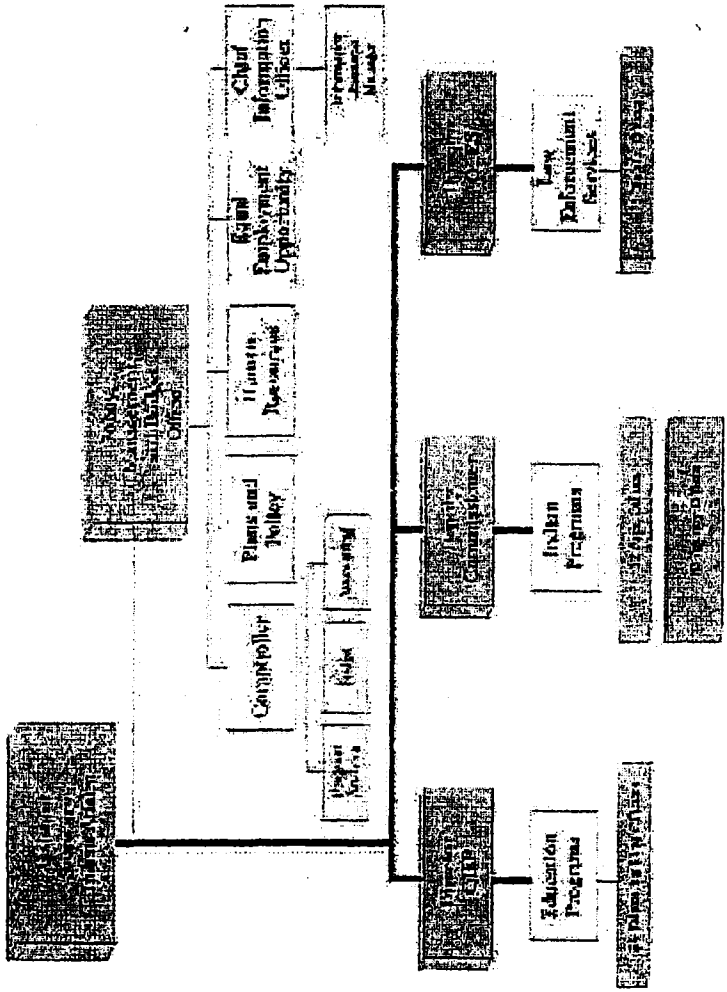


Figure 2: Proposed BIA Organization

Chapter 5
The Bureau's Administrative Problems

This chapter describes the BIA's administrative problems in greater depth, and reports the more detailed findings of the Academy study team and panel recommendations for addressing them.

Organization Under Siege

BIA has long standing problems with its management and administration. Because of these problems, and its lack of progress in correcting them, it is widely perceived as having chronically weak management and administration. This perception makes it difficult for BIA to obtain administration and congressional support for its programs, in spite of the widespread opinion in Indian Country that funding is inadequate to meet the acute needs on many reservations.

The BIA does not meet basic requirements for administrative systems within the federal government. For some time, routine audits and reviews have continually pointed to problems requiring correction:

- BIA does not have a unified approach to human resources management. Current practices focus on processing paper, not managing the workforce.
- The budget structure and process are inflexible and do not provide the information necessary to estimate proposed expenditures or justify needs.
- The financial management systems are too inflexible to permit matches between patterns of funding and changing requirements.
- The accounting systems do not provide reliable enough information to establish BIA's financial position.

- Although improvements are being made, the property management system is unreliable, and BIA has not established property values for a material portion of its assets.

- Efforts to integrate and manage BIA's information resources are fragmented and do not adequately involve field personnel in IRM planning.

- BIA's records, which are vital to establishing Indian ownership of trust assets, are in disarray.

- Since 1991, DOI has declared the procurement system a material weakness, but there has been little improvement.

For its part, BIA perceives itself to be "shortchanged, judged harshly, and misunderstood." It has developed data that show its underfunding relative to other government agencies, but that information has produced no relief. BIA believes that "outsiders" do not understand the breadth of the programs it has to deliver or the comprehensiveness of its mission. Parts of the Bureau now have a "bunker mentality."

The tribes share some of BIA's views. They, too, believe they have been shortchanged. The most recent TPA report presents comparisons, based on national standards for programs such as family assistance, forestry, roads, health service, and housing, that the tribes believe demonstrate substantial underfunding of all the federal agencies that support Indians, not just BIA. With Indian unemployment several times the national average and mounting health and social problems, the tribes find it difficult to understand why no one is hearing their story.

The lack of credible management at BIA appears to impair its capacity to represent Indians within the administration and before Congress. Its administrative problems are real and must be corrected for BIA to meet governmental requirements and regain management credibility.

Human Resources Management

Human resources management is guided by a substantial body of federal law, regulation, and accepted practice that requires considerable expertise to apply. Federal agencies usually have an organizational unit that establishes and monitors human resources management policies and practices, and that carries out the administrative operations needed to keep track of everything that affects or involves agency staff.

Until 1994, BIA had a human resources management unit in its Washington headquarters, as well as personnel units in Central Office West and each area office. To comply with NPR directives and budgetary cuts, BIA downsized those units so it could use the money and positions for other activities. BIA abolished its personnel manual, and established a guiding ratio of one personnel position for every 100 other positions, allowing each organizational entity with a personnel unit to decide how to provide the services as long as it adhered to the ratio. The Washington office chose to contract with another DOI agency, the Office of Surface Mining, to provide personnel policy support for Washington headquarters because otherwise the guiding ratio would have resulted in a unit with only two or three personnel staff, too few to provide adequate administrative services. One area office, Sacramento, contracted with DOI's Bureau of Reclamation for its personnel services. Others have either retained their own personnel unit or combined with other area offices to create a unit large enough to meet their requirements. Currently, the Aberdeen, Phoenix, Portland, Billings, Navajo, Albuquerque, and Anadarko Area Offices maintain personnel units. The Minneapolis, Eastern, Muskogee, and Juneau Area Offices obtain their personnel services from the personnel unit at the Anadarko Area Office, while Central Office West and OLES obtain personnel services from the Albuquerque Area Office. OIEP kept its own unit, with some staff in Albuquerque and some in Gallup, New Mexico.

The Office of Personnel Management (OPM) and DOI's human resource organization downsized at the same time BIA did, and they abolished the Federal Personnel Manual and most of the Department of the Interior Manual. The intent of these changes was to improve the efficiency of human

resources administration and increase managerial flexibility. OPM's and DOI's hypothesis was that BIA employees could interpret the legal framework guiding personnel decisions (Title 5 of the Code of Federal Regulations) for themselves without the constraint of the layers of interpretive guidance that had evolved over the decades, and would find innovative ways to carry out administrative processes, taking advantage of electronic tools. This hypothesis was also based on the idea that agencies would invest in automated systems to provide the services people had provided in the past.

This hypothesis has not been supported by experience. The National Academy of Public Administration Consortium on Human Resources Management recently identified the following as human resources management characteristics of effective organizations. These have human resources units that:

- can initiate top management decisionmaking on policies that affect employment
- participate in top management decisionmaking that affects employees
- promulgate and oversee personnel policies that guide managers and employees in their relationships with both each other and the overall organization
- provide extensive employee development
- plan for management succession and develop the people the organization needs
- establish processes that relieve line managers from having to acquire expertise in personnel management
- make sure administrative operations (paperwork and recordkeeping) are carried out efficiently
- establish integrated personnel and payroll information systems

- provide employees and managers with convenient access to information about employment histories, qualifications, personal status, and policies

BIA has been unable to adhere to these benchmarks. On the whole, it appears as if its operational efficiency has declined along with the reduction in the number of personnel employees, although the actual impact is impossible to measure because of all the other parallel changes.

BIA does not have a human resources policymaking unit responsible for establishing and interpreting human resources management policy. BIA has paid so little attention to its human resources policies that even its personnel experts are not sure what policies are in effect and how they are being applied. If an employee believes a policy needs to be reconsidered, changed, or added, there is no organization within the BIA, with the exception of the personnel policy function within the Office of Surface Mining, to call. Similarly, BIA does not have a unit or person who participates in or contributes to top management decisions that affect human resources or who initiates consideration of human resource policies by top management. The study team did find some instances of managers attempting ad hoc policymaking through task forces or informal coalitions. For example, a Human Resources Council of all the area office directors has been proposed.

Since 1995, BIA has not had an employee development plan or program, nor has it been able to systematically invest in the training and development of staff. It does not set aside funding for employee development or engage in development planning with or for its employees. The bureau does not keep training records and does not have skills, training, or experience profiles for its employees. The training and development that does occur are ad hoc and frequently the result of employees nominating themselves, rather than using a selection process that ensures the training is in BIA's best long-term interest. The Academy study team encountered examples where BIA did not provide needed training, particularly when employees were assigned collateral duties, and examples where the training that was provided was wasted because it took place at the wrong time or was given to people who were unable to use it. In the absence of BIA-wide guidance or requirements for employee development,

area directors generally provide some resources for training, depending on their own estimate of needs and benefits, and some supervisors help employees create individual development plans.

Although BIA selects almost all its managers from inside, it has no succession plan or management development program. Most BIA employees begin their BIA employment in entry-level positions and move up to more technically demanding and responsible positions as they gain experience. BIA has filled almost all its supervisory, managerial, and executive positions with existing BIA employees. Thus, to stay abreast of current best practices and technological innovations, BIA must depend on its managers acquiring the knowledge and skills they need as they perform their new jobs, if time allows. In contrast to BIA, most organizations think employee development is too important to leave to chance.

One glaring example of the consequences of BIA's inattention to employee development is the difficulty it has had filling key executive positions. Most Senior Executive Service (SES) positions across the federal government are filled by people selected from within an agency. Every agency needs to be well aware of its immediate and future needs so it can provide suitable training and experience to develop a large enough pool of well-qualified candidates. In recent years BIA has struggled to find internal candidates qualified to fill executive positions and has nominated people through tribal consultations whom the OPM has rejected as not meeting the minimum qualifications for SES jobs. In addition, DOI's SES development program was suspended in 1998 due to cutbacks in personnel.

BIA executives, managers, foresters, appraisers, lease specialists, range technicians, educators, law enforcement officers, and other employees responsible for carrying out its management and program functions have to know and apply personnel policies in such complex activities as position classification. They are given these collateral duties without training and support. To the extent that these people spend their time doing personnel or other administrative tasks in place of expert administrative staff, BIA's overall efficiency is doubly reduced: program effort is diverted to tasks that are inefficiently performed.

Although electronic aids are available, many of BIA's key personnel processes still involve paperwork ping-ponging from one level to another for concurrence and approvals. According to BIA's field staff, technical support is slow or nonexistent, and little authority has been delegated to the agency level. Employee information is hard to find, analyze, and use. The paperwork requirements are burdensome.

BIA has not defined its staffing requirements. It has not done the work analyses necessary to calculate the number of people needed and has not done the organizational analyses needed to indicate how people can best be deployed. As a result, in its recently issued TPA study, the Bureau attempted to quantify staffing shortages in program areas by comparing its staffing levels with those of other organizations providing similar services. It was necessary to use the staffing of other organizations in part because, except for OIEP, BIA does not have its own standards for adequate staffing in program areas.

On its site visits, the study team found many apparent examples of inadequate staffing, such as range or forest managers responsible for such vast areas that they could not conceivably visit them all regularly, let alone do the planning and management inherent in BIA's trust responsibility. Comparisons show that other DOI bureaus have many more people per acre to protect public lands outside Indian reservations than BIA has to protect reservation land. The study team also observed wide variations in staffing levels across area offices and agencies, and, almost to a person, interviewees said BIA had too few employees to provide its mandated services. But without reliable staffing standards, BIA cannot establish its actual requirements.

Indian Preference

As noted in Chapter 2, under the terms of the Indian Reorganization Act of 1934 Congress directed BIA to apply Indian preference in its hiring and promotions by directing BIA to establish its own qualification requirements for jobs and give Indians that met those qualifications preference in hiring. Subsequent court interpretations of Congress' intent broadened BIA's original application of the act, and BIA now employs Indians in most of its jobs.

BIA has used Indian preference to achieve within the Bureau nearly 90 percent Indian employment. In fact, it appears to have nearly excluded non-Indians except where there are mandated qualifications (such as teacher certification). BIA personnel offices do not refer qualified non-Indians for consideration by a selecting official if even one Indian applicant meets the minimum qualifications for the job. Further, BIA has kept its minimum qualification requirements as general as possible so that Indian applicants will not be screened out. Interviewees told the study team, for example, that because Indians historically have not had as many educational opportunities as non-Indians, BIA tries to avoid establishing educational attainments as a requirement for its jobs, and does so only when outside factors, such as the need to meet accreditation standards in schools, require it. On the other hand, the study team was also told that BIA managers can and sometimes do ask that selective placement factors be added to the qualification requirements for a position to ensure that candidates will qualify for the key elements of the job, whether they are Indian or not.

People in agencies that interact with or review BIA, as well as congressional staff, DOI staff, and BIA employees themselves, told the study team that Indian preference was a root cause of many of BIA's problems. Many BIA employees were said to be poorly qualified for their jobs or just not very good employees.

The study team actually found the opposite to be true in its field visits. BIA staff are well qualified for their jobs and compare favorably with staff in any federal agency. However, it also found some highly visible situations (such as inadequately qualified nominees for SES positions) that can affect outside perceptions. The study team found that managerial positions at headquarters were frequently filled by employees who are not experts in the work of the unit they are managing, are not experienced in field delivery of the program(s), or both. As a result, BIA's employees in the field complained that some managers at headquarters seemed unqualified for their jobs. Field managers also complained that they frequently had to select from a limited number of Indian applicants to fill vacancies, even when they believed better-qualified non-Indians might be available.

Indian preference increases the importance of effective employee development in BIA. Because of Indian preference, BIA cannot easily reach outside its own pool of employees to fill its management and executive positions. There are plenty of well-qualified candidates for management and executive positions in agencies throughout government, but they are not Indians and are therefore not acceptable candidates for BIA jobs. Since federal policy is to apply Indian preference to BIA jobs, the Academy study team expected that a major BIA objective would be to provide employees with supervisory, managerial, and executive training and development so there would be many Indians well qualified for BIA's supervisory and managerial jobs. Instead, BIA gives employee development almost no organized attention.

Indian preference need not limit BIA's ability to find well-qualified staff. The Indian Reorganization Act allows BIA to set appropriate qualification standards for its jobs and to employ and promote non-Indians if well-qualified Indians are not available. However, as the examples above illustrate, BIA's application of Indian preference can be a problem if BIA does not establish appropriate qualification requirements for its jobs or pay appropriate attention to employee development.

Recommendations

- *The Assistant Secretary-Indian Affairs should reestablish a human resources management unit of four to six people, headed by a human resources manager, within the proposed Policy, Management, and Budget Office. This unit should be responsible for establishing and maintaining a consistent approach to human resources management throughout BIA. The manager should have access to and participate with top management in decisions that affect BIA employees; should develop a strategic human resources management plan; and should identify the policies BIA is following and establish a mechanism for assuring they are applied consistently throughout the bureau. This unit should assure that:*

- *BIA makes employee development one of its primary management objectives and provides the planning and resources to support training and development*

- *BIA begins succession planning and development to meet its managerial and executive needs*

- *BIA automates its personnel record-keeping so that summary information about employees is readily available and accessible*

- *BIA's qualification requirements for its jobs are sufficiently stringent so that candidates who meet them will be able to do the job*

- *the units providing BIA personnel operations support are performing effectively*

Budget System

The Office of Management and Administration in OIP manages the BIA's budget system. It transmits a request to the other BIA organizations to submit their budget requests in accordance with "guidelines" published in the spring. The guidelines specify the submittal form, expected levels of funding, requirements for prioritizing programs, and related items. The office then compiles the budget, which tribal representatives review and to which they provide input. The tribal review of the FY 2001 budget was conducted in June 1999. BIA senior management makes the final budget decisions for the organization, and then the assistant secretary submits the budget to the Secretary of the Interior for final decisionmaking and for inclusion in the departmental budget. In turn, DOI submits its budget to OMB in September for review and inclusion in the President's budget.

The BIA budget for FY 1998 was as follows:

	Millions
Operation of Indian Programs (detailed below)	$1,528
Supplementals	1
Construction	125
Other Appropriated Funds	5
Total	$1,659

The budget for Operation of Indian Programs was distributed as follows:

	Millions
Tribal Priority Allocations	$757
Other Recurring Programs	549
Nonrecurring Programs	61
Central Office Operations	47
Area Office Operations	41
Special Programs and Pooled Overhead	73
Total	$1,528

The six major components of the OIP are divided into a tribal budget and a BIA budget. The tribal budget consists of the funding that is expended at the field level, which fundamentally goes for services to the Indian population. The BIA budget consists of the funds required to manage the Bureau. The major OIP accounts are described below.

Tribal Priority Allocation Accounts

Three categories comprise the TPA accounts. The TPA category is the largest segment:

- Tribal Priority Allocations: budget resources that are part of recurring "base funding" at the local tribal level. Funds are used for the delivery of services.

- Other Recurring Programs: programs operated each year at the local level that are not part of the tribes' base funding, but are distributed by formula or some other method. They include School Operations

for BIA-financed schools with the funds distributed by formula; others are distributed by "earmarks," as in the fisheries programs.

- Nonrecurring Programs: programs that are temporary projects at given locations. BIA moves these resources from location to location based on need, or subject to competitive grant processes.

BIA Budget

- Central Office Operations: headquarters functions carried out in Washington, D.C. and in the other central support offices.

- Area Office Operations: general managerial and support functions carried out in the 12 area offices.

- Special Programs and Pooled Overhead: programs operated at locations other than the tribal level (such as Haskell Indian Nations University), and general BIA overhead costs that support overall BIA operations.

BIA adopted the current budget structure in 1993 in response to a proposal by the Joint Tribal/DOI/BIA Task Force on Reorganization of the BIA. The goal of the tribal budget system realignment in 1993 was to increase tribal decisionmaking and control over recurring BIA funds at the tribal level. The Task Force had recommended that "other recurring programs" be reviewed and over time be moved back to the local tribal base.

TPA has a "base" portion that is allocated to a tribe or agency. The funds for four programs—Contract Support, Welfare Assistance, Housing Improvement Program (HIP), and Road Maintenance—have not been allocated to the base amounts, except in the case of a few self-governance tribes. Instead, they are allocated annually by formula. Other nonbase programs relate to new tribes and new and expanded PL 93-638 contracts.

The funding for self-governance (compacted) tribes is a single line item (program element) within the TPA. Generally, the compacts combine all sources of BIA funding, including not only TPA, but also the funds for Other Recurring and Nonrecurring Programs.

The basis for the allocation of BIA resources across the areas and tribes is a complex set of "historical, geographical, demographic, political and programmatic factors."[12] BIA has stated that "the allocation of BIA resources throughout the country is not and probably never has been in accordance with a particular unified scheme." The distribution of funds has been a source of dissatisfaction in many parts of BIA because it does not seem equitable. The allocation of TPA funds does not encompass the results of a needs assessment or priority allocation across tribes. However, the tribes believe that changing the current distribution of the TPA base funding would make all tribes "equally poor." As a result of the complexities involved and a general belief that changing the distribution of funds would do little to better Indian welfare, BIA and the tribes have concluded the existing TPA system should not be modified.

The basic categories of the budget have not changed for several years. Tribal Priority Allocations derived from historical, legal, and political frameworks comprise base funding. Only four TPA programs distribute funding based on formulae: welfare, housing, contract support, and road maintenance. The basis for the distribution of ISEP funds is a complex formula driven by the number of students and the services they require (expressed as Weighted Student Units). The funding for the central office and area offices has tended to follow a pattern of incremental change except for the 30-40 percent reductions that occurred in FY 1996 (see *Table 3*). During the past year the largest percentage change has been in the Law Enforcement Program funds, which reflects the administration's recent BIA/Department of Justice law enforcement initiative.

BIA has little discretion to direct funding to resolve problems or satisfy pressing needs because of ISEP's formula-based allocations and TPA's historical distributions. The 1999 draft TPA study, which was made available to the study team, addressed this problem but did not recommend changing the size of the TPA account or the method of distributing the funds. However, the report did recommend that any additional funds be allocated on the basis of "needs." The basic rationale for this recommendation appears to be rooted in the belief that the tribes are underfunded, and redistribution of the base allocations from wealthier to poorer tribes would not address that problem and was replete with other practical

[12] Bureau of Indian Affairs, "TPA Report," draft, Washington, D.C., May 20, 1999.

	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
Operation of Indian Programs	**$1,372**	**$1,492**	**$1,517**	**$1,388**	**$1,458**	**$1,528**	**$1,584**
• Tribal Priority Allocations	394	430	521	654	631	757	700
• Other Recurring Programs	672	761	701	494	534	549	542
• Non-Recurring Programs	82	86	90	66	62	61	64
• Central Office Operations	77	83	79	51	47	47	46
• Area Office Operations	58	63	53	37	39	41	43
• Special Programs and Pooled Overhead	64	69	64	82	81	73	100
Supplementals	30			4	14	1	
Construction	180	167	120	117	107	125	123
Other Appropriated Funds	14	12	12	6	5	5	5
TOTALS	**$1,636**	**$1,671**	**$1,650**	**$1,511**	**$1,570**	**$1,659**	**$1,712**

Source: Tribal Workgroup on Tribal Needs Assessments, "Empowerment of Tribal Governments," Washington, D.C., May 1999, pp. 30-35.

Table 3: Summary of Appropriations—Bureau of Indian Affairs
Fiscal Years 1993–1999
(In Millions)

shortcomings. It should be noted that, during FY 1998, four tribes returned their TPA funds to BIA, totalling $1.7 million.

While the analyses of tribal allocations made in the draft TPA study raise important issues, the budgeting problem runs much deeper. BIA ought to have an internal appropriation structure that is more flexible and suitable to the current situation. It needs to work with the tribes and propose a revised structure to the administration and the Congress that can provide the flexibility required to permit BIA to allocate funding as equitably as possible.

Recommendations

- *The Assistant Secretary-Indian Affairs should develop a budgeting system that has sufficient flexibility to support the equitable allocation of funds.*

- *The budget and development group in the comptroller unit of the proposed Policy, Management, and Budget Office should work with BIA and the tribes to develop and document appropriate standards (or benchmarks) that can be used consistently in support of budget requests and in measuring performance in the delivery of programs.*

Financial Management

BIA Audit

DOI's Office of Inspector General performs an annual audit of BIA's principal financial statements and issues its findings on those statements. It also audits BIA's internal control structure and compliance with laws and regulations relative to those statements. The IG has for several years provided a qualified audit opinion on the financial statements because the Bureau could not provide adequate documentation or reliable accounting information to support the financial report balances and because BIA had material weaknesses (insufficient internal control procedures) in several major accounts. (Internal control is defined as a method, procedure, or

system designed to promote efficiency, assure the implementation of policy, and safeguard assets.)

The DOI's inspector general's report (dated April 19, 1999 as published in DOI's "Annual Report—Fiscal Year 1998," beginning on p. 46) summarizes the Bureau's material weaknesses in the area of internal controls as follows:

- property management accounts (such as construction-in-progress, land improvements, buildings and other structures and facilities, equipment, and related accumulated depreciation and depreciation expenses)

- general controls over automated information systems (such as system security programs, adequate levels of security, safeguards on computer hardware, level of user access, controls on software, segregation of duties, detection and deterrence of inappropriate use, and systems recovery in case of failure)

- controls over financial integrity reviews (ensuring that errors and invalid transactions contained in its general and subsidiary ledgers, listings, and reports are identified and corrected in a timely fashion)

While substantial efforts to improve performance have occurred, BIA was not in full compliance with the following laws and regulations:

- Chief Financial Officers Act of 1990, specifying general and financial management practices and improved systems

- Debt Collection Improvement Act of 1996, specifying that past due receivables are to be referred to Treasury

- Credit Reform Act of 1990, addressing the proper recording and accounting for loan costs and guarantees

- Prompt Payment Act, specifying paying bills on time and taking appropriate discounts, and paying interest penalties when payment is late

- Federal Financial Management Improvement Act of 1996, specifying that financial management systems are in substantial compliance

Prior-year audits produced similar findings, substantiating the long-outstanding nature of the material weaknesses and nonconformance reported by the IG.

BIA Actions

Accounting

The Division of Accounting Management (DAM) in Albuquerque, New Mexico, which reports to the Office of Management and Administration in Washington, D.C., manages BIA's financial program. DAM is supported by accounting personnel in the 12 area offices. Currently, DAM has slightly over 80 full-time equivalent employees; approximately 70 others support the financial function throughout BIA. The National Business Center located in Reston, Virginia under contract with DOI, provides DOI-wide financial computer systems management (i.e., systems analysis, design, software development or acquisition, etc.). The center's Denver office assists BIA with financial accounting services. The Division of Accounting Management in the Office of Management and Administration oversees Property Management; property officers and some staff in each of the 12 area offices support the division. The BIA agencies typically provide the initial financial and property management information to the area and central offices.

With the support of the DOI's Assistant Secretary for Policy, Management, and Budget and the IG, the Assistant Secretary-Indian Affairs has made property management a matter of the highest priority at central, area, and agency levels. At his initiative a major effort has been underway to correct the material weaknesses in Property Management and to obtain a clean audit. Recently the National Business Center increased its accounting support. Other innovations, such as a new credit card system for purchases below $25,000, have been developed, but not fully implemented by BIA.

In spite of these efforts, DOI auditors have cautioned that BIA has not successfully implemented corrective measures and has slipped back into its old practices. Draft plans have been provided, but have not been implemented.

Prompt Pay

BIA is achieving significant improvements in its percentage of prompt payments. In particular, BIA's new remote data entry (RDE) system is now used in approximately one-third of payments. Through June 30, 1999, the year-to-date RDE percentage was 90, and in the month of June, nearly all the area offices averaged 94 percent (the overall goal is 97 percent). While six of the areas were slightly below that average, six achieved 97 percent or higher, with three of those at 100 percent. For all payments, the area offices averaged 86 percent for the year, with the level for the month of June at 92 percent. The higher percentages result in part from the RDE system and in part from increased use of the new credit card system. Open undelivered orders showed better results between December 1998 and August 1999, with significant progress being made in each successive month.

Documentation

Needed financial documentation was recently approved and released by the Office of Management and Administration: records such as debt management, travel (temporary duty and permanent change of station), property (real and personal), construction-in-progress, undelivered orders, and handbooks on contract administration. This is a good start, but many more policies and procedures await adequate documentation.

Property Management

BIA has stated that property management initiatives are an important and vital management activity; progress is being monitored at the highest levels in DOI and BIA. At the request of BIA, National Business Center staff are conducting a sample property audit (called a preaudit) of eight area offices. As of early July 1999, the center had problems completing the preaudit of the inventory at the different field locations, mainly because of a shortage of BIA staff to assist them with the inventory. However, by the middle of August 1999, BIA met a significant milestone of certifying as complete 11 of the 12 area offices.

To understand the scope of the audit job of determining the book values of property and conducting an item count within BIA, *Table 4* shows the real property, personal property, and noncapitalized property values by area. The total $1.2 billion in recorded book value represent over

18,000 items. (Over one-third of BIA's property value is located on the Navajo Reservation.)

Area	Total			Real Property		Personal Property		Non-capitalized Property	
	Percent	Value*	Items	Value*	Items	Value*	Items	Value*	Items
Navajo	35.7	428.9	5,207	412.1	3,581	13.5	1,390	.3	136
Phoenix	19.2	230.5	2,544	214.6	1,039	15.4	1,049	.3	454
Aberdeen	15.1	180.1	2,993	171.2	1,671	8.4	858	.5	514
Portland	7.9	95.1	1,282	88.5	550	5.3	571	.3	156
Minneapolis	6.0	55.8	847	54.3	644	.9	114	.1	121
Billings	3.5	54.3	1,600	41.5	552	11.5	716	.3	342
Albuquerque	3.8	45.9	1,086	39.6	504	6.0	672	.3	476
Eastern	3.4	40.6	426	30.2	179	1.3	140	.1	7
Oklahoma**	3.2	39.0	388	37.3	100	1.7	271	-	12
Muskogee	1.2	14.3	265	13.9	90	.4	74	-	131
Anadarko	0.4	4.3	175	3.8	40	.7	116	-	12
Juneau	0.4	5.0	221	.5	6	4.5	190	-	25
Sacramento	0.4	5.2	261	3.9	71	1.2	151	.1	39
Central Office	0.2	2.9	549	0	0	2.8	230	.1	329
Total	100.00	1,202.1	18,400	1,120.9	9,076	73.8	6,042	2.4	2,747

* Value = BIA book value in millions of dollars as of July 21, 1999 (prior to final audit adjustments). It excludes a total of $513 thousand (3,240 items) for museum-type collections and artifacts.

** Southwestern Indian Polytechnic Institute and Haskell Indian Nations University.

Table 4: Property Book Value and Item Count as of July 1999

Automated Information Systems

BIA has scheduled completion of the following recommended fixes of its automated information systems for the end of December 1999. They impact the financial management operations.

- security program: elevating the security function by establishing a BIA-wide program, developing documentation and procedures, performing risk assessments, developing and implementing policies to classify BIA computer risks and to manage system-user identification, and evaluating periodically the effectiveness of the systems security program to revise the Bureau's process of assessment

- access controls: establishing personnel security policies, and obtaining appropriate security clearances for ADP personnel

- software development and change control: developing policies and procedures to ensure the identification of individuals responsible for application development and changes

- segregation of duties: ensuring a segregation of duties

- continuity of service: ensuring development of an offsite contingency facility

By now, efforts like these should have expanded BIA's knowledge, improved its procedures and documentation, identified training needs, established roles, further refined automated systems, produced a financial database with accurate information, and made managers aware of the continual effort required to maintain all of the administrative processes. These efforts should have also solved side issues such as real property valuation and construction in progress.

As certain defective administrative processes are corrected, they will become less of a top priority within the Bureau, but management should not revert to allowing administrative functions to take a back seat to program activities and should manage staff time accordingly.

BIA's highly focused efforts to resolve its extensive array of audit issues are a good start that needs to be continued. The important change is the new organization structure recommended in Chapter 4. Strengthened managerial direction and accountability should help to ensure that BIA's focused efforts will finally result in a clean audit and provide some momentum to prevent weakness from reoccurring.

Recommendations

- *The Assistant Secretary-Indian Affairs should establish an accounting group in the comptroller unit of the proposed Policy, Management, and Budget Office to work hand-in-hand with BIA management to (1) continue the drive towards a clean audit, (2) prevent the re-occurrence of material weaknesses, and (3) correct possible problems that go deeper than the issue of a clean audit (establish long-term solutions).*

Toward those ends, the new office would be responsible for:

- *finalizing and approving a series of implementation plans for corrective actions on all audit issues and material weaknesses; supporting coordination and monitoring implementation using a report card system; maintaining important administrative processes and improving documentation of policy and procedures in tandem with that effort*

- *upon project completion, holding detailed retrospective meetings of management and accountable staff to discuss/document what went right and what went wrong (planned versus actual outputs and outcomes)*

- *Increasing current efforts to document all financial policy and procedures (with hands-on involvement by the area and agency offices) and getting those documents out into the field*

- *correcting the serious shortage of administrative staff needed to perform financial duties (currently many functions are collateral duties of overworked staff who lack adequate knowledge or training)*

- *involving field offices more in the development of policy and procedures*

- *providing up-to-date computer software versions that are consistent across BIA*

- *increasing the level of coordination, follow-through, and communication among the different field offices*

Information Resource Management

The OIRM in OIP's Office of Management and Administration manages BIA's information resources. Located in Albuquerque, New Mexico, OIRM is charged with providing professional leadership to BIA's IRM program and

developing and implementing Bureau-wide information technology solutions. OIRM contains an operations service center that runs BIA-wide systems in conjunction with the DOI National Business Center. The center's contract amounted to about $2.3 million in FY 1998. OIRM provides system support for BIA administrative operations and program support in financial management, procurement, personnel, and related areas. OIRM also supports programmatic activities with operations and upgrades in the realty area. It operates the BIA network. The FY 1998 budget for OIRM's administrative activities was over $9.294 million. The total budget for IRM activities, Bureau-wide, is $12.4 million. The authorized staffing level is over 70.

Information technology has enabled major advances in organizational effectiveness around the world. BIA uses information technology to a far more limited extent than do other government organizations. BIA needs to pursue the development of information systems to increase the efficiency of its operations.

BIA would benefit from a formal IRM user group to facilitate the management of IRM systems. This group would establish priorities in the scheduling of new systems and help ensure that potential system applications are identified.

The DOI OIG and GAO reports identify the major IRM concerns, and BIA has put plans in place to address these concerns (see the scheduled corrections of deficiencies in controls over automated information systems listed in the preceding section). BIA is also acquiring 5,000 personal computers that will help correct the Y2K problem and provide the capability to support implementation of the new BIA Trust Asset and Accounting Management System (TAAMS), as well as other new applications. From an IRM standpoint, almost everything that needs "fixing" can be corrected.

While overall BIA seems to be moving forward effectively to address its IRM needs, there are "missed opportunities" that need to be addressed. BIA management does not generate plans with performance measures, and it is not using standard IRM techniques and activities to help with planning and control. There are no effective mechanisms for program planning and communications. The IRM Council no longer functions, and no plans,

newsletters, web pages, or similar methods are being used to inform the organization of IRM activities. Consequently, there is little organizational participation in IRM planning or new product development. The operating organizational elements are in a reactive rather than proactive mode with respect to the implementation of new developments. Finally, BIA has not consistently followed through on implementation of plans.

Guidance needs to be provided to support implementation, particularly in records management and information security.

Recommendations

- *The Assistant Secretary–Indian Affairs should establish a full-time CIO in the Policy, Management, and Budget Office to work with senior management in bringing the full benefits of information technology to BIA. The CIO would direct the activities of OIRM and would be responsible for:*

  - *creating an IRM users group with representatives of BIA management and operators to provide guidance in identifying potential information technology applications. Likewise, the CIO can use the users group to communicate new technologies that may be applicable to BIA*

  - *establishing a BIA-wide communication strategy to link the Bureau together*

  - *establishing the requirements for information technology training*

Records Management

BIA depends upon records for virtually all aspects of its mission. In addition, many historical documents such as Indian treaties and realty documents support the actions being taken by BIA. In 1992–1993, the

Federal Systems Integration and Management Center (FEDSIM)[13] conducted a study of BIA's records management program. The findings confirmed the problems reported in earlier studies (1969, 1980, and 1990) by the National Archives and Records Administration. The purposes of the FEDSIM study were to determine the extent of the records management problem and estimate the costs (both tangible and intangible) of maintaining the status quo and of correcting the deficiencies.

The Academy study team discovered that a number of the study's conclusions were still relevant, including:

- Widespread use of original documents for day-to-day reference places them at extreme risk.

- The environmental conditions for stored records range from passable to unacceptable. Fire protection and temperature control are rare, humidity control is absent, the risk of water and pest damage is often very high, protection against vandalism is marginal, storage containers are rarely of the proper type, and storage shelving is generally inadequate or absent.

- Responsibility for records management is almost always a collateral, low-priority duty. Very few employees in the field have a full-time (or even primary) assignment for records management. The administrative personnel responsible for records are often unaware of the statutory and regulatory requirements, particularly in law enforcement, education, and programs conducted under PL 93-638. This lack of full-time attention has resulted in the absence of informal leadership in records management.

- Most BIA offices possess little if any modern automated data processing equipment; where modern equipment is available, it involves little networking. If offices are to implement any sort of automated solution to their records management difficulties, they will need to acquire new hardware and software. (With the planned purchase of 5,000 new computers a substantial start on the IRM problem should be possible.)

[13] Office of Technical Assistance, Federal Systems Integration and Management Center, "Records Management Study," Falls Church, VA, January 1993.

In recent years records management has become a particularly pressing issue at BIA because of the litigation over Indian trust fund management. The litigation has focused attention on BIA and OST's long-standing problems in records management and the consequences to individual Indians. The litigation has led BIA to make extensive efforts to resolve the problems with the trust management records. As a part of the coordinated trust reform effort, led by the Special Trustee, BIA is charged with developing and implementing new systems, including TAAMS. In addition, BIA is cleaning up the data in the present system, accelerating efforts to eliminate the probate backlog and improve the appraisal program.

BIA has signed a cooperative agreement with the Office of the Special Trustee to jointly address the organization, retention and storage of trust records. As a part of this agreement, BIA and the Office of Special Trustee recently established a combined records management program office—Indian Affairs Records Management—with line responsibility over records management policy, guidance, training, and evaluation. Similar attention will be paid to the non-trust records. The trust record improvements offer an opportunity for leveraging non-trust improvements to upgrade BIA records management as well.

Recommendations

- *The CIO should be responsible for BIA non-trust records management and for ensuring that systems are up-to-date and reliable. The CIO should carry out the following recommendations.*

  - *establish records management policy and oversee the preparation of a records management policy implementation manual*

  - *develop a BIA-wide plan to upgrade records management, building on the Trust Management Improvement Project*

  - *establish accountability for records management in each major organizational element*

- *conduct an examination of the retention schedules for all types of documents and records to determine if they are still current and being applied consistently*

- *ensure that all records management is integrated with the OST and is reviewed annually to determine that the integration continues to occur*

Procurement Management

The OIP Office of Management and Administration is responsible for BIA procurement policies and procedures (except for the self-determination and self-governance programs) and for management of the procurement program throughout the Bureau. Specific responsibility for procurement rests with the Division of Contracts and Grants in OIP, which has a staff of 28.

BIA has distributed procurement authority to the field. It assures compliance with Federal Acquisition Regulations through a contracting officer warrant program, and the field offices have personnel warranted to issue contracts up to the level of their warrant (for example, $100,000). All area offices and some agencies have warranted personnel. They forward procurement requests to the appropriate offices that initiate the procurement actions leading to a contract with a vendor. OIP provides this service to both OIEP and OLES. Interviewees and past studies identified the present procurement system as a major problem. Attempts to improve BIA's procurement management have been ongoing for 25 years. Between 1973 and 1986 the DOI IG issued 77 reports identifying serious management control deficiencies. DOI reviews in 1991 confirmed the continued presence of the problems cited in the IG reports. That year it declared the whole procurement system a material weakness.

Between 1991 and 1994, BIA drafted four corrective action plans before finally coming up with an acceptable plan in 1994. This plan contained 14 actions to correct the problems. To date BIA has completed only three actions. BIA's performance has not improved, but has, in fact, become markedly worse.

The most recent DOI Acquisition Management Review, conducted in 1998, enumerated problems with the management of the procurement process and numerous problems with organizational management that were reflected in a negative work environment. A survey of customer service revealed considerable dissatisfaction with the procurement services being provided. The report also contained 51 recommendations for bringing BIA's procurement function into compliance with DOI requirements and place operations at the level expected of a professional acquisition organization.

One reform BIA has successfully instituted is field use of credit cards for purchases up to $25,000. Although there were some start-up problems, the field now has a responsive tool that meets its needs. The field personnel with procurement warrants, which are for relatively low limits ($50,000 to $100,000), adequately address the remainder of field level purchases.

Procurement is an integral part of governmental operations and requires professionalism to assure taxpayer confidence that their taxes are not being wasted. Frustration with BIA's procurement organization runs high within DOI and among BIA customers. The long-standing nature of the problems and the organizational discord raise concerns about BIA's ability to correct the problems without dramatic action. Prompt resolution of these problems is essential.

Recommendations

- *The Assistant Secretary-Indian Affairs should establish a procurement policy and quality assurance function within the new Policy, Management, and Budget Office.*

- *The Assistant Secretary-Indian Affairs should consider abolishing the BIA's central procurement organization and contracting for procurement services from other sources within the government. If BIA contracts for these services, it should maintain the field capability to meet procurement needs up to a reasonable limit (say $100,000).*

- *If central procurement is retained, the deputy commissioner should develop an action plan to correct the deficiencies identified in the recent DOI Acquisition Management Review. The Assistant Secretary–Indian Affairs and his staff should closely monitor implementation of the action plan and hold the deputy commissioner responsible for its implementation.*

Chapter 6
Future Directions

Numerous external and internal reviews of the Bureau have pointed out the need for administrative and management reforms. In conducting this study, the Academy panel and study team became aware that the Bureau does not have the capacity to perform basic federal functions of accounting, property management, human resources management, procurement, and information resource management efficiently and effectively, let alone to produce program analyses, to generate alternatives and facilitate reasoned choices among alternatives, and to link plans to outputs and outcomes. Not surprisingly, the Bureau's credibility with Congress and public confidence in the Bureau's ability to manage are at a low ebb.

To remedy all the problems the Bureau is facing will take time, resources, and the support of the administration and Congress. The critical first step is to provide the assistant secretary's office with staff capability in the policy, planning and program analysis arenas to exercise effective managerial responsibility for the Bureau; otherwise reform efforts will continue to operate at the margins. The time has come to remedy the Bureau's historical under-investment in its own administration and management.

Federal Indian policy is clearly set on a course of tribal self-determination. The Assistant Secretary–Indian Affairs stated recently, "Within the next 10 or 15 years, the BIA will be mostly out of the business of providing direct services to tribal communities. Virtually all services provided to reservation residents will be provided by the tribes themselves with funds appropriated through BIA."[14] He commented further that the primary obstacle now is "a shortage of money."[15]

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[14] Statement of Kevin Gover, Assistant Secretary-Indian Affairs, Department of the Interior before the Senate Committee on Indian Affairs Oversight Hearing on the Bureau of Indian Affairs Capacity and Mission, Washington, D.C., April 28, 1999.

[15] *Ibid.*

While the Academy panel appreciates the assistant secretary's concern for resources, the thrust of its findings is that correcting the management and administrative problems of the Bureau is necessary before program resource issues can be credibly addressed. Both the tribes and Congress are entitled to expect the Bureau to demonstrate a capacity to prepare and implement plans and account for the performance of its programs.

With a demonstration of administrative competence, including the development of performance measures and credible budget estimates, administration and congressional support to sustain the movement toward self-determination is far more likely. This can, in turn, allay the concern often heard in Indian Country that "self-determination is really the first step in self-termination"—a fear that the federal government will end the historical trust relationship and the funding associated with it. Tribes see an important lesson in over two centuries of Indian experience with shifting federal policy and resulting injustices: "Each time the United States has attempted to withdraw from the government-to-government relationship with the tribes—a relationship established in the earliest days of our national existence—it has produced catastrophic harm to Indian communities."[15]

Resolving the issues of management and administration alone will not change this history. But it can enable the Bureau to perform effectively its role as the federal advocate of Native American and Alaska Native interests and, in consultation with the tribes, chart a course that keeps faith with the citizens of Indian Country and smoothes the transition to full self-determination and improved living conditions early in the new millennium.

[15] *Ibid.*

Appendix A
Study Team Report: Observations on Programs and Services

Introduction

The charge to the Academy panel focused on the management and administrative systems of BIA. The panel made no findings or recommendations about the management of specific programs or the level of resources that may be required for BIA to carry out its program responsibilities. Such analyses were beyond its scope. Specific program requirements cannot be addressed effectively and credibly until the management and administrative recommendations of the panel have been put in place.

The study team report in this appendix contains information and preliminary observations about specific programs developed by the study team during its literature review and field interviews. Information in this report helped the panel understand the urgency of basic management reforms. It is included as an appendix because the information it contains may be helpful to the Assistant Secretary–Indian Affairs and the Bureau as they implement the management recommendations of the Academy panel, come to grips with the challenges of demonstrating management capacity throughout the organization, and develop well-documented standards for and estimates of program requirements.

By way of context, this report begins with a discussion of two policy areas—the federal government's trust responsibility and the advancement of self-determination and self-governance through contracting and compacting of programs. Kevin Gover, the Assistant Secretary–Indian Affairs, has said that BIA's most basic responsibilities are its trust obligation and its facilitation of tribal self-determination. Interviews in the field reveal numerous issues that affect the implementation of these policies and the delivery of BIA programs and services. Following this discussion are comments on

selected programs: facilities management, facilities operations and maintenance, road maintenance, safety management, law enforcement, housing improvement, social services, and Indian education. These comments should be regarded as preliminary steps to a task whose completion is important and that must involve more extensive analysis than was possible in the limited time for field visits and program review.

Policy Problems Affecting Programs and Service Delivery

Trust Responsibility

One of BIA's principal goals is to "protect and improve the trust assets of American Indians, Indian Tribes, and Alaska Natives." This trust function is the foremost consideration in all BIA endeavors. The federal government has a trust responsibility to federally recognized Indians and tribes stemming from federal treaties and statutes, court decisions, executive orders, and other authorities. For example, the courts have consistently upheld Congress' plenary power over Indian affairs. Congress has the power unilaterally to terminate the trust relationship without Indian consent. The courts have sustained statutes providing for the allotment of tribal lands to individual tribal mem bers as constitutional, even where a treaty prohibits such dilution of tribal property. Nevertheless, in recent times the Supreme Court has held that statutes must be "tied rationally" to the trust obligation to Indians. Where Congress exercises its authority over Indians, that trust obligation appears therefore to require a determination that Indian interests will be protected.

In contrast to Congress, the trust relationship narrowly constrains the power of federal executive officials. In some cases, Supreme Court decisions have held officials to "obligations of the highest responsibility and trust" and "the most exacting fiduciary standards." If executive officials breach the trust obligation in dealing with Indian trust property, the beneficiaries of the trust may sue the United States for monetary damages, declaratory relief, or injunctive relief. The courts have applied trust obligations where trust funds, mineral resources, timber, and water are subject to federal executive management.[18]

[18] U.S. Department of the Interior, Office of American Indian Trust, "Tribes and Federal Trust Relationship."

Perhaps the foremost issue in this area is the lack of a clear definition of what "trust assets" the federal government is responsible for. To many, there is no ambiguity—the trust responsibility pertains to the land and natural resources derived from it. To others, trust responsibility describes a government-to-government relationship between the United States and Indian tribes and encompasses special health, education, and other related benefits flowing from that relationship.

Interviewees in the field indicated that there is a lack of policy direction from BIA headquarters with respect to trust responsibility. The Academy study team encountered much frustration on the part of BIA program staff at the agencies, who felt that fulfilling the trust responsibility was problematic in several respects:

- The trust responsibility was not well defined. Interviewees said that the loose definition of trust responsibility, even in program areas dealing with the land, made it difficult to delineate the scope of work at the field level. Agency staff said that this term has never been defined and has grown and expanded to include all activities on trust lands, a tendency that has created more and more unfunded duties. They felt that the Bureau should define trust responsibility and limit activities to responsibilities consistent with that definition. They also noted that there were not enough resources to meet the trust responsibilities, and that they should not be diverting those resources to, or providing technical assistance for, nontrust items.

- BIA is liable for poor trust management even where Indian tribes have contracted/compacted for the delivery of services. Congress, by statute, has granted tribes more authority for managing programs and services for their members through contracts, compacts, and grants; nonetheless, this same statute still holds BIA liable for poor management of the trust assets, while permitting BIA only limited oversight of the agreements. BIA staff felt the Bureau was vulnerable to lawsuits if the tribes mismanage the trust resources. A common complaint was that the Bureau, and specifically the Awarding Officer's Technical Representative (AOTR), has no control over the day-to-day operations of contracted programs. The statute dictates that BIA provides the funding up front, and it limits the Bureau's

ability to hold it back. The AOTR has limited ability to monitor through onsite visits, and the required annual report is often late, incomplete, or inadequate. Yet it is often implied that the AOTR is fully accountable for ensuring that tribes spend the funds properly, run the program effectively, and meet BIA's trust responsibilities. One interviewee commented that the AOTRs "are in the caboose and are going to catch hell if the train runs off the track." Another interviewee noted, "The tribes say, 'Either you trust us or you don't.' Self-governance now means no review at all, but the understanding at the field level is that ultimately the Bureau is still responsible and could face liability down the road."

Management of Trust Assets

The Office of Trust Responsibilities within OIP is charged with the management and protection of trust lands, restricted lands and natural resources, and with the protection of the treaty and statutory rights of the Indian tribes and individual Indians. At present, this is an area where changes are occurring in conjunction with the Bureau's implementation of the TAAMS. The system is expected to have an impact on the way in which assets are managed and protected. TAAMS and the reengineered practices it will incorporate provide an excellent opportunity for the BIA to assess its personnel requirements for managing trust assets as well as its other resource requirements.

A 1993 comparison of BIA natural resources staff with those in the U.S. Department of Agriculture and other agencies with similar natural-resource management responsibilities showed that BIA would have to more than double its staff to be on a par with the other agencies. In light of the substantial BIA staff reductions since 1993, the differences in staffing levels are even greater today. The same Indian Forest Management Assessment Team report cited BIA Indian forestry programs as having only 2.8 natural resources professionals (other than foresters) per million acres, while the U.S. Forest Service had 14.3 (five times more) natural resources professionals. Such staff are all necessary for managing and protecting wildlife, rangelands, fish, hydrology, archeology, geology, and soils. Regarding program funding, the May 1999 "Tribal Workgroup on Tribal Needs Assessments" report states that

"based on our latest analysis (FY1996), federal appropriations account for less than 60 percent of the total expenditures for Indian forest management; the tribes contribute the balance."

Lack of foresters, conservation specialists, range management specialists, and realty officers significantly curtails the ability of the Agencies to manage and protect large forests, ranges, and agricultural lands. The real estate offices have large backlogs in both the processing of leasing requests (agriculture, grazing, and commercial), and in probate. The huge workload occasioned by the fractionation of land ownership exacerbates the staffing shortage in probate.

Self-Determination and Self-Governance Through Contracting and Compacting

The policy of tribal self-determination and self-governance is realized with the assumption of BIA programs by the tribes under PL 93-638 contracts and compacts and PL 100-297 education grants. BIA estimates in the FY 2000 President's budget that "well over two-thirds of its funding will go to contracts, compacts and grants."[1] However, interviewees asserted that several factors appear to be impeding the movement toward self-determination and self-governance, thus thwarting implementation of federal Indian policy:

- Suspicion of federal intent. Some tribes, particularly the "traditional treaty tribes" in the Aberdeen and Billings Areas, have mixed feelings about PL 93-638. The history of federal policy toward Indians is one of dramatic fluctuations. Indians are still very suspicious that the federal government will once again shirk its responsibility. That suspicion is one reason that the tribes have contracted primarily for the programs that directly benefit individuals—education, social services and law enforcement—and not for the trust-related land programs such as forestry, range, minerals, and roads. However, some tribes told the Academy study team that they would contract everything if the programs were adequately funded.

[1] Statement of Assistant Secretary-Indian Affairs Kevin Gover before Senate Committee on Indian Affairs, April 28, 1999.

- Partial funding for contract support. Appropriations made to the BIA have not fully funded contract support costs. The contracts include funding for the administrative functions associated with program delivery, but in the last five years the funds have equaled only 77 to 87 percent of the rates negotiated by the DOI IG annually.[18] The tribes must provide the remaining amount from tribal funds.

- Program funding shortages. The tribes contend that many of BIA's programs are not adequately funded. For example, the money for roads maintenance ranges from 30 to 60 percent of actual requirements. One tribal chairman described a process in which the tribe took over programs under PL 93-638 only to face inadequate funding and a continual shrinkage in the budget amount. The chairman called it "termination by appropriation."

- Reluctance to give up the federal presence. One tribe in the Aberdeen Area gave back two of the programs it had been operating because it believed its servicing agency would be closed or reduced to a field office if it dipped below 15 employees. The tribe and the agency had a close working relationship, and the tribe believed it would not be served as well if it lost its agency and/or superintendent. Likewise, because self-governance compacts are administered by the Office of Self-Governance in Washington, D.C., Title IV compacting may not be attractive to tribes that want a federal presence.

- Dividing the pie among multitribe agencies. Contracting is more likely in agencies with a single tribe versus multiple tribes. If tribes have to split program funds, say, eight ways, they are less likely to want to take it over because their share would not be sufficient to cover the administrative costs. Thus, economic factors play a large part in decisions on whether to take over programs.

- Tension between BIA and self-determination. The self-determination policy has a bearing on employee morale when staff perceive they are "working themselves out of a job."

[18] Statement of Assistant Secretary-Indian Affairs Kevin Gover before U.S. House of Representatives, Committee on Resources, February 24, 1999.

Other issues concerning self-determination contracting and self-governance compacting that surfaced during the interviews are the lack of a transition period when programs are contracted for the first time and the inability to properly monitor contracts due to statutory restrictions and staffing shortages:

- BIA has inadequate resources and no standard procedures to help tribes when initially contracting out. BIA staff at the area offices and agencies felt that rather than awarding contracts "cold turkey," there should be a transition period during which BIA and the tribes can work together to assure that programmatic and administrative controls are in place. Interviewees described BIA staff training in PL 93-638 contracting as very sporadic.

- A conflict exists between self-determination and oversight of federal dollars. BIA managers believe the statutory restrictions on the oversight of contracts, compacts, and grants creates the potential for abuse. Managers remarked that of the 554 federally recognized tribes, the majority met their contractual obligations. However, there were problems with some of the tribes that had graduated to self-governance. By statute BIA cannot impose program standards or provide details on how to manage programs. BIA funds compacts in a lump sum, which the tribes can then allocate to any program. The single audit is not designed to monitor the adequacy of program performance. Managers felt they had little leverage because compact termination is "an onerous process and political suicide."

  In the case of PL 100-297 school grants, the statute calls for the "least possible federal interference." An example of the conflict between this hands-off policy and the federal oversight responsibility is the PL 100-297 school construction grant made to the Lac Courte Oreilles Ojibwe School in Wisconsin. An IG audit found that the tribe had improperly constructed a 41,358-square-foot shell of a building instead of the authorized 17,359-square-foot addition to the existing school, had made an unsecured loan with grant funds, and failed to comply with federal low-cost regulations in awarding the construction contract. The IG further found that BIA had not adequately monitored the grant to ensure the funds were used for the authorized purpose.

- A shortage in BIA staff impedes proper monitoring of contracts. Interviewees at the agencies did not believe they were adequately staffed to monitor contracts. In addition, they felt they did not receive sufficient technical support from the area offices in program oversight. More often than not, monitoring of contracts is a collateral duty. Interviewees told the study team that an attempt is made to assign AOTRs with some program knowledge or interest, but in many cases they are "winging it."

Selected Bureau of Indian Affairs Programs

Facilities Management

A nonpartisan assessment of BIA's facilities management function is perplexing and highly controversial within a number of BIA's major offices. This situation is the result of two major factors: the almost-autonomous operations and responsibilities of OIP, OIEP, and OLES and the extensive dispersion of common facilities management functions and activities within BIA's budget structure. Both factors foster a diffusion of accountability and create controversy among competing organizations. By way of illustration, the BIA budget contains eighteen separate line items for facilities management functions or activities that are common in most federal agencies and similar private sector organizations. In addition, six or more separate organizational entities are charged with management and oversight responsibilities for facilities. Some would not appear to involve facilities activities, such as the Office of Tribal Services that oversees the Housing Improvement Program. Most large organizations that have stewardship over a substantial number of facilities and other valuable physical assets rely heavily on a logical budget structure and a suitable organizational structure for managing those responsibilities effectively and efficiently. As noted, the BIA budget and organizational structure do not embody these fundamental principles. *Table 5* highlights the widespread dispersion of facilities management functions and activities in BIA's budget and organization.

Final Programs	Responsible Offices
Tribal Priority Allocations	
Road Maintenance	Office of Trust Responsibilities (Transportation Division)
Housing Improvement Program	Office of Tribal Services
Education	
Facilities Operations (Schools)	Education
Facilities Maintenance (Schools)	Education
Irrigation Operations and Maintenance	Office of Trust Responsibilities (Natural Resources Division)
Public Safety and Justice	
Law Enforcement Initiative (New Detention Facilities Only)	Law Enforcement Service
Facilities Operations (Non-Education)	Facilities Management and Construction Center (FMCC)
Facilities Maintenance (Non-Education)	Facilities Management and Construction Center (FMCC)
Construction	
Replacement Schools	Facilities Management and Construction Center (FMCC)
Employee Housing Repair (Schools)	Facilities Management and Construction Center (FMCC)
Facilities Improvement and Repair (Schools)	Facilities Management and Construction Center (FMCC)
Facilities Improvement and Repair (Public Safety and Public Justice)	Facilities Management and Construction Center (FMCC)
New Construction (Public Safety and Public Justice)	Facilities Management and Construction Center (FMCC)
Navajo Irrigation Project	Office of Trust Responsibilities (Water and Land Resources Division)
Safety of Dams	Office of Trust Responsibilities (Natural Resources Division)
Dams Maintenance	Office of Trust Responsibilities (Natural Resources Division)
Facilities Improvement and Repair (Non-Education Facilities)	Facilities Management and Construction Center (FMCC)
Telecommunications Program Management	Facilities Management and Construction Center (FMCC)

Table 5: Facilities Management Programs and Responsible Offices

Within this diffuse and complex organization, the Facilities Management and Construction Center (FMCC) in Albuquerque is the principal organization charged with responsibility for management and oversight of specified facilities functions, including new construction, renovation, and maintenance of Bureau-funded facilities. This responsibility was transferred from the Office of Construction Management in DOI to FMCC in October 1997. FMCC is currently involved with eight of the 18 aforementioned budget line items, including functions ranging from the execution of the Operations and Maintenance Funding Allotment Formula to preparation and justification of the operations and maintenance budget request for the administrative and educational programs. Other responsibilities within the Operations and Maintenance Division of the center include the minor improvement and repair program, emergency funds reimbursement, energy conservation, and telecommunications. The Division of Programming, Planning, and Implementation manages and oversees new construction, including schools, detention facilities, fire stations, warehouses, and administrative facilities. Approximately 80 percent of the planning, design, and construction projects are executed through PL 100-297 education grants and PL 93-638 contracts or self-governance compacts. The Department of Justice now funds new law enforcement construction projects. FMCC provides the necessary liaison and coordination between the field offices. It also manages the major Facilities Improvement and Repair Program.

The OIEP coordinates with FMCC on the education needs for all work associated with the schools and other education support facilities. Coordination and cooperation at the Albuquerque level appear to be very good. However, this is not the situation at the working level in the field and in Washington, D.C. The vast majority of people in the educational community believe strongly that, since educational facilities account for 75 to 80 percent of BIA's total inventory of facilities, FMCC should be placed under the jurisdiction of OIEP rather than OIP. The fact that operations and maintenance are severely underfunded colors their opinion, as do persistent and major deficiencies in facilities and their continued deterioration.

OIP's countervailing view is that educators do not have the experience necessary to maintain and manage facilities. OIEP did take over facilities management in the Navajo and Muskogee Areas, but in OIP's opinion the situation there has regressed. Interviewees pointed to large carryovers of

unobligated construction funds as indicators of OIEP's questionable performance. However, OIEP believed the reason for the unobligated balances was inadequate procurement support by OIP.

The issue is whether to transfer all education facilities construction and maintenance to OIEP or to limit its responsibility to maintenance and minor repairs of school facilities. In light of the division of responsibility between FMCC and OIEP for maintenance, it is difficult for the Assistant Secretary to hold either accountable for the operation and maintenance of school facilities.

Many of the Agency offices are highly critical of FMCC's oversight of construction projects and of the technical assistance it provides to agencies and tribes. Some interviewees were of the opinion that FMCC contracts out too many activities without oversight, a process that precludes federal or tribal involvement. A prevalent comment was that FMCC routinely ignores agency requests and comments.

Interviewees specifically cited FMCC's inadequate oversight of construction and failure to respond to requests for assistance in correcting deficiencies at school replacement construction projects. Another prevailing criticism was inadequate maintenance and correction of hazardous deficiencies in both school and detention facilities. Some interviewees said that FMCC is very autocratic in executing its design and construction activities. FMCC has a major challenge in developing a mode of operations that changes its current perception in the field offices as being highly autocratic.

Many agencies leveled similar criticisms at the area offices. Some agencies seriously questioned the need for area offices. The performance of the area offices and the FMCC both in construction management and operations and maintenance, as well as in the provision of technical assistance, is regarded to be inadequate by many of the agencies and tribes.

Facilities Operations and Maintenance

In virtually all of the field offices visited one of the most pervasive and consistent concerns expressed by agency superintendents and staff were

insufficient staff and underfunding of the operations and maintenance of both education and noneducation facilities. Of the two issues, underfunding of maintenance was seen as the most critical. Contributing to the problem is that maintenance funds are not appropriately segregated from operational funds. Managers now have the latitude of deferring maintenance to augment operational activities. The FY 2000 budget for the first time provides separate line items for operations and maintenance requirements, a distinction that should emphasize the magnitude of maintenance problems.

Although almost all federal agencies face inadequate funding for maintenance and repair, BIA is especially constrained compared with most other agencies. Detailed studies and reports by the National Research Council (NRC), the Civil Engineering Research Foundation, and GAO all validate the severity of the problem in general, and particularly in federal facilities. The NRC reports recommend that 2 to 4 percent of the current replacement value of a facility should be the appropriate budget allocation for its routine maintenance and repair. A 1998 facilities maintenance assessment study by DOI cites the annual funding for facility maintenance at BIA at only 0.6 percent of replacement value, an amount less than one-third of the recommended minimum 2 percent guideline.

When senior managers face limited funds and a host of competing requirements, it often is easy to defer maintenance and repairs for one more year in the belief that the impact will not be serious. Invariably, however, these decisions lead to increased costs, the need for major replacements, or breakdowns, all of which affect accomplishment of the basic mission. The NRC studies characterize "decisions to neglect maintenance, whether intentional or through ignorance, as violations of the public trust and a mismanagement of public funds."

Deferrals and indefinite delays of valid maintenance and repair add directly to the constantly increasing backlog of essential maintenance and repair. BIA estimates that the cost of eliminating the backlog for all buildings is $962 million. Included in this total is a major immediate concern of a $230 million backlog of safety deficiencies that affect the life, safety, and health of building occupants.

The majority of BIA facilities, both education and noneducation, are in poor condition as a result of low levels of funding for maintenance and repair. The organizational downsizing at the field level has affected the ability of many Agencies to provide adequate management and oversight of maintenance and repair activities. The forced assignment to BIA field staff of numerous collateral duties because of the staffing reductions has exacerbated the situation.

Maintenance deficiencies have grown with time. The neglect of maintenance observed by the study team suggests a need for reassessment of the Bureau's priorities to arrest further deterioration of facilities and bring routine maintenance more in line with accepted federal agency practice.

Addressing staffing problems will require a comprehensive workload analysis in both numbers and skills to provide the necessary basis for realigning personnel and responsibilities in the area offices and agencies to support optimal delivery of services and performance of the facilities operations and maintenance functions at the field level.

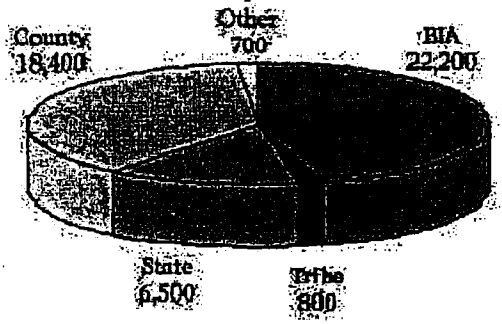
Road Maintenance

The BIA and tribes own and maintain approximately 23,000 miles of roads—5,600 miles are paved, 2,500 are gravel, and 14,100 are unimproved and earth roads *(Figure 3)*. In addition, approximately 25,600 miles of state, county, and other roads are located on Indian reservations. Thus the total road network on the reservations is 48,600 miles.

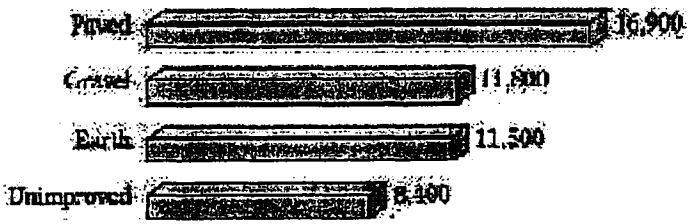
The Division of Transportation in the Office of Trust Responsibilities in BIA manages the annual maintenance program for Indian reservation roads. The amount BIA receives in the TPA portion of the budget is approximately $26 million per year, less than one-third of its estimated requirement of $90 million a year. The maintenance funds are allocated by formula to area offices, which then sub-allocate them to the agencies. The agencies or tribal governments under PL 93-638 contracts, compacts, and inter-government cooperative agreements with states and counties perform the actual maintenance. As a condition for continuance of Federal Lands Highway funds (Highway Trust Funds) for construction and

improvements, the area offices and agencies are responsible for maintaining BIA roads to protect the public investment and for providing safe transportation for tribal members and the general public. The Highway Trust Fund does provide some assistance with maintenance, since the law permits up to 15 percent of the funds allocated to BIA to be used to reseal paved roads. BIA has taken advantage of this provision in some instances.

a. Total IRR Network



b. IRR Network Surfaces (48,600 total miles)



c. BIA Road Surfaces (22,200 total miles)

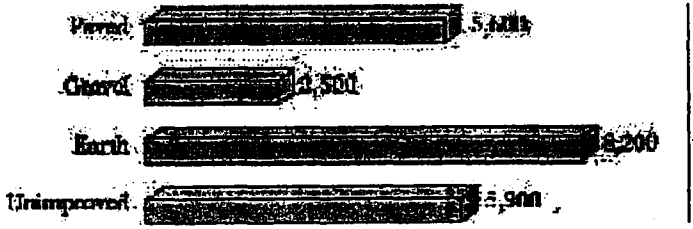


Figure 3: Indian Reservation Roads

The major work components for roads maintenance in the northern plains and northwest reservations include snow and ice control, interior pavement sealing, pavement maintenance, gravel maintenance, and remedial work on improved earth roads. In some severe winter seasons, the snow and ice control activities have consumed the majority of the limited maintenance funds and left the agencies and tribes with only marginal amounts for other critical maintenance. The study team found that consistently low levels of funding of roads maintenance were a critical and longstanding problem at almost every agency it visited. The end result has been the curtailment of crack sealing and patching at many locations, further deterioration of road conditions, increased costs for major repairs, risks to safety, a severe impact on the maintenance of bridges, and substantial reductions in regraveling of road surfaces. Another result of the funding pattern is an inability to replace worn-out equipment, excessive equipment maintenance costs, and in numerous cases, prohibitive repair costs. At some locations the unit costs per mile to maintain the different types of road surfaces (paved, gravel, and improved earth) included in the BIA budget were less than half the expenditures for similar rural roads in surrounding counties and states.

In view of the continued severe underfunding of roads maintenance, many tribes have no interest in contracting for the program. This decision affects the basic policy of assisting tribes to achieve self-governance status through PL 93-638 contracts and compacts. Agency superintendents contend that the gross underfunding of roads maintenance precludes them from carrying out their trust responsibilities. All the data examined shows that BIA budgets contain funding for only about 30 percent of the validated requirements for road maintenance. Historically, the roads maintenance program has been funded at levels that permit Indian reservation roads to continue to deteriorate at increasing rates.

The assistant secretary and the deputy commissioner currently lack the capacity to assemble and present compelling evidence on the size of the backlog of deferred roads maintenance.

Safety Management

The BIA's Safety Management Program is comprised of six elements: Occupational Safety and Health Programs, Loss Compensation Program, Employee Injury Compensation Program, Motorized Equipment Program, Indian Highway Safety Program, and Technical Assistance.

The overarching safety policy of the BIA is to provide a safe environment for all BIA employees, students attending BIA schools, tribal members, contractors' employees and the visiting public when using its facilities.

The Division of Safety and Risk Management located in Central Office West in Albuquerque is responsible for program policy and oversight. The division provides professional and technical leadership, as well as guidance and assistance in carrying out the programs. The division administers Indian Highway Safety Program grants, which are funded by the DOT. Division employees also inspect and evaluate BIA controlled facilities and equipment for safety and health and determine hazardous conditions and required actions.

The 12 area offices are required to have full-time qualified safety professionals on their staffs, with the exception of the Juneau and Sacramento offices, which have waivers to the requirement due to the small sizes of land holdings and a small number of BIA-owned or controlled facilities. There is also a full-time safety engineer assigned to the Haskell Indian Nation University in Kansas. At the agency level, most of the safety duties have been assigned as collateral duties due to the lack of staff. One exception at the agency level is the Navajo Nation, which has five safety officers (one at each of the five agencies). BIA's best estimate of the number of safety officers at the tribal government level is that probably less than ten percent of the tribes have safety officers on their staffs.

The Occupational Safety and Health Administration (OSHA) Law of 1960 specifies the required training and certification for collateral assignments of safety duties. Some of the interviewees at the agency level expressed serious concerns over the lack of training in their collateral assignments in Safety Management. Some of the full time safety officers at the area offices also expressed concerns over the excessive time and effort

often required to remedy significant safety or health hazards once they have been identified and corrective action has been requested.

The number of qualified safety officers at agencies and area offices does not meet OSHA standards, and employees who are assigned safety responsibilities as collateral duties have not had the required training to carry out those responsibilities.

Law Enforcement in Indian Country

Law enforcement services are delivered through a BIA organization comprised of a central office in Albuquerque; five district offices in Aberdeen, Muskogee, Phoenix, Albuquerque and Billings; and a Washington liaison office serving the Eastern Area (*Figure 4*). There are approximately 175 chiefs of police or equivalents serving at the Agency/reservation level. In addition, six states—Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin—provide law enforcement services under Public Law 280. Of approximately 200 law enforcement programs in Indian Country, 47 percent are operated under PL 93-638 contracts, 19 percent under self-governance compacts, 27 percent by the BIA, and 7 percent by original tribal agreements. The current number of sworn officers in BIA is approximately 2,000, with some additional officers currently being hired with resources provided under the 1999 Presidential Initiative.

Indian Country, with an estimated population of 1,430,000, has fewer than half as many police officers per capita as non-Indian communities. The Federal Bureau of Investigation Uniform Crime Reports reflect 2.9 officers per 1,000 residents in non-Indian communities of under 10,000 population, while the equivalent ratio in Indian Country is 1.3 officers per 1,000 citizens. The current number of officers in Indian Country would have to be doubled to bring BIA enforcement coverage even close to approaching comparability with the rest of the country. Bringing the OLES staff at the field/reservation level in closer alignment with national standards would entail increasing the number of sworn officers from 2,000 to 4,300.

There are 74 jails, including detention centers and holding facilities, on 55 reservations. Thirty-four of these are operated by the BIA and 40 by tribal governments. Many of the jails are forced to house both adults

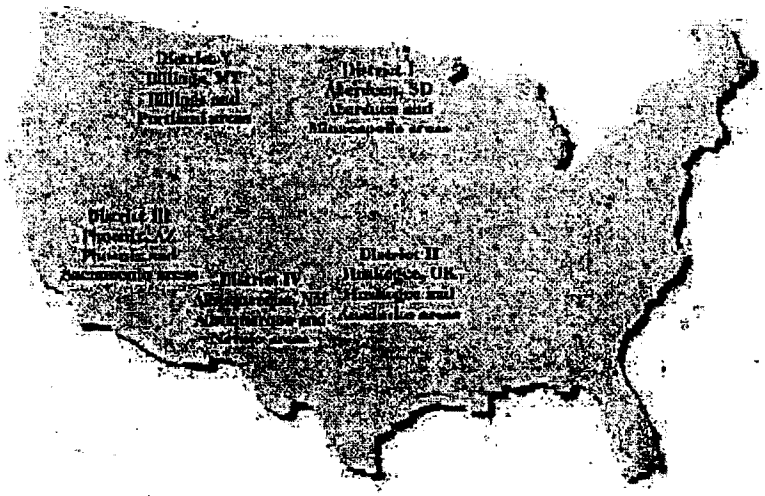


Figure 4: Office of Law Enforcement Services, Albuquerque, New Mexico

and juveniles due to the lack of separate facilities. Some of the tribal communities prefer not to lock up any juveniles. All of the law enforcement officials interviewed were in agreement that alcohol causes 95 percent or more of incarcerations on the reservations. A number of interviewees advised that the main function of most jails is to permit alcoholics to sober up and to protect themselves and others from harm.

The Department of Justice funds the construction of new and replacement jails. The Presidential Initiative for FY 1999 includes $34 million in DOJ's budget for this purpose. *Table 6* reflects the priorities for replacement of detention centers.

In addition to staffing shortages, the major problem reported in most of the jails, with the exception of two new facilities, was an acute shortage of maintenance and repair funds, which results in severe structural deficiencies and directly jeopardizes the health and safety of the inmates and staff. These include: defective or inoperative heating, ventilation, and air conditioning systems; major electrical and plumbing problems; serious fire and safety code violations; lighting inadequacies including inoperative emergency lights; required roof replacements; and severe over-crowding of cells and holding areas. *Table 7* lists the priorities for major improvements and repairs.

Rank	Facility/Project
1	Gila River Indian Community
2	Salt River Pima-Maricopa Indian Community
3	Colville Confederated Tribes
4	Navajo Nation—Crownpoint
5	Navajo Nation—Kayenta
6	Navajo Nation—Shiprock
7	Mississippi Band Of Choctaw Indians
8	Tohono O'Odham Nation
9	Confederated Tribes of the Umatilla Indians
10	Eight Northern Pueblos
11	San Carlos Apache Tribe
12	Three Affiliated Tribes of Fort Berthold

Table 6:
BIA Detention Facilities Construction
Priority List of Pending Projects

1	Blackfeet Law Enforcement Center	18	Northern Cheyenne Law Enforcement Center
2	Red Lake Law Enforcement Center	19	Sacaton Adult Detention Center
3	Pine Ridge Correctional Facility	20	Owyhee Detention Center
4	Wellpinit Law Enforcement Center	21	Warm Springs Detention Center
5	Supai Jail	22	Fort Peck Police Department
6	Medicine Root Detention Center	23	Sacaton Juvenile Detention Center
7	White Mountain Law Enforcement Center	24	Peach Springs Detention Center
8	Crow Law Enforcement Center	25	Hopi Rehabilitation Center
9	Zuni Police Department	26	Menominee Tribal Jail
10	Fort Belknap Law Enforcement Center	27	Fort Thompson Jail
11	Turtle Mountain Law Enforcement Center	28	Omaha Tribal Police Department
12	San Carlos Law Enforcement Center	29	Sells Adult Detention Center
13	Wind River Police Department	30	Standing Rock Law Enforcement Center
14	Fort Totten Municipal Center	31	Chemawa Indian School
15	Nett Lake Law Enforcement Center	32	Fort Peck Indian Youth Service Center
16	Rosebud Law Enforcement Center	33	Walter Miner Law Enforcement Center—Adult
17	Quinault Police Department	34	Walter Miner Law Enforcement Center—Juvenile

Table 7:
Rehabilitation/Renovation Construction Pending Projects
Ranked by Priority

Compounding the problem of low levels of funding for maintenance and repair is the fact that the Law Enforcement District Offices do not

have the responsibility for managing the funds that are available. The funds go instead to the area offices, whose priorities often differ from the districts, since their boundaries are not coterminous. The result is that critical deficiencies are often deferred. It is clear that coordination and cooperation between the officials responsible for maintenance and repairs and the law enforcement staff should be improved. Increased funding alone will not remedy the maintenance problem.

Because funding for maintenance, improvement and repair of facilities has been inadequate, many facilities now require major repairs or total replacement. Given the condition of facilities inspected by the study-team, its experts in capital facilities estimate that an annual budget of approximately $4 million for facilities improvement and repair would be required (in contrast with the current $1.4 million) for improvements and repairs of jails, detention facilities, and court facilities. An annual budget of approximately $6 million for facilities maintenance (of all non-educational facilities) would be required (in contrast with the current $4 million) for the critical maintenance of jails and detention facilities.

Housing Improvement Program

The Housing Improvement Program (HIP) is administered by the Social Services Division of the Office of Tribal Services. The program's major emphasis is on repair, renovation, and replacement of existing housing. The bulk of new housing is acquired through HUD programs. HIP provides three categories of assistance:

- interim improvements—up to $25,000 for housing repairs to correct conditions that threaten the health, safety or both of the occupants
- repairs and renovation—up to $35,000 for repairs or renovations to improve the condition of a dwelling so that it meets applicable building code standards
- replacement housing—provides a modest replacement home if the current dwelling cannot be brought up to applicable building code standards within the cost limitation for repairs and renovations, or if

the applicant does not own a home but has ownership or lease of sufficient land suitable for housing.

To be eligible for a HIP grant, the recipient must be a member of a federally recognized American Indian tribe or Alaska Native village, be living in an approved tribal service area, and have an annual income that does not exceed 125 percent of the HHS Poverty Income Guidelines. Eligibility for a HIP grant does not, however, guarantee receipt of services because funding is limited. Participation and receipt of housing assistance are based on the priority of the need. Generally, assistance is one time. The priority list of eligible applicants is developed through a formula-based ranking system that considers annual household income, the number of elderly persons living in the dwelling, a disabled person living in the dwelling, and the number of unmarried dependent children living in the dwelling.

Approximately 95 percent of the tribes operate HIP programs through PL 93-638 self-determination contracts or self-governance compacts. The remaining tribes receive services directly from BIA. Although HIP funding for tribes is distributed through TPA, it is not part of the TPA base and is not an entitlement program for tribes. BIA is presently revising its HIP funding distribution methodology for FY 2000, with the objective of ensuring that the grant funds go to the intended recipients (the neediest of needy eligible applicants).

BIA currently estimates that 30,000 low-income Indian families are eligible for HIP grants. At the current annual funding level of $16.074 million (the FY 1999 appropriation), it would take 24 years to meet the needs of currently eligible applicants. BIA states it would take $434 million to meet this current need for housing and housing repairs.

Social Services

BIA provides financial assistance and social services to eligible Indians when assistance is either not available or not provided by state, tribal, county, local, or other federal agencies. BIA programs within social services include Services to Children, Elderly and Families (covering the administration of all social programs); Indian Child Welfare Act; Welfare Assistance

(encompassing General Assistance, Child Welfare Assistance, Tribal Work Experience Program and Miscellaneous Assistance); and the HIP.

General Assistance

The BIA Grant Assistance Program provides for "basic essential needs" of individual Indians and families residing on or near reservations who do not qualify for state assistance programs and who are not covered by any other welfare assistance program. BIA funding under the Grant Assistance Program covers approximately 87 percent of the estimated need. Tribes contract for approximately 85 percent of the Grant Assistance Program.

An increase in the number of individual Indians and families requiring BIA grant assistance is predicted due to the Welfare Reform Law of 1996 and the stringent requirements of the TANF program. The high unemployment rate on reservations (averaging 49 percent and going as high as 90 percent in some locations) makes it difficult to link BIA grant assistance and welfare-to-work programs. Some states exempt Indian families (but not single individuals) living on or near reservations with an unemployment rate of at least 50 percent from the TANF mandatory cut-off date, but this exemption varies from state to state. States also may use different labor force statistics, either their own or BIA's.

Indian Child Welfare Act (ICWA)

Congress enacted the ICWA in 1978 to prevent unwarranted removal and placement of Indian children in non-Indian foster and adoptive homes. Under the law, BIA is required to maintain a repository of all adoptions of Indian children. The law also requires the states to notify BIA of involuntary child custody proceedings involving Indian children where the child's tribe cannot be identified.

Under the ICWA program, BIA funds tribes for tribally designated Indian child and family service programs that include the licensing of foster and adoptive homes, operation of counseling and treatment facilities, family assistance to prevent the removal of children, and legal services for families. Tribes have fully contracted/compacted the ICWA program.

Tribal Work Experience Program (TWEP)

Under TWEP, eligible participants receive work experience, training, or both that promotes work habits and develops work skills aimed at self-sufficiency. This program is also fully contracted/compacted by tribes.

Miscellaneous Assistance: Burial Assistance, Disaster Assistance, and Emergency Assistance

Burial Assistance provides funds for minimum burial expenses on behalf of eligible indigent Indians. Disaster Assistance provides relief where a tribal community is adversely affected by a natural disaster or other force that threatens life, safety, or health. Emergency Assistance provides relief where an individual or family's home and personal possessions are either destroyed or damaged through forces beyond their control. These miscellaneous assistance programs are approximately 90 percent contracted/compacted.

Child Protection

Several statutes that deal with federally and tribally operated child protection services require certain administrative and program functions. The Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (PL 99-570) requires BIA to collect data on the numbers and types of child abuse and neglect cases and the type of assistance provided. The data also identifies cases involving alcohol and substance abuse, recurrent abuse, and involvement of other minor siblings. The Indian Child Protection and Family Violence Prevention Act of 1990 (PL 101-630) requires that reports of abused Indian children reach the appropriate authorities. It provides for the establishment of tribally operated programs to protect Indian children and reduce the incidence of family violence. The Crime Control Act, Child Care Worker-Employee Background Checks of 1990 (PL 101-647) requires criminal history background checks on employees providing child care services.

Both BIA and the tribes agree that the social service programs are underfunded. Child Protection Services has never been funded as a specific program; its requirements were just incorporated into the overall caseload. The TPA Workgroup attempted to quantify the level of unmet need in BIA-funded social service programs by comparing the cost of activities that tribal governments provide through TPA funding with the cost of comparable activities

provided by other federal, state, and local governments. The workgroup used data collected from a small sample of 18 tribes.[19]

For Services to Children, Elderly, and Families, the workgroup found that general assistance caseloads for BIA and tribal social services staffs were twice as high as those for TANF social workers in state programs: 30:1 versus 15:1 for high casework (client counseling at least once a month); 50:1 versus 25:1 for moderate casework (every two months); and 100:1 versus 50:1 for minimum casework (every six months). The workgroup also calculated the unit cost of the service using an average salary of $30,000 times the difference in the number of social workers. Thus calculated, the unmet need for Services to Children, Elderly, and Families came to $13,140,000 (the FY 1998 funding was $28,063,000).

Area office and agency social workers interviewed by the study team reported typical caseloads of over 140 people per caseworker. These findings comport with those of the TPA Workgroup.

The TPA Workgroup also examined the unmet needs under the ICWA. It found that the caseloads for BIA and tribal caseworkers were two to three times higher than the same caseload of high-risk child welfare cases for caseworkers in a state program, the Child Welfare League of America: 60:1 versus 20:1 for caseloads of no more than 20 children under age five; 60:1 versus 20:1 for caseloads of no more than 15 children over age five; and 60:1 versus 30:1 for caseloads of no more than 30 adoptive families. The workgroup calculated the unit cost of the service using an average salary of $43,000 times the difference in the number of caseworkers. Thus calculated, the unmet need for the ICWA came to $21,500,000 (the FY 1998 funding was $14,235,000).

The workgroup found that the Welfare Assistance Program (FY 1998 funding of $93,960,000) had zero unmet needs. The study team, however, heard a different story. Social services workers in the field said they were barely able to meet the welfare needs. Those at several Agencies had to deny services to eligible single individuals because there was not enough money to support all eligible people.

[19] Tribal Workgroup on Tribal Needs Assessments, "Empowerment of Tribal Governments," May 1999, and Bureau of Indian Affairs, "TPA Report," draft, May 20, 1999.

BIA social service professionals told the study team that there is potential for mismanagement in the tribally run social service programs because of the statutory restrictions under PL 93-638 on oversight and on what program matic requirements can be included in contracts and compacts. BIA could not require that tribal workers have the same professional qualifications and credentials as BIA staff, nor could they include caseload guidance in the PL 93-638 contracts. In addition, BIA staff can only monitor performance once a year. Yet, BIA still has liability for cases over which it does not exercise much oversight. The study team was told of an extreme case involving a self-governing (fully compacted) tribe. The older children of foster parents had beaten a foster child to death. The biological family sued, and the court determined that the tribal agency had failed to inspect the foster home adequately and had no court order placing the child. The court also determined that technically the tribal employees with oversight responsibility for this case were considered to be federal; therefore, the lawsuit was brought against BIA, which lost.

Interviewees in the field also commented on a lack of policy direction from headquarters with regard to social service programs. Area office and agency social workers felt that communication between the central office and the field was poor and that the central office was out of touch with field operations. For instance, the study team was told of a White House Directive distributed by the central office in January 1999 that said that incarcerated individuals would not be eligible for general assistance. It provided no guidance on what incarceration means—"a kid thrown in the drunk tank over the weekend?" Field social workers believe that central office just applies welfare reform to the reservations with no grounding in reality and no policy guidance.

Strengthened communication between the social service offices in the field and policymakers in the central office is critical to providing consistent policy guidance to the field, and central office understanding of field problems.

The study team visited the Division of Social Services within the Office of Tribal Services in Washington, D.C. Social Services staff were still working from a Bureau of Indian Affairs Manual dated May 23, 1980.

The study team observed routine data collection at some areas and agency offices; however, the Division of Social Services does not have any Bureau-wide system for collection and analysis of social services data such as number of caseworkers and caseloads, number of eligible single individuals turned down for assistance, or number of child abuse and neglect referrals.

Indian Education

BIA began providing education for Indians in the nineteenth century. Along with other aspects of the federal government's relationship with Indians and Alaska Natives, education evolved from an element of the federal government's trust and treaty obligations to Indians, to a predominantly locally or tribally administered program, with funding and general guidance from BIA and other federal agencies. As noted above, OIEP was separated from the other BIA programs in 1978 and put under a director with a professional education background to ensure that only educators would supervise educators. Congress' intent was for OIEP to stand alone, not necessarily dependent for anything on any other part of BIA. Currently, OIEP depends on OIP for facilities construction and maintenance, procurement, OIRM, safety management, budget and a few other administrative services, which OIP includes in its budget formulation and presentation. However, in every other way it is separate, and its last remaining ties to OIP are the only rough spots in its otherwise smooth operations.

OIEP has a staff of around 5,000, and its educational facilities (including school buildings, dormitories, and teacher housing) account for more than 80 percent of BIA's physical facilities.

Although education involves half of BIA's employees, the Bureau educates only a small percentage of Indian children: in 1994, only 10 percent of Indian children enrolled in kindergarten through 12th grade attended BIA or tribally operated schools. Eighty-five percent attended public schools, and 5 percent attended parochial schools. Indian students attending public schools receive support under the Johnson O'Malley Act and the Department of Education's Impact Aid, which reimburse local school districts for the costs of educating children from Indian families that are exempt from local taxation.

Every state provides free public education to Indian children, and Indian families can choose whether to send their children to a public or BIA school. The differences between BIA or tribally operated schools and on-reservation public schools (found mainly in Arizona and New Mexico) seem minor. All must meet the same accreditation standards, a provision that creates substantial educational similarity. Further, because the two categories of schools serve the same communities (sometimes side by side), the student populations are demographically similar. But in situations where the public schools are not actually on the reservation there are substantial differences between the student populations at BIA schools, which only Indian children attend, and the public schools where Indian children are in the minority. BIA schools are more likely to offer cultural and other Indian-centered programs than public schools. Because of the ISEP formula, there are only minor differences in the federal costs of educating a reservation Indian child in a BIA school or a public school.

As lifestyles, housing patterns, and road systems have changed on Indian reservations, day schools have become more practical and popular. All public schools are day schools, as are most BIA schools. The number of boarding schools BIA operates has declined, and their role is changing. Some Indian children must still attend boarding school because their family homes are so isolated and inaccessible, particularly in winter, that daily transportation is impractical. An increasing percentage of the students who attend boarding schools or live in dormitories, however, are there for other reasons. Some Indian parents send their children to boarding schools because they have happy memories of their own experience (this feeling, of course, is not universal), and a few boarding schools are seen to provide elite opportunities, almost like preparatory schools. Social service agencies place the majority of children in boarding schools in an attempt to protect them from impoverished or dangerous home environments, and the courts are sending a growing number in response to behavioral problems. Thus, the student population at most boarding schools has a higher percentage of students who need special attention than is found at a typical day school, although the funding formula is approximately the same for both.

Based on the interviews and other data, the study team generally found OIEP's organization to be simple and efficient, and its components were able successfully to address any issues that came up. OIEP managers

believed that the ISEP formula was a reasonable way to identify educational funding requirements and that BIA schools could be operated successfully with the funds provided.

The problems that surfaced related to four things, discussed in more detail below:

- the continuing shift from BIA direct operation to tribal operation through grants
- the inadequacy of the resources available to maintain and replace educational facilities
- poor contract support
- the need for specialized counseling in boarding schools

The transfer of operating responsibility from BIA to tribes has created two main problems with grants. One has to do with teacher salaries. BIA ties teacher salaries to the Department of Defense pay rates for overseas teachers, so that BIA teachers receive higher salaries than teachers in other schools on or near the reservations. In addition, as federal employees, BIA teachers are protected by federal severance pay requirements: a BIA teacher who loses a job can receive up to a year's salary as severance pay. Because of these two factors that increase labor costs, it is expensive for tribes to take over school operations. The teachers do not want to accept lower pay to work for a tribe.

The second grants issue involves oversight and technical assistance. The education line officers interviewed said they are uneasy about constraints on their ability to monitor the performance of grant schools or to provide technical assistance. Both the legislation and the grant agreements themselves limit the line officers' opportunities to review school operations unless invited to do so in writing. Nevertheless, most education line officers believe they and BIA, and not the Indian tribes, will be held accountable for problems. This is the same fear BIA employees in other program areas expressed. Currently, accountability for operations of tribal organizations running schools under BIA grants is unclear.

Almost all the education line officers told the study team that the resources allocated to facilities maintenance were insufficient to maintain school facilities properly. They cited safety, environmental, health, and appearance problems that they could not address adequately because they did not have enough money. Children are attending school in substandard buildings, some of which are not safe and teachers are living in tattered, unkempt housing. The Academy study team observed poorly maintained buildings including irreplaceable historic structures everywhere it went. As this report points out in the section on facilities maintenance, Congress appropriates only a fraction of the generally accepted cost of maintaining facilities.

In locations where the education line officers did not have to depend on OIP for facilities maintenance, they felt they were more able to accomplish the most important maintenance, even though funding was no greater at these locations. The Academy team did not verify that OIEP was doing a better job with maintenance, but it did encounter fewer complaints.

The education line officers also said they were not getting good service from FMCC. The daunting priority list, the availability of funding to accomplish only a tiny portion of it, and the slow response on projects that do finally get going are all frustrating. The study team heard repeatedly that OIEP does not receive its proportional share of funding or service from FMCC.

The division of responsibility for maintenance and operations makes it difficult for OIEP to acquire services, and in turn, for the Assistant Secretary to hold it responsible for maintaining its facilities properly, particularly those that children use daily.

The education line officers told the study team that the procurement services from the area offices are slow and poor. They said they received satisfactory service from OIEP's administrative units. This situation could be corrected by making OIEP accountable for all its administrative needs and not dependent on OIP for funding or services unless it chooses.

On the final issue, the need for specialized counseling in boarding schools, many education line officers said that funding for this purpose is required, particularly at the off-reservation boarding schools. They said

the number of students placed in these schools because of traumatic or impoverished home lives, or because the judicial system did not have a more appropriate place to put them, was creating an environment where the students needed special help to succeed.

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Appendix C
Selected List of Interviewees

Office of the Assistant Secretary-Indian Affairs

Kevin Gover, Assistant Secretary-Indian Affairs
James McDivitt, Chief of Staff

Office of American Indian Trust
Elizabeth Homer, Director (outgoing)
Jim Pace, Acting Director

Office of Audit and Evaluation
Linda Richardson

Office of Self-Governance
Bruce Blanchard, Special Assistant to the Director

Facilities Liaison Staff
Jerry Schwiegert

Bureau of Indian Affairs—Office of Indian Programs

Central Office East—Washington, D.C.

Hilda Manuel, Deputy Commissioner

Office of Management and Administration
Nancy Jemison, Director (outgoing)
Deborah Maddox, Director
Jeanette Hanna, Budget Officer

Office of Tribal Services
Deborah Maddox, Director (outgoing)
Larry R. Blair, Chief, Social Services
Bob Stearns, Statistician
James J. Thomas, Self-Determination

Office of Trust Responsibilities
Terry Virden, Director

Equal Employment Opportunity
John Nicholas, Director

Central Office West—Albuquerque

Office of Management and Administration
Dan Gamble, Director, Division of Accounting Management
Jerri Stivers, Accounting
George Gover, Acting Director, Division of Information Records Management
Mona Infield, OIRM
Carolyn Smalley, Records Management, OIRM

Office of Law Enforcement Services
Theodore Quasula, Director
Walter Lamar, Deputy Director

Facilities Management and Construction Center
Edward Abeita, Structural Fire Program
Mike Campbell, Operations and Maintenance Budget
Delphie Montoya, Acquisition Services
Margie Morin, Operations and Maintenance Program
Michael Perry, Chief, Acquisition Services
Boyd Robinson, Employee Housing Program
Kenneth G. Ross, Special Asst. to Director, OIEP
Norman Suazo, Chief, Division of Program Planning
Buddy Warnack, Director's Secretary

Aberdeen Area

Aberdeen Area Office
Cora Jones, Area Director
Alice Harwood, Deputy Area Director
Lee Bearheels, Accounting Operations
Joanne Belgarde, IRM Operations
Eve Benson, Accounting Operations
Gerry Ferrel, Roads Construction & Maintenance
Jim Geffre, Land and Title Records
Caroline Harris, IRM Operations
Frank Joseph, Housing Improvement Program
Wayne Labelle, Safety Management
Kevin McNulty, Records Management
Lee Moore, Facilities Management

Ernie Pourier, Accounting Operations
Roy Pulfrey, Natural Resources

Ted Sanchez, IRM Operations
Richard Zephier, Contracts

Cheyenne River Agency
Russell McClure, Superintendent
Dany Deane, Social Services
Donel Newbrough, Procurement

Crow Creek Agency
Steve McLaughlin, Superintendent

Fort Berthold Agency
Adeline Brunsell, Superintendent
Arnie Goodbird, Probate
Pat Staples, Range Land Management

Lower Brule Agency
Cleve Her Many Horses, Superintendent

Pine Ridge Agency
Pamela Hatch, Administration Norman Ford, 638 Contracts

Rosebud Agency
Larry Burr, Superintendent
Elton Hawk Wing, Facilities Management
JoAnne Young, Administration

Sisseton Agency
Pat Hemmy, Superintendent
Zozette Gates, Reality

Standing Rock Agency
Larry Bodin, Superintendent

Turtle Mountain Agency
Ken Davis, Superintendent

Winnebago Agency
Russell Bradley, Superintendent

Yankton Agency
Timothy C. Lake, Superintendent

Albuquerque Area

Albuquerque Area Office
Rob Baracker, Area Director
Don Whitener, Deputy Area Director
Steve Calvin, Contracts
Karen A. Chicharello, Personnel
Cecilia Clark, Finance and Budget
LaVern Doyle, Property
Iris Ann Drew, Tribal Government and Self-Determination
Alex Lujan, Safety Management
Nolan Padgett, Facilities Management
Donna Peigler, Lands and Title Records
Ken Russell, IRM Operations
Cynthia Tafoya, Procurement

Laguna Agency
Yamie Leeds, Superintendent
Barbara Cheromiah, Administration
Viola Cheromiah, Administration
Annalyn Shariacino, Administration

Northern Pueblo Agency
Lorene Dieguez, Administration

Ramah Navaho Agency
William Leeds, Superintendent

Southern Pueblo Agency
Florene Gutierrez, Superintendent
Margaret Baillom, Procurement
Rick Infield, IRM Operations
Melissa Jojola, Procurement
Darlene Maria, Procurement
Francis Price, Self-Determination
Julie Ration, Budget

Southern Ute Agency
Dan Breuninger, Superintendent

Zuni Agency
Michael Hackett, Superintendent

Anadarko Area

Anadarko Area Office
Robert K. Impson, Deputy Area Director
Terry Bruner, Tribal Government
Jeannie Cooper, Personnel
Braven Dyer, Roads Engineering
Debby Kobrick, Land and Title Records
Retha Murdock, Social Services
Barbara Nixon, Finance

Anadarko Agency
Betty Tippeconnie, Superintendent

Concho Agency
Galila S. Johnson, Superintendent
Nancy Edwards, Administration
Connie Fox, Self-Determination
Paul Knight, Land Operations
Scott McCorkle, Realty

Kickapoo Field Office (formerly Shawnee Agency)
Brian Eddlemon, Soil Conservationist
Frances Wetselline, Reality Specialist

Billings Area

Billings Area Office
Keith L. Beartusk, Area Director
Mike Black, Facilities Management
Henry Graham, Administration
Jack Koontz, Personnel
Clark Madison, Realty, TAAMS
Dave Pennington, Natural Resources
Louise Rayez, Social Services

Crow Agency
Gordon Jackson, Superintendent
Brenda Schiff, Natural Resources

Northern Cheyenne Agency
John E. White, Superintendent
Raymond Harris, Real Estate
Karen Locher, Administration
Darryl Sanchez, Range Land Management

Eastern Area

Eastern Area Office
Franklin Keel, Area Director
Brenda Bennett, Administration

Juneau Area

Juneau Area Office
Niles Caesar, Area Director
Warren Heisler, Jr., Deputy Area Director

Anchorage Agency
Albert Kahklen, Superintendent

Minneapolis Area

Minneapolis Area Office
Larry Morin, Area Director
Claricy Smith, Deputy Area Director

Great Lakes Agency
Robin Jaeger, Superintendent
Dave O'Donohue, Roads Engineering
Dawn Selwyn, Administration
Gerald Walhovd, Natural Resources

Minnesota Agency
Joel D. Smith, Superintendent
Glennis Dudley, Administration
Janis Shockey, Real Estate
David Sterr, Forestry
Dick Wilkie, Law Enforcement

Red Lake Agency
Claire Fetzer, Trust Officer

Muskogee Area

James E. Fields, Area Director

Chickasaw Agency
Traile G. Glory, Acting Superintendent

Okmulgee Agency
Jimmy L. Gibson, Superintendent
Floyd Waters, Realty
Phyllis Yahola, Tribal Government

Osage Agency
De Sloan—Acting Superintendent
Bill Barker, Minerals
Melissa Currey, Realty
Charles Hurlburt, FOIA

Navajo Area

Navajo Area Office
Elouise Chichiarello, Area Director
Rina Thom, Acting Deputy Area Director

Shiprock Agency
Donald Bendoni, Realty
Lucy Davis, Range Land Management
Gloria John, Secretary
Roxanne Owens, Range Land Management
Tracy Ramos, Natural Resources

Navajo Indian Irrigation Project
Robert Krakow, Project Manager

Phoenix Area

Phoenix Area Office
Wayne Nordwall, Area Director
John Ashley, IRM Operations
Brian Bowkes, Administration
Gerald Shipman, Real Property Management
Charles Thomas, Facilities Management

Fort Apache Agency
Ben Nuvamsa, Superintendent
Kevin Buck, Tribal Services
Glorianna Dayawa, Tribal Services
Bob Rogers, Facilities Management

Hopi Agency
Bob Caroline, Acting Superintendent
Wendell Honanis, Administration

Papago Agency
Nina M. Siquieros, Superintendent

Pima Agency
Davis Pecusa, Superintendent

Portland Area

Portland Area Office
Stanley Speaks, Area Director
Nick Longley, Budget

Yakima Agency
Ernest Clark, Superintendent
A.C. Oberly, Programs

Sacramento Area

Sacramento Area Office
Ronald Jaeger, Area Director
Mike Smith, Deputy Area Director
Amy Deutche, Budget

Central California Agency
Dale Risling, Sr., Superintendent
James Brafford, Realty
Troy Burdick, Administration
Douglas Rollins, Self Determination

Northern California Agency
Virgil Akins, Superintendent
Angela Butterfield, Tribal Services
Robert Eben, 638 Contracts

Bureau of Indian Affairs—Office of Indian Education Programs

Central Office—Washington, D.C.

Joanne Sebastian Morris, Director (outgoing)
Joseph Christie, Acting Director
William Mehojah, Deputy Director
Dennis Fox, Assistant Director
James Martin, Planning, Evaluation & Oversight

Albuquerque Personnel Office

Joann Deere, Personnel Officer

Education Line Offices

Billings Area
Levon French, Acting Education Line Officer

Chinle Agency
Beverly Crawford, Education Line Officer

Crow Creek/Lower Brule Agency
Dan Shroyer, Education Line Officer

Eastern Navajo Agency
Bea Woodward, Acting Education Line Officer

Fort Apache Agency and Pima Agency
Ray Interpreter, Education Line Officer

Fort Defiance Agency
Charles Johnson, Education Line Officer

Hopi Agency
John Wahnee, Education Line Officer
David Talayumptewa, Business Manager

Minneapolis Area
Terry Portra, Education Line Officer

Northern Pueblos Agency
Kevin Skendore, Education Line Officer

Oklahoma Area
Joy Martin, Education Line Officer

Papago Agency
Joe Frazier, Education Line Officer

Pine Ridge Agency
Norma Tibbitts, Education Line Officer

Rosebud Agency
Karen Halligan, Business Manager

Shiprock Agency
Lester Hudson, Education Line Officer

Southern and Eastern States Agency
LaVonna Weller, Education Line Officer

Southern Pueblo Agency
Benjamin Atencio, Education Line Officer

Western Navaho Agency
Andrew Tah, Education Line Officer

Tribal Representatives:

Harold Salway, President, Oglala Sioux
Milo Yellowhair, Vice President, Oglala Sioux
Norman G. Wilson, Chairman, Rosebud Sioux
Louie DePree, Vice Chairman, Cheyenne River Sioux
Stephen Cournoyer, Jr., Chairman, Yankton Sioux
Robert McGlothlin, Standing Rock Sioux tribal member
Alan Whitelighting, Standing Rock Sioux tribal members
Michael Jandreau, Chairman, Lower Brule Sioux
Clara Nomee, Chairman, Crow Tribe
Joseph Walksalong, Sr., Chairman, Northern Cheyenne Tribe
Judy Moe, Tribal Operations, Minnesota Chippewa
Lawrence Bedeau, Tribal Council Member, Red Lake Band of Chippewa
Darrell G. Seki, Sr., Red Lake Band of Chippewa
Lisa Allen, Administration, Red Lake Band of Chippewa
Donald W. Moore, Sr., Chairman, Bad River Band of Lake Superior Chippewa
Jeff Burrough, Administration, Bad River Band of Lake Superior Chippewa
Tom Maulson, President, Lac du Flambeau Band of Lake Superior Chippewa
Gaishkibos, Chairman, Lac Courte Oreilles Band of Lake Superior Chippewa

Terry Mayer, Superintendent of LCO School
Norma Ross, Comptroller, LCO Band of Lake Superior Chippewa
Charles O. Tillman, Jr., Principal Chief, Osage Nation
Patricia Beasley, Federal Programs, Osage Nation
Leonard Morell Maker, Planning, Osage Nation
Edward D. Manuel, Chairman, Tohono O'odham Nation

Department of the Interior

John Berry, Assistant Secretary for Policy, Management and Budget

Office of Fiscal Resources
Robert L. Lamb, Deputy Assistant Secretary, Budget and Finance

Office of Administration
Paul Denett, Director/Senior Procurement Executive
Dean Titcomb, Acquisition

Office of the DOI CIO
Daryl White, CIO
Bobby Swain, Telecommunications

Office of Financial Management
Schuyler Lesher, Director

Office of Planning and Performance Management
Norma Campbell, Acting Director

Office of the Inspector General
Jim Duff
Andy Fedak
Roger Larouche
Ben Pivott
Julie Theis

Office of the Special Trustee
Thomas Thompson, Principal Deputy, Washington, D.C.

Ken Rossman, Albuquerque

Charlene Sampson, Cheyenne River Agency

Dean Webb, Aberdeen

Office of Surface Mining
Allison S. Beard, Personnel

National Business Center
Dick Comerford, Chief, NBC, Reston
Stan Dunn, Director, NBC Denver Operations
Allan Chaney, NBC Denver Operations

Other Federal Agencies

Department of Education
Paul S. (Sandy) Brown
Bob Palone
Liz Whitehorn

Department of Health and Human Services
Richard Church, CIO, Indian Health Service

Department of Transportation
Larry Weiser, Indian Reservation Roads, Federal Highway Administration

Smithsonian Institution
Kathleen Johnson, Assistant Director of Budget

Congress

Joel Kaplan, Staff Assistant, Subcommittee on Interior and Related Agencies, U.S. House Appropriations Committee

Anne McInery, Staff Member, Subcommittee on Interior and Related Agencies, U.S. Senate Appropriations Committee

State Agencies

New Mexico Department of Education
Kurt A. Steinhaus, Assistant Superintendent

Appendix D
Academy Panel and Study Team Biographies

Academy Panel

Royce Hanson, Panel Chair—Wilson H. Elkins Visiting Professor, University of Maryland, Baltimore County. Former Professor and Dean, School of Social Sciences, University of Texas at Dallas; Associate Dean and Professor, Hubert H. Humphrey Institute of Public Affairs, University of Minnesota; Senior Staff Officer, National Research Council, National Academy of Sciences; Chairman, Montgomery County Planning Board and Chairman, Maryland National Capital Park and Planning Commission.

Eddie Frank Brown—Associate Dean/Director Buder Center for American Indian Studies, Washington University; Former Consultant/Executive Director, Department of Human Services, Sells, Arizona; Assistant Secretary, Department of the Interior, Washington, D.C.; Director, Arizona Department of Economic Security, Phoenix, Arizona; Director of Community Affairs/Associate Professor, Arizona State University, Tempe, Arizona; Division Chief, Department of the Interior, Bureau of Indian Affairs, Division of Social Services, Washington, D.C.; Associate Professor, Graduate School of Social Work, Arizona State University, Tempe, Arizona.

Mark W. Cannon—Venture Capitalist: Former founding owner of Geneva Steel and Executive Vice President, Geneva Development; Staff Director, Commission on the Bicentennial of the U.S. Constitution; Administrative Assistant to the Chief Justice of the United States; Director, Institute of Public Administration; Chairman, Political Science Department, Brigham Young University.

Bernard Martin—Consultant. Former Special Assistant to the Deputy Director for Management; Deputy Associate Director for Human Resources; Assistant Director for Legislative Reference; Deputy Associate Director, Labor, Veterans, and Education Division; Chief, Economics-Science-General Government Branch, Legislative Reference Division of the U.S. Office of Management and Budget.

Jacqueline Rogers—Senior Fellow, School of Public Affairs, University of Maryland College Park. Former Secretary of Housing and Community Development, State of Maryland; Director, Office of Management and Budget, Director, Department of Housing and Community Development and Community Development Director, Montgomery County Maryland.

Academy Study Team

Carole M.P. Neves, Ph.D.—Project Director. Project Director and Director of International Programs, National Academy of Public Administration.

William E. Lilly—Senior Project Officer. Director, National Aeronautics and Space Administration Programs, National Academy of Public Administration. Former Associate Administrator/Comptroller, National Aeronautics and Space Administration.

Thomas E. Utsman—Project Manager. Former Deputy Associate Administrator, National Aeronautics and Space Administration Headquarters, Washington. D.C.; Deputy Director, Kennedy Space Center, Florida.

Kathleen Ernst—Senior Research Associate, National Academy of Public Administration. Former Staff Assistant to Court Administrator, U.S. Tax Court.

Wallace O. Keene—Senior Research Associate. Former Director of Information Resource Management, National Aeronautics and Space Administration and Department of Health and Human Services; Finance Team Leader, National Performance Review and Principal, Council for Excellence in Government.

Billie J. McGarvey, Major General, USAF (Ret.)—Senior Research Associate. Former Director of Facilities Engineering, National Aeronautics and Space Administration and Deputy Chief of Staff for Civil Engineering, United States Air Force. Registered Professional Engineer.

Herbert R. McLure—Senior Research Associate. Former Associate Administrator for Human Resource Management, Federal Aviation Administration and Deputy Assistant Comptroller General, U.S. General Accounting Office.

Whitney Watriss—Senior Research Associate, National Academy of Public Administration.

Jack Zickafoose—Senior Research Associate, Former Associate Director, Office of Planning, Management and Budget, Smithsonian Institution.

Larry A. Patrizi—Research Associate, National Academy of Public Administration.

Mary Brown—Project Secretary, National Academy of Public Administration.

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